

105TH CONGRESS
1ST SESSION

S. 208

To provide Federal contracting opportunities for small business concerns located in historically underutilized business zones, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 1997

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

A BILL

To provide Federal contracting opportunities for small business concerns located in historically underutilized business zones, 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 “HUBZone Act of
5 1997”.

6 **SEC. 2. HISTORICALLY UNDERUTILIZED BUSINESS ZONES.**

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

1 “(o) DEFINITIONS RELATING TO HISTORICALLY
2 UNDERUTILIZED BUSINESS ZONES.—In this section:

3 “(1) HISTORICALLY UNDERUTILIZED BUSINESS
4 ZONE.—The term ‘historically underutilized business
5 zone’ means any area located within one or more
6 qualified census tracts or qualified nonmetropolitan
7 counties.

8 “(2) SMALL BUSINESS CONCERN LOCATED IN A
9 HISTORICALLY UNDERUTILIZED BUSINESS ZONE.—
10 The term ‘small business concern located in a his-
11 torically underutilized business zone’ means a small
12 business concern—

13 “(A) that is owned and controlled by one
14 or more persons, each of whom is a United
15 States citizen;

16 “(B) the principal office of which is located
17 in a historically underutilized business zone;
18 and

19 “(C) not less than 35 percent of the em-
20 ployees of which reside in a historically under-
21 utilized business zone.

22 “(3) QUALIFIED AREAS.—

23 “(A) QUALIFIED CENSUS TRACT.—The
24 term ‘qualified census tract’ has the same

1 meaning as in section 42(d)(5)(C)(i)(I) of the
2 Internal Revenue Code of 1986.

3 “(B) QUALIFIED NONMETROPOLITAN
4 COUNTY.—The term ‘qualified nonmetropolitan
5 county’ means, based on the most recent data
6 available from the Bureau of the Census of the
7 Department of Commerce, any county—

8 “(i) that is not located in a metropoli-
9 tan statistical area (as that term is defined
10 in section 143(k)(2)(B) of the Internal
11 Revenue Code of 1986); and

12 “(ii) in which the median household
13 income is less than 80 percent of the non-
14 metropolitan State median household in-
15 come.

16 “(4) QUALIFIED SMALL BUSINESS CONCERN
17 LOCATED IN A HISTORICALLY UNDERUTILIZED BUSI-
18 NESS ZONE.—

19 “(A) IN GENERAL.—A small business con-
20 cern located in a historically underutilized busi-
21 ness zone is ‘qualified’, if—

22 “(i) the small business concern has
23 certified in writing to the Administrator
24 that—

1 “(I) it is a small business con-
2 cern located in a historically underuti-
3 lized business zone;

4 “(II) it will comply with the sub-
5 contracting limitations specified in
6 Federal Acquisition Regulation
7 52.219–14;

8 “(III) in the case of a contract
9 for services (except construction), not
10 less than 50 percent of the cost of
11 contract performance incurred for
12 personnel will be expended for employ-
13 ees of that small business concern or
14 for employees of other small business
15 concerns located in historically under-
16 utilized business zones; and

17 “(IV) in the case of a contract
18 for procurement of supplies (other
19 than procurement from a regular
20 dealer in such supplies), the small
21 business concern (or a subcontractor
22 of the small business concern that is
23 also a small business concern located
24 in a historically underutilized business
25 zone) will perform work for not less

1 than 50 percent of the cost of manu-
 2 facturing the supplies (not including
 3 the cost of materials) in a historically
 4 underutilized business zone; and

5 “(ii) no certification made by the
 6 small business concern under clause (i) has
 7 been, in accordance with the procedures es-
 8 tablished under section 30(c)(2)—

9 “(I) successfully challenged by an
 10 interested party; or

11 “(II) otherwise determined by the
 12 Administrator to be materially false.

