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SBIR AND STTR OVERSIGHT AND PILOT PROGRAM EXTENSION ACT OF 2017

DECEMBER 20, 2018.—Ordered to be printed

Mr. RISCH, from the Committee on Small Business and
Entrepreneurship, submitted the following

R E P O R T

[To accompany S. 1061]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business and Entrepreneurship, to which was referred the bill (S. 1961) to amend the Small Business Act to temporarily reauthorize certain pilot programs under the Small Business Innovation Research Program and the Small Business Technology Transfer Program, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

I. INTRODUCTION

The SBIR and STTR Oversight and Pilot Program Extension Act of 2017 (S. 1961) was introduced by Senator James E. Risch, the Committee's Chairman, for himself, and Senator Jeanne Shaheen on October 16, 2017.

This bill, as introduced would have extended, through September 30, 2018, four pilot programs that were enacted as part of the Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) Reauthorization Act of 2011. These programs include the "Phase Flexibility Pilot Program," the "Phase 0 Proof of Concept Partnership Pilot Program," "Commercialization Readiness Pilot Program for Civilian Agencies Pilot Program," and the "SBIR/STTR Administrative Funding Pilot Program".

For the markup of the bill, the Chairman filed a substitute amendment that extends the reauthorization of the pilot programs

in this bill through September 30, 2019. By authority of the Cordon Rule, there was also a technical correction to the name of the EPSCoR program, which will read, “Established Program to Stimulate Competitive Research.”

The bill, as amended, was approved unanimously by a roll call vote as part of a manager’s package.

II. HISTORY (PURPOSE & NEED FOR LEGISLATION)

The Small Business Technology Research (SBIR) program was authorized by the Small Business Innovation Development Act of 1982. A sister program, the Small Business Technology Transfer (STTR) program, was authorized by the Small Business Research and Development Enhancement Act of 1992. The SBIR program requires federal agencies with extramural research and development budgets of \$100 million or more to allocate at least 3.2 percent of their extramural funds for research awards to small businesses. Awards are competitive and merit-based, given to small businesses that have proposals or technology that could benefit the awarding agency: Phase I awards are given to determine the feasibility of an idea; Phase II awards are generally given to Phase I awardees—though there are exceptions—for technology that is particularly promising but needs further development; and Phase III allows the small business to pursue commercialization objectives resulting from the Phase I/II research and development (R&D) activities. The SBIR program does not fund Phase III. This Phase may involve follow-on non-SBIR federal R&D funding or production contracts for products, processes or services for the federal government. Currently, eleven federal agencies participate in the SBIR program. The STTR program has a similar three phase award structure, but focuses on public-private partnerships in which small businesses partner with research institutions with the intention of eventually commercializing their ideas. The STTR program requires federal agencies with an extramural research and development budget of \$1 billion or more to allocate at least 0.45 percent of their extramural funds for STTR awards. Currently, five federal agencies participate in the STTR program.

In the 112th Congress, the SBIR/STTR Reauthorization Act of 2011 was reported favorably by the Committee and was later incorporated into the National Defense Authorization Act for Fiscal Year 2012 (P.L. 112–81). This bill, among other things, reauthorized the SBIR and STTR programs through September 30, 2017 and created four new pilot programs. These four pilots including the Phase Flexibility Pilot Program, the Phase 0 Proof of Concept Partnership Pilot Program, the Commercialization Readiness Pilot Program for Civilian Agencies, and the SBIR/STTR Administrative Funding Pilot Program—were agreed to after lengthy discussion and negotiation and the inclusion of reporting requirements to provide insight into the success of the programs at the agencies, including information about how funds are being spent. Congress has yet to receive sufficient or complete information from the agencies or SBA on the pilot programs. The pilots programs expired on October 1,

2017,¹ in spite of several legislative efforts to temporarily extend them.

In the 114th Congress, the Improving Small Business Innovation and Technologies Research Act of 2015 (S. 2136), introduced by Chairman David Vitter and Senator Mike Enzi, was reported favorably by the Committee. This bill extended the SBIR/STTR Administrative Funding Pilot Program. It also modified that pilot program by allowing a portion of the administrative funds to establish the Regional SBIR State Collaborative Initiative Pilot Program. The Regional Collaborative was designed to increase competitiveness in the proposal and selection process for states which fall in the bottom half of states receiving SBIR awards, and to increase technology transfer and commercialization of their projects. Finally, the legislation reauthorized the Federal and State Technology Partnership (FAST) Program. This bill did not receive consideration by the full Senate, but the language extending the Administration Funding Pilot through September 30, 2017, was incorporated into the National Defense Authorization Act for Fiscal Year 2016 (P.L. 114–92).

In the same Congress, the Committee favorably reported the SBIR and STTR Reauthorization and Improvement Act of 2016 (S. 2812), introduced by Ranking Member Shaheen, Chairman David Vitter, and Senators Kelly Ayotte and Ed Markey. This bill would have made comprehensive changes to the SBIR and STTR programs, including making permanent the SBIR and STTR programs and the Commercialization Readiness Pilot Program for Civilian Agencies. Of note, this legislation incorporated the Improving Small Business Innovative Research and Technologies Act of 2015 (S. 2136). The legislation never received consideration by the full Senate as a free-standing bill, but the most essential portion of the bill—extension of the SBIR and STTR programs was—enacted as part of the National Defense Authorization Act for Fiscal Year 2016 (P.L. 114–92), a full year ahead of expiration. The final version extended the programs for five years, through September 30, 2022.

