

**Proposed Rule Changes:
Chapter 123:2-15
123:2-16**

Chapter 123:2-15 Rules

- Background on Rules
 - The Ohio General Assembly adopted House Bill 584 in 1980. This law, codified sections 123.151 and 125.081 of the Ohio Revised Code, created contract set asides for the participation of minority business enterprises (MBE's) in construction contracting and subcontracting, and in the purchase of supplies and services. When enacted, H.B. 584 applied to all competitive procurements made by the Ohio Department of Administrative Services (ODAS) for itself or on behalf of other State agencies with regard to goods & services and construction contracts.
 - The constitutionality of Ohio's MBE law was challenged in October 1998 in the United States Court of Appeals for the Sixth Circuit and held the construction portion of the program to be unconstitutional and ordered an end to the State's set-aside program in the construction contracting category (case of Associated General Contractor of Ohio, Inc. vs. the Department of Administrative Services Case Number 98-4393). The goods & services procurement contracting category was not affected and has continued accordingly.
 - Ohio Revised Code (ORC) 123.151 and ORC 125.081 were amended on March 9, 1999 and those portions of the law pertaining to construction were rescinded.
 - Based on this 1998 ruling the Ohio Administrative Codes that allowed for the operational framework of the Set-Aside Review Board should have been rescinded.

Purpose of the Set-Aside Review Board

- Under previous provisions in the Ohio Revised Code, the Set Aside Review Board had been responsible for conducting hearings to consider waiver or modification applications submitted by contractors who could not meet MBE set-aside goals associated with construction contracts. In October of 1998, following the Federal Appeals Court decision striking down the construction portion of the MBE program, the Set Aside Review Board was deactivated.
- The Set Aside Review Board has not existed since October of 1998.

Effect on the MBE Program

- Proposed changes have **no impact** on any current MBE Ohio Revised Codes or any other administrative codes.
- The purpose behind recent rules filed by the Department of Administrative Services, as referenced in their December 24th public notice, was to rescind all rules pertaining to the operation of the Set Aside Review Board which has not existed since October of 1998. The intent is to ensure that administrative rules match existing state law.

Chapter 123:2-16 Rules

- Background on Rules
 - The Ohio Administrative Code governs the Encouraging Diversity, Growth and Equity (EDGE) Program. The Department of Administrative Services as part of their five year review, updated the section of the Ohio Administrative Code pertaining to EDGE in order to clarify provisions in the Ohio Revised Code. Much of the newly proposed language was created in response to comments and feedback from business owners.

- Proposed language was crafted to accomplish the following: provide clear definition for what constitutes a socially disadvantaged business enterprise; minimize the ability of so-called “front” companies to benefit from the EDGE Program; and provide DAS with the flexibility to work more closely with businesses and to increase their capacity to respond to potential abuses.

Effect on the EDGE Program

- Proposed rule changes will strengthen the EDGE program and ensure that administrative rules amplify existing state law. Some of the improvements are as follows:
 - Define Key Terms
 - In business
 - Economically Disadvantaged Business size limits for program participation
 - Principal office
 - Net worth
 - Owned and controlled
 - Other minor terms
 - Clarifies
 - Certification criteria
 - What constitutes ownership, control and independence
 - What is included in net worth
 - Transfer of assets and ownership limitations
 - Reasons for decertification
 - Defines what is and is not a commercially useful function
 - Strengthens requirements for prime contractors when requesting waivers from contract goals
 - Other minor changes