13 “(B) CHANGE IN PERCENTAGES.—The Ad-
 14 ministrator may utilize a percentage other than
 15 the percentage specified in under subclause
 16 (III) or (IV) of subparagraph (A)(i), if the Ad-
 17 ministrator determines that such action is nec-
 18 essary to reflect conventional industry practices
 19 among small business concerns that are below
 20 the numerical size standard for businesses in
 21 that industry category.

22 “(C) CONSTRUCTION AND OTHER CON-
 23 TRACTS.—The Administrator shall promulgate
 24 final regulations imposing requirements that
 25 are similar to those specified in subclauses (III)

1 and (IV) of subparagraph (A)(i) on contracts
 2 for general and specialty construction, and on
 3 contracts for any other industry category that
 4 would not otherwise be subject to those require-
 5 ments. The percentage applicable to any such
 6 requirement shall be determined in accordance
 7 with subparagraph (B).

8 “(D) LIST OF QUALIFIED SMALL BUSINESS
 9 CONCERNS.—The Administrator shall establish
 10 and maintain a list of qualified small business
 11 concerns located in historically underutilized
 12 business zones, which list shall—

13 “(i) include the name, address, and
 14 type of business with respect to each such
 15 small business concern;

16 “(ii) be updated by the Administrator
 17 not less than annually; and

18 “(iii) be provided upon request to any
 19 Federal agency or other entity.”.

20 (b) FEDERAL CONTRACTING PREFERENCES.—The
 21 Small Business Act (15 U.S.C. 631 et seq.) is amended—

22 (1) by redesignating section 30 as section 31;

23 and

24 (2) by inserting after section 29 the following:

1 **“SEC. 30. HISTORICALLY UNDERUTILIZED BUSINESS ZONES**
 2 **PROGRAM.**

3 “(a) IN GENERAL.—There is established within the
 4 Administration a program to be carried out by the Admin-
 5 istrator to provide for Federal contracting assistance to
 6 qualified small business concerns located in historically
 7 underutilized business zones in accordance with this sec-
 8 tion.

9 “(b) CONTRACTING PREFERENCES.—

10 “(1) CONTRACT SET-ASIDE.—

11 “(A) REQUIREMENT.—The head of an ex-
 12 ecutive agency shall afford the opportunity to
 13 participate in a competition for award of a con-
 14 tract of the executive agency, exclusively to
 15 qualified small business concerns located in his-
 16 torically underutilized business zones, if the Ad-
 17 ministrator determines that—

18 “(i) it is reasonable to expect that not
 19 less than 2 qualified small business con-
 20 cerns located in historically underutilized
 21 business zones will submit offers for the
 22 contract; and

23 “(ii) the award can be made on the
 24 restricted basis at a fair market price.

1 “(B) COVERED CONTRACTS.—Subpara-
 2 graph (A) applies to a contract that is esti-
 3 mated to exceed the simplified acquisition
 4 threshold.

5 “(2) SOLE-SOURCE CONTRACTS.—

6 “(A) REQUIREMENT.—The head of an ex-
 7 ecutive agency, in the exercise of authority pro-
 8 vided in any other law to award a contract of
 9 the executive agency on a sole-source basis,
 10 shall award the contract on that basis to a
 11 qualified small business concern located in a
 12 historically underutilized business zone, if any,
 13 that—

14 “(i) submits a reasonable and respon-
 15 sive offer for the contract; and

16 “(ii) is determined by the Adminis-
 17 trator to be a responsible contractor.

18 “(B) COVERED CONTRACTS.—Subpara-
 19 graph (A) applies to a contract that is esti-
 20 mated to exceed the simplified acquisition
 21 threshold and not to exceed \$5,000,000.

22 “(3) PRICE EVALUATION PREFERENCE IN FULL
 23 AND OPEN COMPETITIONS.—In any case in which a

1 contract is to be awarded by the head of an execu-
 2 tive agency on the basis of full and open competi-
 3 tion, the price offered by a qualified small business
 4 concern located in a historically underutilized busi-
 5 ness zone shall be deemed as being lower than the
 6 price offered by another offeror (other than another
 7 qualified small business concern located in a histori-
 8 cally underutilized business zone) if the price offered
 9 by the qualified small business concern located in a
 10 historically underutilized business zone is not more
 11 than 10 percent higher than the price offered by the
 12 other offeror.

