



# Ohio Legislative Service Commission

## Bill Analysis

Nicholas A. Keller

### **S.B. 136**

130th General Assembly  
(As Introduced)

**Sens.** Tavares, Cafaro, Kearney

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## **BILL SUMMARY**

- Requires community colleges, state community colleges, technical colleges, and university branches to comply with minority business enterprise set-aside requirements.
- Requires the Director of Administrative Services to establish guidelines to establish procurement goals for community colleges, state community colleges, technical colleges, university branches, and the Northeast Ohio Medical University to contract with EDGE business enterprises.

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## **CONTENT AND OPERATION**

### **Expansion of the Minority Business Enterprises Program**

The bill requires for the contracting authority of a community college district, university branch district, technical college district, or state community college district to set aside a percentage of the contracts awarded by that contracting authority for competition by minority business enterprises only, as specified in the Minority Business Enterprise Program Law (MBE).<sup>1</sup>

### **Expansion of the Encouraging Diversity, Growth, and Equity Program**

The bill adds community colleges, state community colleges, technical colleges, university branches, and the Northeast Ohio Medical University to the current law list of entities for whom the Director of Administrative Services must adopt rules in

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<sup>1</sup> R.C. 3354.161, 3355.121, 3357.161, and 3358.10.

accordance with the Administrative Procedure Act<sup>2</sup> to administer the Encouraging Diversity, Growth, and Equity (EDGE) Program that establish guidelines for allowing the entities, in awarding contracts pursuant to current law, to establish agency procurement goals for contracting with EDGE business enterprises.<sup>3</sup>

## **Background**

### **Minority Business Enterprises Program**

The MBE Program, under continuing law, is a minority "set-aside" program that requires state agencies and the Department of Administrative Services (DAS) set aside a number of purchases for competition only by minority business enterprises. The value of the set-aside purchases must equal 15% of the aggregate value of total purchases for a fiscal year. If no minority business enterprise submits a bid for these purchases, then the purchase must be made under normal procedures. However, the agency then must set aside additional purchases so that it can still meet the 15% amount for the year. Additionally, no state agency funds may be expended during any fiscal year for purchases that require competitive selection until the Director certifies that the appropriate number of purchases has been set aside to meet the 15% goal.

Continuing law requires the Director to make rules establishing the procedure for minority business enterprise certification. "Minority business enterprise" is defined for purposes of the law to mean a business owned and controlled by U.S. citizens who are also Ohio residents and are Black or African-American, American Indian, Hispanic, Latino, or Asian.<sup>4</sup>

### **Encouraging Diversity, Growth, and Equity Program**

Current law requires the Director to create the EDGE Program and to adopt rules to administer the EDGE Program. Under those rules, the Program must allow businesses to apply to be certified as an EDGE business enterprise. In order to be certified as an EDGE enterprise, the owner of a business must show both social and economic disadvantage, based on the following factors:

- The relative wealth of the business seeking certification;
- The personal wealth of the owner or owners of the business;

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<sup>2</sup> R.C. Chapter 119.

<sup>3</sup> R.C. 123.152.

<sup>4</sup> R.C. 123.151 and 125.081 (not in the bill).



- Social disadvantage based on any of the following:
  - The business owner or owners membership in a racial minority group or personal disadvantage due to color, ethnic origin, gender, physical disability, long-term residence in an environment isolated from the mainstream of American society, or location in an area of high unemployment (an owner who demonstrates this factor creates a rebuttable presumption of social disadvantage);
  - Some other demonstration of personal disadvantage not common to other small businesses;
  - The location of the business in a qualified census tract.
- Economic disadvantage based on economic and business size thresholds and eligibility criteria designed to stimulate economic development through contract awards to businesses located in qualified census tracts.

Under continuing law and the rules adopted by the Director, a sole proprietorship, association, partnership, corporation, limited liability corporation, or joint venture must be certified by the Equal Employment Opportunity Coordinator of DAS as an "EDGE business enterprise" when the owner or owners of the business demonstrate that (1) the business is owned and controlled by U.S. citizens, residing in Ohio, (2) the business is a for-profit business entity and has been in business for at least a year, and (3) either (a) the business is socially and economically disadvantaged or (b) the owner is considered to be socially and economically disadvantaged. Based on the number of program participants in the area, the Director must determine goals for the percentage of procurements by each state agency that must be made from EDGE certified businesses, except with respect to higher education, as discussed above.<sup>5</sup>

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## HISTORY

ACTION	DATE
Introduced	05-21-13

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<sup>5</sup> R.C. 123.152 and Ohio Administrative Code 123:2-16.

