

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 5819) TO AMEND THE  
SMALL BUSINESS ACT TO IMPROVE THE SMALL BUSINESS INNOVATION  
RESEARCH (SBIR) PROGRAM AND THE SMALL BUSINESS TECHNOLOGY  
TRANSFER (STTR) PROGRAM, AND FOR OTHER PURPOSES

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APRIL 22, 2008.—Referred to the House Calendar and ordered to be printed

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Mr. WELCH, from the Committee on Rules,  
submitted the following

R E P O R T

[To accompany H. Res. 1125]

The Committee on Rules, having had under consideration House Resolution 1125, by a non-record vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 5819, the SBIR/STTR Reauthorization Act, under a structured rule. The rule provides one hour of general debate, with 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Small Business and 20 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Science and Technology. The rule waives all points of order against consideration of the bill except clauses 9 and 10 of rule XXI. The rule provides that the amendment in the nature of a substitute recommended by the Committee on Small Business now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read. The rule waives all points of order against the amendment in the nature of a substitute except for clause 10 of rule XXI. This waiver does not affect the point of order available under clause 9 of rule XXI (regarding earmark disclosure).

The rule makes in order only those amendments printed in this report. The amendments made in order may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole. All

points of order against the amendments except for clauses 9 and 10 of rule XXI are waived. The rule provides one motion to recommit with or without instructions. The rule provides that, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker.

#### EXPLANATION OF WAIVERS

The waiver of all points of order against consideration of the bill (except for clauses 9 and 10 of rule XXI) includes a waiver of clause 3(e) of rule XIII requiring the inclusion of a comparative print of any part of the bill or joint resolution proposing to amend the statute and of the statute or part thereof proposed to be amended, and a waiver of clause 3(d)(2) of rule XIII requiring the inclusion of an estimate by the committee of the costs that would be incurred in carrying out the bill or joint resolution in the fiscal year in which it is reported and in each of the five fiscal years following that fiscal year. Although the rule waives of all points of order against the committee amendment in the nature of a substitute (except for clause 10 of rule XXI), the committee is not aware of any points of order against the substitute. The waiver is prophylactic.

#### SUMMARY OF AMENDMENTS MADE IN ORDER

(Summaries derived from information provided by sponsors.)

1. Boswell (IA)/Sutton (OH): The amendment would give priority to applications from companies located in areas that have lost a major source of employment. (10 minutes)

2. Ehlers (MI): The amendment strikes section 102—doing so leaves the current set-asides for SBIR and STTR unchanged. (10 minutes)

3. Sestak (PA): The amendment notifies an applicant to the SBIR and STTR programs, who is not successful in receiving an award, that the applicant can request an explanation of why the applicant did not receive the award. (10 minutes)

4. Matheson (UT): The amendment gives priority to small businesses and organizations, in the awarding of SBIR, STTR, and FAST grants, that are making significant contributions towards energy efficiency, including those that are making efforts to reduce their carbon footprint or are carbon neutral. (10 minutes)

5. Giffords (AZ): The amendment would mandate that SBIR awardees must be entities with their primary business operations in the United States. (10 minutes)

6. Graves (MO): The amendment strikes and replaces Title II, regarding venture capital investment standards. (10 minutes)

7. Matsui (CA): The amendment adds business incubators as eligible for the partnerships with SBIR awardees that are required by section 404. The amendment also defines the term “business incubators” for this purpose. (10 minutes)

8. Sutton (OH): The amendment provides that veterans will be given priority when applying for SBIR and STTR awards. (10 minutes)

9. Sutton (OH): The amendment requires agencies that administer SBIR programs to give special consideration to pressing transportation and infrastructure research activities, as identified by re-

ports issued by the Department of Transportation and National Academy of Sciences. (10 minutes)

10. Barrow (GA): The amendment establishes a pilot program to make grants to minority institutions that partner with nonprofit organizations that have experience developing relationships between industry, minority institutions, and other entities. (10 minutes)

11. Capito (WV): The amendment changes section 104, regarding the SBIR Advisory Board. It would add to small business concerns owned and controlled by service-disabled veterans to the groups to be targeted by the board to make applications for SBIR grants. (10 minutes)

12. Carney (PA): The amendment would allow the Administrator of the SBA to view favorably FAST grant applicants that use accredited SBDC's in determining the award of a FAST grant. (10 minutes)