13 “(4) RELATIONSHIP TO OTHER CONTRACTING
 14 PREFERENCES.—

15 “(A) SUBORDINATE RELATIONSHIP.—A
 16 procurement may not be made from a source on
 17 the basis of a preference provided in paragraph
 18 (1), (2), or (3) if the procurement would other-
 19 wise be made from a different source under sec-
 20 tion 4124 or 4125 of title 18, United States
 21 Code, or the Javits-Wagner-O’Day Act.

22 “(B) SUPERIOR RELATIONSHIP.—A pro-
 23 curement may not be made from a source on
 24 the basis of a preference provided in section
 25 8(a), if the procurement would otherwise be

1 made from a different source under paragraph
2 (1), (2), or (3) of this subsection.

3 “(5) DEFINITIONS.—In this subsection, the
4 terms ‘executive agency’, ‘full and open competition’,
5 and ‘simplified acquisition threshold’ have the mean-
6 ings given such terms in section 4 of the Office of
7 Federal Procurement Policy Act.

8 “(c) ENFORCEMENT; PENALTIES.—

9 “(1) IN GENERAL.—The Administrator shall
10 enforce the requirements of this section.

11 “(2) VERIFICATION OF ELIGIBILITY.—In carry-
12 ing out this subsection, the Administrator shall es-
13 tablish procedures relating to—

14 “(A) the filing, investigation, and disposi-
15 tion by the Administration of any challenge to
16 the eligibility of a small business concern to re-
17 ceive assistance under this section (including a
18 challenge, filed by an interested party, relating
19 to the veracity of a certification made by a
20 small business concern under section
21 3(o)(4)(A)); and

22 “(B) verification by the Administrator of
23 the accuracy of any certification made by a
24 small business concern under section
25 3(o)(4)(A).

1 “(3) RANDOM INSPECTIONS.—The procedures
2 established under paragraph (2) may provide for
3 random inspections by the Administrator of any
4 small business concern making a certification under
5 section 3(o)(4).

6 “(4) PROVISION OF DATA.—Upon the request
7 of the Administrator, the Secretary of Labor and the
8 Secretary of Housing and Urban Development shall
9 promptly provide to the Administrator such informa-
10 tion as the Administrator determines to be necessary
11 to carry out this subsection.

12 “(5) PENALTIES.—In addition to the penalties
13 described in section 16(d), any small business con-
14 cern that is determined by the Administrator to have
15 misrepresented the status of that concern as a ‘small
16 business concern located in a historically underuti-
17 lized business zone’ for purposes of this section,
18 shall be subject to the provisions of—

19 “(A) section 1001 of title 18, United
20 States Code; and

21 “(B) sections 3729 through 3733 of title
22 31, United States Code.”.

1 **SEC. 3. TECHNICAL AND CONFORMING AMENDMENTS TO**
 2 **THE SMALL BUSINESS ACT.**

3 (a) PERFORMANCE OF CONTRACTS.—Section 8(d) of
 4 the Small Business Act (15 U.S.C. 637(d)) is amended—

5 (1) in paragraph (1)—

6 (A) in the first sentence, by striking “,,
 7 small business concerns owned and controlled
 8 by socially and economically disadvantaged indi-
 9 viduals” and inserting “, qualified small busi-
 10 ness concerns located in historically underuti-
 11 lized business zones, small business concerns
 12 owned and controlled by socially and economi-
 13 cally disadvantaged individuals”; and

14 (B) in the second sentence, by inserting
 15 “qualified small business concerns located in
 16 historically underutilized business zones,” after
 17 “small business concerns,”;

18 (2) in paragraph (3)—

19 (A) by inserting “qualified small business
 20 concerns located in historically underutilized
 21 business zones,” after “small business con-
 22 cerns,” each place that term appears; and