Because an extension of the pilot programs was not included in the five-year reauthorization for the SBIR and STTR programs last Congress, and attempts earlier this Congress to extend the programs through expedited consideration have not been possible, the pilot programs expired on October 1, 2017. Several agencies that robustly participated in the pilot programs would like to see the pilots extended. They contend that their agencies and awardees have been or will be adversely affected by the lapse of these pilots. Collectively, these pilots attempt to improve the commercialization outcomes of awardees, allow for more program flexibility, improve program outreach and efficiency, as well as improve the administration of the programs and support for awardees. This bill strikes a compromise by extending the pilots long enough for the agencies to get the programs back up and running as the agencies work through the backlog of reports due to Congress on the performance of these pilots.

¹The Administrative Funding Pilot Program first expired in 2015, but was extended for two years, through September 20, 2017, as part of the National Defense Authorization Act for Fiscal Year 2016 (P.L. 114–92).

III. HEARINGS & ROUNDTABLES

In the 112th Congress, the Committee held a hearing on February 17, 2011 entitled, “Reauthorization of the SBIR and STTR Programs.” Dr. Charles Wessner, Director of the Technology, Innovation, and Entrepreneurship program at the National Academy of Sciences, expressed his concern that good ideas were being lost in between Phase awards. Dr. Wessner also observed that shortening the award process time would be beneficial for the program. Several senators and witnesses endorsed a stronger relationship between universities and the SBIR program, as well as improved program outreach.

In the 113th Congress, the Committee held a roundtable on December 18, 2013 entitled, “SBIR/STTR Measuring the Effectiveness of the Reauthorization Act and Maximizing Research Dollars to America’s Small Businesses.” Dr. Charles Wessner, Director of the Technology, Innovation, and Entrepreneurship program at the National Academy of Sciences, expressed support for strengthening ties between universities and the SBIR program. Mr. Manny Oliver, Director of the SBIR and STTR programs at the Department of Energy, also expressed support for greater cooperation between universities and the SBIR program. All of the participants expressed support for more program outreach.

In the 114th Congress, the Committee held a hearing on January 28, 2016 entitled, “Reauthorization of the SBIR/STTR Program: The Importance of Small Business Innovation to National and Economic Security.” During this hearing, Chairman Vitter and Ranking Member Shaheen expressed strong support for the SBIR/STTR Program. Chairman Vitter expressed support for a Regional SBIR State Collaborative Initiative Pilot Program, whose aim is to increase competitiveness in the proposal and selection process for states who fall in the bottom half of states receiving SBIR awards. Mr. Robert L. Smith, Director of the Department of the Navy SBIR and STTR Programs expressed support for the Admin Funding Pilot Program, which he said helped to reduce Phase II award processing times, though these times are still too long. Overall, members were supportive of improved outreach, prompt reporting, and the reauthorization of the SBIR/STTR programs.

IV. DESCRIPTION OF BILL

This bill extends, through September 30, 2019, four pilot programs that were included in the SBIR/STTR Reauthorization Act of 2011.

The bill also would require the SBA and the relevant agencies to comply with reporting requirements. As passed out of Committee, agencies would have a hard deadline of December 31, 2018, to provide their data to the SBA, and the SBA would be required to submit all the reports and evaluation data to the Congress by March 30, 2019. SBA and the agencies are required to report to Congress on how the funds are being used and whether the pilots are meeting their objectives. However, the reports have not been submitted, and what information has been provided to Congress has been incomplete. This information would help Congress decide if the pilots should be continued, improved or ended.

The Phase Flexibility Pilot Program allows firms receiving research funds from the National Institutes of Health (NIH), Department of Defense (DoD), and the Department of Education to bypass the Phase I award process and become a Phase II awardee if the agency finds that the firm has already met the Phase I standards.

The Phase 0 Proof of Concept Partnership Pilot Program allows the NIH to use \$5 million of its annual STTR funds to make awards to research institutions. These awards cannot exceed \$1 million per university, and grants to researchers cannot exceed \$100,000. This pilot is designed to help researchers demonstrate which of their federally funded projects are commercially viable, while encouraging researchers to start businesses and apply for SBIR/STTR awards.

The Commercialization Readiness Pilot Program for Civilian Agencies allows any SBIR agency, other than DoD, to use up to 10 percent of its SBIR/STTR funding for follow-on awards to SBIR and STTR firms for technology development, testing, evaluation, and commercialization assistance. The purpose is to help small firms get over the valley of death and inserted into a government product or process, or commercialized in the private sector. The size of these awards may be up to \$3 million.