13. Gillibrand (NY): The amendment requires a veteran small-business owner must be at least one of the people appointed to the advisory board overseeing the Small Business Innovation Research Program Grants. (10 minutes)

14. Walz (MN): The amendment would require the Small Business Administration to consult with the Secretary of Veterans Affairs to develop an outreach program to publicize the Small Business Innovation Research program to veterans returning from service and encourage veterans with appropriate technical skills to apply for SBIR grants. (10 minutes)

15. Foster (IL)/Ellsworth (IN)/Altmire (PA): The amendment requires SBIR awardees to be owned and controlled by at least one individual, or a business concern owned and controlled by individuals, who are a citizens of, or permanent resident aliens in, the United States. Any applicant found knowingly hiring, recruiting, or referring for a fee, an unauthorized alien shall not be eligible for the receipt of future awards. (10 minutes)

16. Welch (VT): The amendment strikes language that allows firms not receiving SBIR/STTR Phase I grants to be eligible to receive Phase II. (10 minutes)

17. Welch (VT): The amendment limits to half the amount of an agency's SBIR budget that could go to grant awards that exceed \$200,000 for Phase I, and \$1,500,000 for Phase II. (10 minutes)

#### TEXT OF AMENDMENTS MADE IN ORDER UNDER THE RULE

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BOSWELL OF IOWA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

In title V of the bill, add at the end the following (and conform the table of contents accordingly):

#### **SEC. 506. PRIORITY FOR AREAS THAT HAVE LOST A MAJOR SOURCE OF EMPLOYMENT.**

Section 9 of the Small Business Act (15 U.S.C. 638) is amended by adding at the end the following:

“(ee) PRIORITY FOR AREAS THAT HAVE LOST A MAJOR SOURCE OF EMPLOYMENT.—In making awards under this section, Federal agencies shall give priority to applications from companies located in geographic areas that, as determined by the Administrator, have lost a major source of employment. Not later than 90 days after the

date of the enactment of this subsection, the Administrator shall promulgate rules for making the determination required by this subsection.”.

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2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE EHLERS OF MICHIGAN, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 3, line 10, through page 4, line 17, strike section 102, and redesignate the subsequent sections accordingly.

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3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SESTAK OF PENNSYLVANIA, OF HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title I of the bill, insert the following:

**SEC. 1 \_\_\_\_ . PROVIDING EXPLANATIONS TO UNSUCCESSFUL APPLICANTS.**

Section 9 of the Small Business Act (15 U.S.C. 638) is amended by adding at the end the following:

“(dd) PROVIDING EXPLANATIONS TO UNSUCCESSFUL APPLICANTS.—Whenever an entity applies for, but does not receive, an award under an SBIR or STTR program under this section, the Federal agency conducting the program shall—

“(1) in a plain and conspicuous manner, notify that entity that it can request an explanation (which must be of a constructive nature) of the reasons why the entity did not receive the award; and

“(2) provide such an explanation to that entity, if the entity so requests.”.

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4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MATHESON OF UTAH, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title V of the bill, add the following (and conform the table of contents accordingly):

**SEC. \_\_\_\_ . PREFERENCE FOR ORGANIZATIONS THAT ARE MAKING SIGNIFICANT CONTRIBUTIONS TOWARDS ENERGY EFFICIENCY.**

Section 9 of the Small Business Act (15 U.S.C. 638) is further amended by adding at the end the following:

“(ff) PREFERENCE FOR ORGANIZATIONS THAT ARE MAKING SIGNIFICANT CONTRIBUTIONS TOWARDS ENERGY EFFICIENCY.—In making awards under this section, Federal agencies shall give priority to applications so as to increase the number of SBIR, STTR, and FAST award recipients from organizations that are making significant contributions towards energy efficiency, including organizations that are making efforts to reduce their carbon footprint or are carbon neutral.”.

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5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GIFFORDS OF ARIZONA, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, insert the following (and amend the table of contents accordingly):

**SEC. \_\_\_\_ . SBIR Awardee Business Operations.**

Section 9 of the Small Business Act is further amended by adding at the end the following:

“(ee) SBIR Awardee Business Operations.—

“(1) IN GENERAL.—To be eligible to receive an SBIR award, an awardee must have its primary business operations in the United States.

“(2) DEFINITION.—In this subsection, the term ‘United States’ includes the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.”.