23 (B) by adding at the end the following:

1 “(F) In this contract, the term ‘qualified small
2 business concern located in a historically underuti-
3 lized business zone’ has the same meaning as in sec-
4 tion 3(o) of the Small Business Act.”;

5 (3) in paragraph (4)—

6 (A) in subparagraph (D), by inserting
7 “qualified small business concerns located in
8 historically underutilized business zones,” after
9 “small business concerns,”; and

10 (B) in subparagraph (E), by striking
11 “small business concerns and” and inserting
12 “small business concerns, qualified small busi-
13 ness concerns located in historically underuti-
14 lized business zones, and”;

15 (4) in paragraph (6), by inserting “qualified
16 small business concerns located in historically under-
17 utilized business zones,” after “small business con-
18 cerns,” each place that term appears; and

19 (5) in paragraph (10), by inserting “qualified
20 small business concerns located in historically under-
21 utilized business zones,” after “small business con-
22 cerns,”.

23 (b) AWARDS OF CONTRACTS.—Section 15 of the
24 Small Business Act (15 U.S.C. 644) is amended—

25 (1) in subsection (g)(1)—

1 (A) by inserting “qualified small business
 2 concerns located in historically underutilized
 3 business zones,” after “small business con-
 4 cerns,” each place that term appears; and

5 (B) by inserting after the second sentence
 6 the following: “The Governmentwide goal for
 7 participation by qualified small business con-
 8 cerns located in historically underutilized busi-
 9 ness zones shall be established at not less than
 10 1 percent of the total value of all prime con-
 11 tract awards for fiscal year 1998, not less than
 12 2 percent of the total value of all prime con-
 13 tract awards for fiscal year 1999, not less than
 14 3 percent of the total value of all prime con-
 15 tract awards for fiscal year 2000, and not less
 16 than 4 percent of the total value of all prime
 17 contract awards for fiscal year 2001 and each
 18 fiscal year thereafter.”;

19 (2) in subsection (g)(2)—

20 (A) in the first sentence, by striking “,, by
 21 small business concerns owned and controlled
 22 by socially and economically disadvantaged indi-
 23 viduals” and inserting “, by qualified small

1 business concerns located in historically under-
 2 utilized business zones, by small business con-
 3 cerns owned and controlled by socially and eco-
 4 nomically disadvantaged individuals”;

5 (B) in the second sentence, by inserting
 6 “qualified small business concerns located in
 7 historically underutilized business zones,” after
 8 “small business concerns,”; and

9 (C) in the fourth sentence, by striking “by
 10 small business concerns owned and controlled
 11 by socially and economically disadvantaged indi-
 12 viduals and participation by small business con-
 13 cerns owned and controlled by women” and in-
 14 serting “by qualified small business concerns lo-
 15 cated in historically underutilized business
 16 zones, by small business concerns owned and
 17 controlled by socially and economically dis-
 18 advantaged individuals, and by small business
 19 concerns owned and controlled by women”; and

20 (3) in subsection (h), by inserting “qualified
 21 small business concerns located in historically under-
 22 utilized business zones,” after “small business con-
 23 cerns,” each place that term appears.

24 (c) OFFENSES AND PENALTIES.—Section 16 of the
 25 Small Business Act (15 U.S.C. 645) is amended—

1 (1) in subsection (d)(1)—

2 (A) by inserting “, a ‘qualified small busi-
3 ness concern located in a historically underuti-
4 lized business zone’,” after “‘small business
5 concern’,”; and

6 (B) in subparagraph (A), by striking “sec-
7 tion 9 or 15” and inserting “section 9, 15, or
8 30”; and

9 (2) in subsection (e), by inserting “, a ‘small
10 business concern located in a historically underuti-
11 lized business zone’,” after “‘small business con-
12 cern’,”.