The SBIR/STTR Administrative Funding Pilot Program allows an agency to set aside three percent of its SBIR funding for administrative needs to operate the programs. These funds may be used to conduct outreach to under-served states, shorten award review timelines, streamline reporting, and reduce waste, fraud, and abuse. The pilot requires SBA to establish performance criteria to measure the effectiveness of the activities by the agencies and report to Congress on how the funds are used. The pilot originally expired in 2015, but was extended through September 30, 2017, as previously noted as part of P.L. 114–328.

This legislation also includes language that passed the Committee last Congress to direct 15 percent of the SBIR/STTR Administrative Funding Pilot Program funds to SBA to support regional, multi-state collaboratives to increase participation by small firms located in the states that receive fifty percent or less of SBIR awards.

V. COMMITTEE VOTE

In compliance with rule XXVI (7)(b) of the Standing Rules of the Senate, the following vote was recorded on March 14, 2018.

A motion to adopt the SBIR and STTR Oversight and Pilot Program Extension Act of 2017, a bill to amend the Small Business Act to temporarily reauthorize certain pilot programs under the Small Business Innovation Research Program and the Small Business Technology Transfer Program, and for other purposes, was approved unanimously by a roll call vote as part of a manager's package. Senators Risch, Rubio, Paul, Scott, Ernst, Inhofe, Young, Enzi, Rounds, Kennedy, Cardin, Cantwell, Shaheen, Heitkamp, Markey, Booker, Coons, Hirono, and Duckworth voted for the bill.

VI. COST ESTIMATE

In compliance with rule XXVI (11)(a)(1) of the Standing Rules of the Senate, the Committee estimates the cost of the legislation will

be equal to the amounts discussed in the following letter from the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 21, 2018.

Hon. JAMES E. RISCH,
*Chairman, Committee on Small Business and Entrepreneurship,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1961, the SBIR and STTR Oversight and Pilot Program Extension Act of 2018.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

KEITH HALL,
Director.

Enclosure.

S. 1961—SBIR and STTR Oversight and Pilot Program Extension Act of 2017

S. 1961 would direct the Small Business Association (SBA) to develop a one-year pilot program to provide grants to research institutions and small businesses that collaborate, to improve those small businesses' ability to compete for awards under the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. Using information from several participating agencies, CBO estimates that implementing the bill would cost \$6 million over the 2019–2023 period; such spending would be subject to the availability of appropriated funds.

Under current law, the SBIR program requires federal agencies with annual extramural research and development (R&D) budgets of more than \$100 million to set aside 3.2 percent for small-business contracts. The STTR program requires agencies with more than \$1 billion in their annual extramural R&D budgets to set aside 0.45 percent to fund cooperative research between small businesses and federal laboratories or nonprofit research institutions. Eleven agencies currently participate in at least one of those programs. Under an existing pilot program for administrative spending, agencies that participate in the SBIR program may use up to 3 percent of their SBIR funds—instead of general operating funds—to pay for some of the activities of program administration. That pilot program is authorized through 2022.

S. 1961 would direct agencies participating in that pilot program to transfer a portion of the funds to the SBA for grants under the bill's pilot program. The SBA could spend any transferred amounts above \$5 million on administrative costs, additional grants, or another SBA grant program.

Based on the historical use of the 3 percent set-aside by participating agencies, CBO estimates that transferring a portion of that amount to the SBA would require agencies to use additional funds to cover the costs of administering their SBIR and STTR programs. Using information from the SBA and several participating agencies about the size of their extramural R&D budgets, their respective administrative costs, and amounts historically set aside under the

administrative-spending pilot program, CBO estimates that implementing that provision of S. 1961 would cost \$6 million over the 2019–2020 period; such spending would be subject to the availability of appropriated funds. That amount consists of \$5 million to be transferred to the SBA and \$1 million for the SBA to administer and report on the pilot program.

CBO estimates that implementing other provisions of S. 1961, such as updating agency rules and regulations related to the SBIR and STTR programs, would cost less than \$500,000 over the 2019–2020 period; such spending would be subject to the availability of appropriated funds.

Enacting S. 1961 would not affect direct spending or revenues; therefore pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 1961 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 1961 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

VII. EVALUATION OF REGULATORY IMPACT

In compliance with rule XXVI (11)(b) of the Standing Rules of the Senate, it is the opinion of the Committee that no significant additional regulatory impact will be incurred in carrying out the provisions of this legislation. There will be no additional impact on the personal privacy of companies or individuals who utilize the services provided.

VIII. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides the short title for the Act, the “SBIR and STTR Oversight and Pilot Program Extension Act of 2017.”

Sec. 2. Pilot extensions and reporting compliance; Pilot program

This section extends four SBIR/STTR Pilot Programs through fiscal year 2019. These include the “Phase Flexibility Pilot Program,” “Phase 0 Proof of Concept Partnership Pilot Program,” “Commercialization Readiness Pilot Program for Civilian Agencies Pilot Program,” and the “SBIR/STTR Administrative Funding Pilot Program.” This section also creates the “Regional SBIR State Collaborative Initiative Pilot Program” within the SBIR/STTR Administrative Funding Pilot Program. This pilot redirects 15 percent of the funds from this pilot program for SBA to be used to coordinate state participation in multi-state collaboratives, which aim to increase applications and awards to small businesses located in states that received fifty percent or less of SBIR awards.