

109TH CONGRESS
1ST SESSION

S. 1263

To amend the Small Business Act to establish eligibility requirements for business concerns to receive awards under the Small Business Innovation Research Program.

IN THE SENATE OF THE UNITED STATES

JUNE 16, 2005

Mr. BOND introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

To amend the Small Business Act to establish eligibility requirements for business concerns to receive awards under the Small Business Innovation Research Program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Save America’s Bio-
5 technology Innovative Research Act of 2005” or “SABIR
6 Act”.

1 **SEC. 2. ELIGIBILITY FOR PARTICIPATION IN SMALL BUSI-**
2 **NESS INNOVATION RESEARCH PROGRAM.**

3 (a) IN GENERAL.—Section 9 of the Small Business
4 Act (15 U.S.C. 638) is amended by adding at the end the
5 following new subsection:

6 “(x) ELIGIBILITY FOR PARTICIPATION IN SBIR PRO-
7 GRAM.—

8 “(1) IN GENERAL.—To be eligible to receive an
9 award under the SBIR program, a business con-
10 cern—

11 “(A) shall have not more than 500 employ-
12 ees; and

13 “(B) shall be owned in accordance with
14 one of the ownership requirements described in
15 paragraph (2).

16 “(2) OWNERSHIP REQUIREMENTS.—The owner-
17 ship requirements referred to in paragraph (1) are
18 the following:

19 “(A) The business concern is—

20 “(i) at least 51 percent owned and
21 controlled by individuals or eligible venture
22 capital companies, who are citizens of or
23 permanent resident aliens in the United
24 States; and

25 “(ii) not more than 49 percent owned
26 and controlled by a single eligible venture

1 capital company (or group of commonly-
2 controlled eligible venture capital compa-
3 nies).

4 “(B) The business concern is at least 51
5 percent owned and controlled by another busi-
6 ness concern that is itself at least 51 percent
7 owned and controlled by individuals who are
8 citizens of or permanent resident aliens in the
9 United States.

10 “(C) The business concern is a joint ven-
11 ture in which each entity to the joint venture
12 meets one of the ownership requirements under
13 this paragraph.

14 “(3) EMPLOYEE DEFINED.—For purposes of
15 paragraph (1)(A), the term ‘employee’ means an in-
16 dividual employed by the business concern and does
17 not include—

18 “(A) an individual employed by an eligible
19 venture capital company providing financing to
20 the business concern; or

21 “(B) an individual employed by any entity
22 in which the eligible venture capital company is
23 invested other than that business concern.

24 “(4) TREATMENT OF OTHER FORMS OF OWNER-
25 SHIP.—

1 “(A) STOCK OPTION OWNERSHIP.—For
 2 purposes of this subsection, in the case of a
 3 business concern owned in whole or in part by
 4 an employee stock option plan, each stock trust-
 5 ee or plan member shall be deemed to be an
 6 owner.

7 “(B) TRUST OWNERSHIP.—For purposes
 8 of this subsection, in the case of a business con-
 9 cern owned in whole or in part by a trust, each
 10 trustee or trust beneficiary shall be deemed to
 11 be an owner.

12 “(5) EXCEPTION FOR START-UP CONCERNS.—
 13 Notwithstanding paragraphs (1) through (4), any
 14 business concern that is a start-up concern shall be
 15 eligible to receive funding under the SBIR pro-
 16 gram.”.

17 (b) DEFINITIONS.—Section 9(e) of the Small Busi-
 18 ness Act (15 U.S.C. 638(e)) is amended by adding at the
 19 end the following new paragraphs:

20 “(9) The term ‘eligible venture capital com-
 21 pany’ means a business concern—

22 “(A) that—

23 “(i) is a Venture Capital Operating
 24 Company, as that term is defined in regu-

1 lations promulgated by the Secretary of
2 Labor; or

3 “(ii) is an entity that—

4 “(I) is registered under the In-
5 vestment Company Act of 1940 (15
6 U.S.C. 80a–51 et seq.); or

7 “(II) is an investment company,
8 as defined in section 3(c)(14) of such
9 Act (15 U.S.C. 80a–3(c)(14)), which
10 is not registered under such Act be-
11 cause it is beneficially owned by less
12 than 100 persons; and

13 “(B) that is not controlled by any business
14 concern that is not a small business concern
15 within the meaning of section 3.

16 “(10) The term ‘start-up concern’ means a
17 business concern that—

18 “(A) for at least 2 of the 3 preceding fiscal
19 years has had—

20 “(i) sales of not more than
21 \$3,000,000; or

22 “(ii) no positive cash flow from oper-
23 ations; and

24 “(B) is not formed to acquire any business
25 concern other than a small business concern

1 that meets the requirement under subparagraph
2 (A).”.

3 (c) REGULATIONS.—Before the date that is 90 days
4 after the date of the enactment of this Act, the Adminis-
5 trator of the Small Business Administration shall—

6 (1) in accordance with the exceptions to public
7 rulemaking under section 553(b)(A) and (B) of title
8 5, United States Code, promulgate regulations to
9 implement the provisions of this Act;

10 (2) publish in the Federal Register a notifica-
11 tion of the changes in eligibility for participation in
12 the Small Business Innovation Research program
13 made by this Act; and

14 (3) communicate such changes to Federal agen-
15 cies that award grants under the Small Business In-
16 novation Research program.

17 (d) EFFECTIVE DATE.—The amendments made by
18 this Act shall apply with respect to any business concern
19 that participates in the Small Business Innovation Re-
20 search program on or after the date of the enactment of
21 this Act.

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