13 **SEC. 4. OTHER TECHNICAL AND CONFORMING AMEND-**
14 **MENTS.**

15 (a) TITLE 10, UNITED STATES CODE.—Section 2323
16 of title 10, United States Code, is amended—

17 (1) in subsection (a)(1)(A), by inserting before
18 the semicolon the following: “, and qualified small
19 business concerns located in historically underuti-
20 lized business zones (as that term is defined in sec-
21 tion 3(o) of the Small Business Act)”; and

1 (2) in subsection (f), by inserting “or as a
2 qualified small business concern located in a histori-
3 cally underutilized business zone (as that term is de-
4 fined in section 3(o) of the Small Business Act)”
5 after “subsection (a))”.

6 (b) FEDERAL HOME LOAN BANK ACT.—Section
7 21A(b)(13) of the Federal Home Loan Bank Act (12
8 U.S.C. 1441a(b)(13)) is amended—

9 (1) by striking “concerns and small” and in-
10 serting “concerns, small”; and

11 (2) by inserting “, and qualified small business
12 concerns located in historically underutilized busi-
13 ness zones (as that term is defined in section 3(o)
14 of the Small Business Act)” after “disadvantaged
15 individuals”.

16 (c) SMALL BUSINESS ECONOMIC POLICY ACT OF
17 1980.—Section 303(e) of the Small Business Economic
18 Policy Act of 1980 (15 U.S.C. 631b(e)) is amended—

19 (1) in paragraph (1), by striking “and” at the
20 end;

21 (2) in paragraph (2), by striking the period at
22 the end and inserting “; and”; and

23 (3) by adding at the end the following:

24 “(3) qualified small business concerns located
25 in historically underutilized business zones (as that

1 term is defined in section 3(o) of the Small Business
2 Act).”.

3 (d) SMALL BUSINESS INVESTMENT ACT OF 1958.—
4 Section 411(c)(3)(B) of the Small Business Investment
5 Act of 1958 (15 U.S.C. 694b(c)(3)(B)) is amended by in-
6 serting before the semicolon the following: “, or to a quali-
7 fied small business concern located in a historically under-
8 utilized business zone, as that term is defined in section
9 3(o) of the Small Business Act”.

10 (e) TITLE 31, UNITED STATES CODE.—

11 (1) CONTRACTS FOR COLLECTION SERVICES.—

12 Section 3718(b) of title 31, United States Code, is
13 amended—

14 (A) in paragraph (1)(B), by inserting “and
15 law firms that are qualified small business con-
16 cerns located in historically underutilized busi-
17 ness zones (as that term is defined in section
18 3(o) of the Small Business Act)” after “dis-
19 advantaged individuals”; and

20 (B) in paragraph (3)—

21 (i) in the first sentence, by inserting
22 before the period “and law firms that are
23 qualified small business concerns located in
24 historically underutilized business zones”;

1 (ii) in subparagraph (A), by striking
2 “and” at the end;

3 (iii) in subparagraph (B), by striking
4 the period at the end and inserting “;
5 and”; and

6 (iv) by adding at the end the follow-
7 ing:

8 “(C) the term ‘qualified small business
9 concern located in a historically underutilized
10 business zone’ has the same meaning as in sec-
11 tion 3(o) of the Small Business Act.”.

12 (2) PAYMENTS TO LOCAL GOVERNMENTS.—Sec-
13 tion 6701(f) of title 31, United States Code, is
14 amended—

15 (A) in paragraph (1)—

16 (i) in subparagraph (A), by striking
17 “and” at the end;

18 (ii) in subparagraph (B), by striking
19 the period at the end and inserting “;
20 and”; and

21 (iii) by adding at the end the follow-
22 ing:

23 “(C) qualified small business concerns lo-
24 cated in historically underutilized business
25 zones.”; and

1 (B) in paragraph (3)—

2 (i) in subparagraph (A), by striking
3 “and” at the end;

4 (ii) in subparagraph (B), by striking
5 the period at the end and inserting “;
6 and”; and

7 (iii) by adding at the end the follow-
8 ing:

9 “(C) the term ‘qualified small business
10 concern located in a historically underutilized
11 business zone’ has the same meaning as in sec-
12 tion 3(o) of the Small Business Act (15 U.S.C.
13 632(o)).”.