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**6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GRAVES OF MISSOURI, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES**

Strike title II of the bill and insert the following:

## **TITLE II—VENTURE CAPITAL INVESTMENT STANDARDS**

**SEC. 201. ENSURING THAT INNOVATIVE SMALL BUSINESSES WITH SUBSTANTIAL INVESTMENT FROM VENTURE CAPITAL OPERATING COMPANIES ARE ABLE TO PARTICIPATE IN THE SBIR PROGRAM.**

Section 9(e) of the Small Business Act (15 U.S.C. 638(e)) is amended by striking “and” at the end of paragraph (8), striking the period at the end of paragraph (9) and inserting “; and”, and adding at the end the following:

“(10) effective only for the SBIR and STTR programs, notwithstanding any other amendment made by the SBIR/STTR Reauthorization Act, the following shall apply:

“(A) A business concern that has more than 500 employees shall not qualify as a small business concern.

“(B) In determining whether a small business concern is independently owned and operated under section 3(a)(1) or meets the small business size standards instituted under section 3(a)(2), the Administrator shall not consider a business concern to be affiliated with a venture capital operating company (or with any other business that the venture capital operating company has financed) if—

“(i) the venture capital operating company does not own 50 percent or more of the business concern; and

“(ii) employees of the venture capital operating company do not constitute a majority of the board of directors of the business concern.

“(C) A business concern shall be deemed to be ‘independently owned and operated’ if—

“(i) it is owned in majority part by one or more natural persons or venture capital operating companies;

“(ii) there is no single venture capital operating company that owns 50 percent or more of the business concern; and

“(iii) there is no single venture capital operating company the employees of which constitute a majority of the board of directors of the business concern.

“(D) If a venture capital operating company controlled by a business with more than 500 employees (in this subparagraph referred to as a ‘VCO’ under large business control’) has an ownership interest in a small business concern that is owned in majority part by venture capital operating companies, the small business concern is eligible to receive an award under the SBIR or STTR program only if—

“(i) not more than two VCOs under large business control have an ownership interest in the small business concern;

“(ii) the VCOs under large business control do not collectively own more than 20 percent of the small business concern; and

“(iii) the VCOs under large business control do not collaborate with each other to exercise more control over the small business concern than they could otherwise exercise individually.

“(E) The term ‘venture capital operating company’ means a business concern—

“(i) that—

“(I) is a Venture Capital Operating Company, as that term is defined in regulations promulgated by the Secretary of Labor; or

“(II) is an entity that—

“(aa) is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–51 et seq.); or

“(bb) is an investment company, as defined in section 3(c)(14) of such Act (15 U.S.C. 80a–3(c)(14)), which is not registered under such Act because it is beneficially owned by less than 100 persons; and

“(ii) that is itself organized or incorporated and domiciled in the United States, or is controlled by a business concern that is incorporated and domiciled in the United States.”.

#### 7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MATSUI OF CALIFORNIA, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 33, line 13, insert “(A)” before “Each”.

Page 33, line 17, after “venture capital investment companies,” insert “business incubators,”.

Page 33, after line 24, insert the following:

“(B) DEFINITION.—In this paragraph, the term ‘business incubator’ means an entity that provides coordinated and specialized services to entrepreneurial businesses which meet selected criteria during the businesses’ startup phases, including providing services such as shared office space and office services, access to equipment, access to telecommunications and tech-

nology services, flexible leases, specialized management assistance, access to financing, mentoring and training services, or other coordinated business or technical support services designed to provide business development assistance to entrepreneurial businesses during these businesses' startup phases.”.

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8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SUTTON OF OHIO, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title V of the bill, insert the following (and conform the table of contents accordingly):

**SEC. \_\_\_\_\_. VETERANS PREFERENCE.**

Section 9 of the Small Business Act (15 U.S.C. 638) is further amended by adding at the end the following:

“(ff) VETERANS PREFERENCE.—In making awards under this section, Federal agencies shall give priority to applications from veterans, as defined in section 101(2) of title 38, United States Code, so as to increase the number of SBIR and STTR award recipients who are veterans.”.

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9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SUTTON OF OHIO, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 107(3) of the bill, in the quoted matter, strike “or” at the end of subparagraph (D), and insert after subparagraph (D) the following:

(E) the National Academy of Sciences, in the final report issued by the ‘Transit Research and Development: Federal Role in the National Program’ project and the ‘Transportation Research, Development and Technology Strategic Plan (2006–2010)’ issued by the United States Department of Transportation Research and Innovative Technology Administration, and in subsequent reports issued by the National Academy of Sciences and United States Department of Transportation on transportation and infrastructure; or

In section 504(a) of the bill, in the quoted matter, redesignate (E) as (F).

