



**S.B. 258**

127th General Assembly  
(As Introduced)

Sen. Kearney

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**BILL SUMMARY**

- Generally requires the Department of Administrative Services and other state agencies to set aside approximately 10% of their purchases for which only small business enterprises may compete.

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**CONTENT AND OPERATION**

**Set aside for competition by small business enterprises**

The bill generally establishes a set aside requirement for the competitively selected<sup>1</sup> purchases of the Department of Administrative Services (DAS) and most state agencies.<sup>2</sup> Approximately 10% of these purchases must be set aside only for competition by small business enterprises.

The bill uses the same definition of "small business enterprise" as is used in current law for the Small Business Innovation Research Grant Program in the Department of Development. Thus, a "small business enterprise" is any person with a principal place of business or research in Ohio that meets the requirement of a "business concern" under federal regulations pertaining to the small business innovation research program under federal law, 13 C.F.R. 121.702. (R.C. 125.083(A).) A "small business concern," under federal law, is one that is organized for profit, with a place of business located in the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor; is in the legal form of an

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<sup>1</sup> "Competitive selection" includes competitive sealed bidding, competitive sealed proposals, and reverse auctions. (R.C. 125.01.)

<sup>2</sup> The legislative and judicial branches, boards of elections, and the Adjutant General's office are excluded in the same manner as they are excluded from the Minority Set Aside Act, R.C. 125.081. (R.C. 125.083(C).)

individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust, or cooperative (except that where the legal form is a joint venture, there can be not more than 49% participation by foreign business entities); is at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States; and has, including its affiliates, not more than 500 employees.<sup>3</sup>

### **Implementation of the small business set aside**

The Director of DAS may adopt rules in accordance with the Administrative Procedure Act as are necessary for the implementation of the small business set aside program. (R.C. 125.083(E).) The bill provides, however, that if no bid is submitted by a small business enterprise for purchases set aside for them, then the purchase is to be made according to usual procedures and the contracting agency, from time to time, is to set aside additional purchases under the program to replace those previously set aside but for which no small business enterprise submitted a bid. This is to ensure that, in any fiscal year, the aggregate amount of contracts awarded to small business enterprises will equal approximately 10% of the total amount of contracts awarded by the agency. (R.C. 125.083(D).)

The bill does not preclude any small business enterprise from competing for any other state purchases that are not specifically set aside for small business enterprises. (R.C. 125.083(F).)

### **Violation for misrepresentation**

Any person who intentionally misrepresents self as owning, controlling, operating, or participating in a small business enterprise for the purpose of obtaining a contract or other benefit under the small business set aside program is guilty of theft by deception. (R.C. 125.083(G).)

### **First year of application**

The set aside program established by the bill first applies to purchases made in fiscal year 2009.

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<sup>3</sup> U.S. Small Business Administration, Frequently Asked Questions, Small Business Innovation Research – SBIR. <http://app1.sba.gov/faqs/faqindex.cfm?areaID=9>; 13 C.F.R. 121.702.

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## HISTORY

ACTION	DATE
Introduced	11-20-07

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