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H.R. 2965—The Enhancing Small Business Research and Innovation Act

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Order of Business: The bill is scheduled to be considered on Wednesday, July 8, 2009, under an expected structured rule providing for one hour of general debate and making in order several amendments. The RSC will summarize each amendment made in order in a separate document.

Summary: H.R. 2965 would reauthorize the Small Business Innovation Research Program (SBIR) and the Small Business Technology Transfer Program (STTR) for two years, through September 30, 2011. The SBIR program provides grants meant to aid certain small businesses grow in scope through three phases of project development, implementation, and commercialization. The STTR program requires certain federal agencies to set-aside a percentage of their extramural research and development budget for the purpose of developing projects produced by small businesses. In addition, the bill would expand the amount of agency set-asides for SBIR and STTR programs and increase the maximum amount of individual awards for small businesses. The specific provisions of the bill are as follows:

- ***Venture Capital Investment Standards:*** Allows businesses with investment from venture capital companies (not more than 50 percent) to participate in the SBIR and STTR program. The provision provides that a small business working with venture capital investment to be independently owned and operated, have a single venture capital company owning a majority of the entity and does not allow a venture capital company to control a majority of board of director's seats.

The legislation defined a venture capital company as a company domiciled in the United States with fewer than 500 employees, but does not place a cap on annual revenues. Additionally, it does not contain language that prohibits two large venture capital companies from collaborating with each other to exercise more control over the small firm than they could otherwise exercise individually.

- ***Rare Disease & Energy-related Research Focus and Priorities:*** Requires agencies to give “special consideration” to topics contained in the annual report on the rare diseases research activities of the National Institutes of Health.
- ***Research Goals:*** Requires agencies that award \$5 billion or more in SBIR grants annually to establish specific goals regarding the percentage of SBIR projects that receive funding for Phase III, the percentage of programs that are successfully integrated into a notable program and the amount of federal dollars received by SBIR projects through federal contracts.
- ***SBIR Commercialization Program:*** Authorizes \$27.5 million for FY 2009 and each year thereafter for agencies to operate “commercialization programs” that support the progress of SBIR award winners towards Phase III. Suggested uses for the funds include “partnership databases, partnership conferences, multiple second phases, mentoring between prime contractors and SBIR awardees, multiple second phases with matching private investment requirements, jumbo awards, SBIR helpdesks, and transition assistance programs.”
- Requires agency’s advisory boards to include a report detailing efforts to enhance manufacturing activities in each annual report.
- Requires the SBA Administrator to annually submit a report to the appropriate congressional committees listing every small business that has received at least 15 Phase I SBIR awards in the past five years without receiving a Phase II award (given to more commercially viable research projects).
- Requires the SBA Administrator to ensure that agencies “engage” SBIR awardees that have been awarded multiple Phase I grants but have not received Phase II awards.
- ***Outreach & Partnerships:*** Authorizes \$10 million for the Federal and State Technology Partnership (FAST) program to help organizations submit proposals to conduct SBIR outreach efforts directed at “underrepresented states and regions, women-, service-disabled veterans- and minority-owned small businesses.” Also, this provision requires agencies to give a preference to SBIR and STTR award applications submitted by small businesses located in rural areas.
- Requires each federal agency that grants more than \$50 million in SBIR awards annually to establish a SBIR Advisory Board for the purpose of encouraging participation in the SBIR program and supporting commercialization of federal research funded by SBIR awards.
- ***Increased SBIR/STTR Award Levels:*** Increases the maximum dollar amount of individual awards given to small business participating in the SBIR and STTR programs from \$100,000 to \$250,000 for businesses participating in Phase I, and from \$750,000 to \$2 million for business participating in Phase II.

Additional Background: The Small Business Innovation Research Program (SBIR) and the Small Business Technology Transfer Program (STTR) were established by the Small Business Innovation Development Act of 1982 for the purpose of assisting small businesses compete for government research and development funds. The program is carried out in three hierarchical phases, with higher grant awards in the first two phases and an emphasis on commercialization assistance in the final stage. The first phase of the program involves establishing the scientific merit of the project, the second phase awards grants for businesses to complete the project and determine its commercial viability, while the third phase is comprised of applying the project commercially and obtaining funding for the project from non-government sources.

Every federal agency that has an extramural budget for research, or research and development, in excess of \$1 billion is required to participate in the SBIR and STTR programs. Currently, 11 different federal agencies participate in the two programs: the Department of Agriculture, Department of Commerce, the Department of Defense, the Department of Education, the Department of Energy, the Department of Health and Human Services, the Department of Homeland Security, the Department of Transportation, the Environmental Protection Agency, the National Aeronautics and Space Administration, and the National Science Foundation.

Possible Conservative Concerns: Some conservatives may be concerned that the bill would expand the definition of an “independently owned and operated business” to include businesses that are up to 50% controlled by a single venture capital company. Under the expanded definition, a wealthy venture capital company could hold a plurality of interest in a small technology company and obtain lucrative SBIR and STTR awards. Some conservatives may be concerned that the expanded definition may send funds to those small businesses that may have a competitive advantage by being owned or operated by one or more venture capital company. However, other conservatives may believe the venture capital provisions are adequate and ensure fair grant competition exists.

Some conservatives may be concerned the H.R. 2965 would dramatically expand the maximum amount of awards available through the SBIR and STTR programs and ease access to significantly more valuable awards. The bill would dramatically expand Phase II awards from \$750,000 to \$2 million. In addition, the bill would allow businesses the opportunity to bypass Phase I and apply directly for Phase II awards.

Additionally, some conservatives have expressed concern that the bill prohibits the involvement of the independent Office of Advocacy at the SBA in the SBIR and STTR programs. This is the first time that Congress would forbid the Chief Counsel for Advocacy from acting on a small business issue

Committee Action: On June 19, 2009, the bill was introduced and referred to the Committee on Small Business, and in addition to the Committee on Science and Technology. On June 25, 2009, the Committee on Small Business held a mark-up and

ordered the bill to be reported by a vote of 22 – 0. On June 24, 2009, the Committee on Science and Technology held a mark-up and ordered the bill to be reported by a voice vote.

Administration Position: No Statement of Administration Policy (SAP) is available at press time.

Cost to Taxpayers: While no CBO score for H.R. 2965 exists (though CBO provided an analysis of similar legislation passed in the 110th Congress), the House Small Business Committee estimates “the cost of H.R. 2965 would be \$260.5 million over the 2010-2014 period, subject to appropriation of the specified and necessary amounts. In addition, based on prior CBO analysis and current staff review, the Committee does not believe that H.R. 2965 would affect direct spending or revenue.”

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: According to House Report 111-190, pursuant to clause 9 of rule XXI, H.R. 2965 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

Constitutional Authority: The Small Business Committee, in House Report 111-190, cites constitutional authority legislation in Article I, Section 8, clause 18 (the “necessary and proper” clause), but fails to cite a specific “foregoing power” to which this clause refers.

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