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10. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BARROW OF GEORGIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 36, after line 2, insert the following:

**(D) MINORITY INSTITUTION PILOT PROGRAM.—**

(i) ESTABLISHMENT.—From amounts made available to carry out this subparagraph, the Administrator shall establish and carry out a pilot program to make grants to minority institutions that partner with non-profit organizations that have experience developing relationships between industry, minority institutions, and other entities, for the purpose of increasing the number of SBIR and STTR program applications by minority-owned small businesses.

(ii) APPLICATION.—To be eligible to receive a grant under the pilot program established in clause (i), a minority institution shall submit an application to the Administrator at such time, in such manner, and containing such information and assurances as the Administrator may require.

(iii) MATCHING REQUIREMENT.—As a condition of a grant under the pilot program, the Administrator shall require that a matching amount be provided from a source other than the Federal Government that is equal to the amount of the grant.

(iv) MINORITY INSTITUTION.—In this subparagraph, the term “minority institution” has the meaning given that term in section 365(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k(3)).

(v) FUNDING.—For each of fiscal years 2009 through 2012, of the amounts appropriated pursuant to the authorization of appropriations in subparagraph (C), up to \$4,000,000 shall be available to carry out this subparagraph.

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11. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CAPITO OF WEST VIRGINIA, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 8, line 10, after “minorities,” insert the following: “small business concerns owned and controlled by service-disabled veterans,”.

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12. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CARNEY OF PENNSYLVANIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 26, line 2, strike “and” at the end.

Page 26, line 5, strike the period at the end and insert “; and”.

Page 26, after line 5, insert the following:

“(D) criteria designed to give preference to applicants who include an SBDC program that is accredited for its technology services.”.

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13. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GILLIBRAND OF NEW YORK, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 7, line 9, strike “and”.

Page 7, after line 9, insert the following:

(C) at least one individual who is a veteran who owns a small business concern owned and controlled by veterans; and

Page 7, line 10, redesignate (C) as (D).

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14. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WALZ OF MINNESOTA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title V of the bill, add the following (and conform the table of contents accordingly):

**SEC. 506. INITIATIVE TO PUBLICIZE THE SBIR PROGRAM TO VETERANS.**

The Administrator of the Small Business Administration, in consultation with the Secretary of Veterans Affairs, shall develop an initiative to publicize the SBIR program to veterans returning from service and encourage those veterans with applicable technical skills to apply for SBIR grants.

15. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FOSTER OF ILLINOIS, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following (and amend the table of contents accordingly):

**SEC. \_\_\_\_ . PROHIBITION OF AWARDS TO ALIENS UNLAWFULLY PRESENT IN THE UNITED STATES.**

Section 9 of the Small Business Act is amended by adding at the end the following:

“(ee) PROHIBITION OF AWARDS TO ALIENS UNLAWFULLY PRESENT IN THE UNITED STATES.—A concern is not eligible to receive an award under this section if an individual who is an alien unlawfully present in the United States—

“(1) has an ownership interest in that concern; or

“(2) has an ownership interest in another concern that itself has an ownership interest in that concern.”.

**SEC. \_\_\_\_ . PROHIBITION ON AWARDS TO FIRMS IN VIOLATION OF IMMIGRATION LAWS.**

Any applicant found, based on a determination by the Secretary of Homeland Security or the Attorney General to have engaged in a pattern or practice of hiring, recruiting or referring for a fee, for employment in the United States an alien knowing the person is an unauthorized alien shall not be eligible for the receipt of future awards under section 9 of the Small Business Act.

16. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WELCH OF VERMONT, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 16, strike line 16 and all that follows through page 17, line 5.

17. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WELCH OF VERMONT, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 6, after line 16, insert the following:

“(3) ADDITIONAL LIMITATION.—A Federal agency shall not use more than one-half of its SBIR budget established pursuant to subsection (f)(1) for the purpose of funding the following awards:

“(A) Any award in the first phase of the SBIR program that exceeds \$200,000.

“(B) Any award in the second phase of the SBIR program that exceeds \$1,500,000.”.

