

118TH CONGRESS
1ST SESSION

H. R. 1538

To amend the Small Business Act to provide for contracting preferences and other benefits for emerging business enterprises, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 2023

Mr. CARSON (for himself, Mr. THOMPSON of Mississippi, Mr. ESPAILLAT, Mr. GARCÍA of Illinois, Ms. SÁNCHEZ, Ms. GARCIA of Texas, Mr. CASE, and Mr. LANDSMAN) introduced the following bill; which was referred to the Committee on Small Business

A BILL

To amend the Small Business Act to provide for contracting preferences and other benefits for emerging business enterprises, and for other purposes.

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 “Emerging Business
5 Encouragement Act of 2023”.

6 **SEC. 2. EMERGING BUSINESS ENTERPRISES.**

7 (a) DESIGNATION.—Section 3 of the Small Business
8 Act (15 U.S.C. 632) is amended by adding at the end the
9 following:

1 “(gg) EMERGING BUSINESS ENTERPRISE.—

2 “(1) IN GENERAL.—In this Act, the term
3 ‘emerging business enterprise’ means a concern des-
4 ignated by the Administrator in accordance with this
5 section.

6 “(2) CRITERIA FOR DESIGNATION.—Not later
7 than 90 days after the date of enactment of this
8 subsection, the Administrator shall establish criteria
9 for designation of a small business concern as an
10 emerging business enterprise which shall include the
11 following:

12 “(A) NUMBER OF EMPLOYEES.—That the
13 highest number of employees of the concern
14 during the year preceding the date of applica-
15 tion is less than the larger of—

16 “(i) 10 percent of the number of em-
17 ployees that a small business concern with-
18 in that industry category may employ, if
19 that small business concern is so classified
20 by reason of a size standard under sub-
21 section (a) pertaining to the number of
22 employees of the concern; or

23 “(ii) 25 employees.

1 “(B) AGE OF BUSINESS.—That the small
2 business concern has been in operation for less
3 than 5 years on the date of application.

4 “(C) SALARY REQUIREMENTS.—That the
5 small business concern does not, in the Admin-
6 istrator’s determination, pay to an individual
7 who owns any part of the concern or who is in
8 a management position a salary greater than
9 200 percent of the mean annual salary for an
10 individual in the Managers of Companies and
11 Enterprises sector (as assigned a North Amer-
12 ican Industry Classification System code begin-
13 ning with 55) or the equivalent from the most
14 recent employment and wage estimates devel-
15 oped by the Secretary of Labor.

16 “(3) DEADLINE.—The Administrator shall com-
17 plete review of an application for designation as an
18 emerging business enterprise and either issue or
19 deny such designation not later than one year of re-
20 ceipt of such application.

21 “(4) TERMINATION OF DESIGNATION.—A des-
22 ignation as an emerging business enterprise shall
23 terminate on the date on which the concern is no
24 longer in compliance with the criteria under para-
25 graph (2), except that—

1 “(A) with respect to the requirement in
2 paragraph (2)(A), such designation shall termi-
3 nate only if the concern employs 50 percent or
4 more employees than the number of employees
5 that a small business concern within that indus-
6 try category may employ; and

7 “(B) with respect to the requirement in
8 paragraph (2)(C), such designation shall termi-
9 nate only if the concern exceeds such require-
10 ment and employs not more than 10 percent of
11 the number of employees that a small business
12 concern within that industry category may em-
13 ploy, if that small business concern is so classi-
14 fied by reason of a size standard under sub-
15 section (a) pertaining to the number of employ-
16 ees of the concern.

17 “(5) PUBLIC NOTIFICATION.—The Adminis-
18 trator shall take appropriate action to publicize the
19 establishment of the procedures for designations
20 under this paragraph, including by conducting out-
21 reach to eligible small business concerns.

22 “(6) CONTRACTOR TRAINING.—The Adminis-
23 trator shall provide training on Federal procurement
24 specifically for emerging business enterprises on an

1 Internet website of the Administrator, which shall be
2 available to the public at no charge.”.

3 (b) CONTRACTING PREFERENCE.—Section 15(g)(2)
4 of the Small Business Act (15 U.S.C. 644(g)(2)) is
5 amended by adding at the end the following:

6 “(G) EMERGING BUSINESS ENTER-
7 PRISES.—

8 “(i) IN GENERAL.—The head of each
9 Federal agency shall, after consultation
10 with the Administrator, establish goals for
11 participation by emerging business enter-
12 prises in not less than 3 percent of all
13 prime contracts and subcontracts of such
14 agency for each fiscal year.

15 “(ii) REQUIREMENTS.—The head of a
16 Federal agency—

17 “(I) shall make consistent efforts
18 to annually expand participation by
19 emerging business enterprises from
20 each industry category in contracts of
21 the agency; and

22 “(II) shall, subject to clause (iii),
23 award a contract to an emerging busi-
24 ness enterprise if the head of a Fed-
25 eral agency determines the agency will

1 not meet the goals established under
2 this subparagraph for a fiscal year.

3 “(iii) PREFERENCE.—The preference
4 described in clause (ii)(II) shall take pri-
5 ority over any preference for procurement
6 from the procurement list established pur-
7 suant to section 8503 of title 41, United
8 States Code, or the Federal Prison Indus-
9 tries catalog described under section
10 4124(d) of title 18, United States Code.