14 (3) REGULATIONS.—Section 7505(c) of title 31,
15 United States Code, is amended by striking “small
16 business concerns and” and inserting “small busi-
17 ness concerns, qualified small business concerns lo-
18 cated in historically underutilized business zones,
19 and”.

20 (f) OFFICE OF FEDERAL PROCUREMENT POLICY
21 ACT.—

22 (1) ENUMERATION OF INCLUDED FUNC-
23 TIONS.—Section 6(d) of the Office of Federal Pro-
24 curement Policy Act (41 U.S.C. 405(d)) is amend-
25 ed—

(A) in paragraph (11), by inserting “qualified small business concerns located in historically underutilized business zones (as that term is defined in section 3(o) of the Small Business Act),” after “small businesses,”; and

(B) in paragraph (12), by inserting “qualified small business concerns located in historically underutilized business zones (as that term is defined in section 3(o) of the Small Business Act (15 U.S.C. 632(o)),” after “small businesses,”.

(2) PROCUREMENT DATA.—Section 19A of the Office of Federal Procurement Policy Act (41 U.S.C. 417a) is amended—

(A) in subsection (a)—

(i) by inserting “the number of qualified small business concerns located in historically underutilized business zones,” after “Procurement Policy”; and

(ii) by inserting a comma after “women”; and

(B) in subsection (b), by adding at the end the following: “In this section, the term ‘qualified small business concern located in a historically underutilized business zone’ has the same

1 meaning as in section 3(o) of the Small Busi-
 2 ness Act (15 U.S.C. 632(o)).”.

3 (g) ENERGY POLICY ACT OF 1992.—Section 3021 of
 4 the Energy Policy Act of 1992 (42 U.S.C. 13556) is
 5 amended—

6 (1) in subsection (a)—

7 (A) in paragraph (2), by striking “or”;

8 (B) in paragraph (3), by striking the pe-
 9 riod and inserting “; or”; and

10 (C) by adding at the end the following:

11 “(4) qualified small business concerns located
 12 in historically underutilized business zones.”; and

13 (2) in subsection (b), by adding at the end the
 14 following:

15 “(3) The term ‘qualified small business concern
 16 located in a historically underutilized business zone’
 17 has the same meaning as in section 3(o) of the
 18 Small Business Act (15 U.S.C. 632(o)).”.

19 (h) TITLE 49, UNITED STATES CODE.—

20 (1) PROJECT GRANT APPLICATION APPROVAL
 21 CONDITIONED ON ASSURANCES ABOUT AIRPORT OP-
 22 ERATION.—Section 47107(e) of title 49, United
 23 States Code, is amended—

24 (A) in paragraph (1), by inserting before
 25 the period “or qualified small business concerns

located in historically underutilized business zones (as that term is defined in section 3(o) of the Small Business Act)”;

(B) in paragraph (4)(B), by inserting before the period “or as a qualified small business concern located in a historically underutilized business zone (as that term is defined in section 3(o) of the Small Business Act)”; and

(C) in paragraph (6), by inserting “or a qualified small business concern located in a historically underutilized business zone (as that term is defined in section 3(o) of the Small Business Act)” after “disadvantaged individual”.

(2) MINORITY AND DISADVANTAGED BUSINESS PARTICIPATION.—Section 47113 of title 49, United States Code, is amended—

(A) in subsection (a)—

(i) in paragraph (1), by striking the period at the end and inserting a semicolon;

(ii) in paragraph (2), by striking the period at the end and inserting “; and”; and

1 (iii) by adding at the end the follow-
2 ing:

3 “(3) the term ‘qualified small business concern
4 located in a historically underutilized business zone’
5 has the same meaning as in section 3(o) of the
6 Small Business Act (15 U.S.C. 632(o)).”; and
7 (B) in subsection (b), by inserting before
8 the period “or qualified small business concerns
9 located in historically underutilized business
10 zones”.

○