11 “(iv) REPORTS.—

12 “(I) REPORTS FROM AGEN-
13 CIES.—At the conclusion of each fiscal
14 year, the head of each Federal agency
15 shall report to the Administrator on
16 the extent of participation by emerg-
17 ing business enterprises in procure-
18 ment contracts of such agency. Such
19 reports shall contain appropriate jus-
20 tifications for failure to meet the goals
21 established under this subparagraph.

22 “(II) REPORTS TO CONGRESS.—
23 The Administrator shall annually
24 compile and analyze the reports sub-
25 mitted by agencies pursuant to sub-

1 clause (I) and shall submit to the
2 President and the Committee on
3 Small Business and Entrepreneurship
4 of the Senate and the Committee on
5 Small Business of the House of Rep-
6 resentatives the compilation and anal-
7 ysis, which shall include the following:

8 “(aa) The goals in effect for
9 each agency and the agency’s
10 performance in attaining such
11 goals.

12 “(bb) An analysis of any
13 failure to achieve individual agen-
14 cy goals and the actions planned
15 by such agency (that have been
16 approved by the Administrator)
17 to achieve the goals in the suc-
18 ceeding fiscal year.

19 “(cc) The total number and
20 dollar value of prime contracts
21 and subcontracts awarded to
22 emerging business enterprises for
23 each agency.

24 “(III) ANNUAL PRESIDENTIAL
25 REPORT ON THE STATE OF SMALL

1 BUSINESS.—The President shall in-
2 clude the information required by sub-
3 clause (II) in each annual report to
4 the Congress on the state of small
5 business prepared pursuant to section
6 303(a) of the Small Business Eco-
7 nomic Policy Act of 1980 (15 U.S.C.
8 631b(a)).”.

9 (c) FEE WAIVERS.—Section 7(a) of the Small Busi-
10 ness Act (15 U.S.C. 636(a)) is amended by adding at the
11 end the following:

12 “(38) FEE WAIVERS.—The Administrator may
13 not collect an origination fee or a guarantee fee de-
14 scribed in paragraph (18) in connection with a loan
15 made under this subsection to an emerging business
16 enterprise, unless—

17 “(A) the President’s budget for the upcom-
18 ing fiscal year, submitted to Congress pursuant
19 to section 1105(a) of title 31, United States
20 Code, includes a cost for the program estab-
21 lished under this paragraph that is above zero;
22 and

23 “(B) the Administrator determines car-
24 rying out this paragraph will have no adverse

1 effect on the waivers provided under paragraph
2 (31)(G) or (33)(E)(ii) for a fiscal year.

3 “(39) EMERGING BUSINESS ENTERPRISES.—

4 “(A) REPORTS.—On the date that is 1
5 year after the end of the first fiscal year for
6 which a guaranteed loan is made to an emerg-
7 ing business enterprise under this subsection,
8 and annually thereafter, each lender making
9 such a loan shall submit to the Administrator
10 a report with respect to the preceding fiscal
11 year on the total number and dollar amount of
12 such loans made and the number of waivers
13 issued under paragraph (38).

14 “(B) VERIFICATION.—A lender shall verify
15 with the Administrator the status of a concern
16 as an emerging business enterprise before mak-
17 ing a loan guaranteed under this subsection to
18 such emerging business enterprise.

19 “(C) PENALTY.—If a concern received a
20 loan under this subsection and fraudulently
21 misrepresented the status of the concern as an
22 emerging business enterprise, that concern
23 shall—

24 “(i) repay the amount of the loan to
25 the lender (from which amount the lender

1 shall repay the amount of any guarantee
2 paid on the loan to the Administrator);
3 and

4 “(ii) pay a fine to the Administrator
5 in an amount determined by the Adminis-
6 trator.”.

7 **SEC. 3. RULEMAKING.**

8 (a) IN GENERAL.—Not later 1 year after the date
9 of enactment of this subsection and for each industry cat-
10 egory for which the Administrator of the Small Business
11 Administration established a size standard under section
12 3(a) of the Small Business Act (15 U.S.C. 632(a)), the
13 Administrator shall issue a rule—

14 (1) establishing procedures for designating a
15 small business concern in each such industry cat-
16 egory as an emerging business enterprise that in-
17 clude the criteria under subsection (gg)(3) of section
18 3 of the Small Business Act (15 U.S.C. 632), as
19 added by this Act, and a process for appealing des-
20 ignation decisions of the Administrator;

21 (2) establishing procedures for certification by
22 the Administrator as an emerging business enter-
23 prise;

24 (3) requiring a small business concern to annu-
25 ally submit documentation to the Administrator to

1 establish eligibility for designation as an emerging
2 business enterprise; and

3 (4) establishing compliance requirements for
4 emerging business enterprises.

5 (b) DEFINITIONS.—In this section:

6 (1) SMALL BUSINESS CONCERN.—The term
7 “small business concern” has the meaning given
8 under section 3 of the Small Business Act (15
9 U.S.C. 632).

10 (2) EMERGING BUSINESS ENTERPRISE.—The
11 term “emerging business enterprise” has the mean-
12 ing given under subsection (gg) of section 3 of the
13 Small Business Act (15 U.S.C. 632), as added by
14 this Act.

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