

116TH CONGRESS
1ST SESSION

H. R. 1432

To establish a Minority Business Development Administration in the Department of Commerce, to clarify the relationship between such Administration and the Small Business Administration, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 2019

Mr. MCNERNEY (for himself, Ms. BARRAGÁN, Ms. JUDY CHU of California, Mr. RUSH, and Mr. YOUNG) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish a Minority Business Development Administration in the Department of Commerce, to clarify the relationship between such Administration and the Small Business Administration, 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 “Minority Business De-
5 velopment Act of 2019”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress finds that—

3 (1) the opportunity for full participation in our
4 free enterprise system by socially and economically
5 disadvantaged individuals is essential if we are to
6 obtain social and economic equality for such individ-
7 uals and improve the functioning of our national
8 economy;

9 (2) many such individuals are socially disadvan-
10 tagged because of their identification as members of
11 certain groups that have suffered the effects of dis-
12 criminatory practices or similar invidious cir-
13 cumstances over which they have no control;

14 (3) such groups include, but are not limited to,
15 African Americans, Hispanic Americans, Native
16 Americans, Asian Pacific Americans, Asian Indian
17 Americans, and other minorities;

18 (4) it is in the national interest to expeditiously
19 ameliorate the conditions of socially and economi-
20 cally disadvantaged groups;

21 (5) such conditions can be improved by pro-
22 viding the maximum practicable opportunity for the
23 development of business concerns owned by members
24 of socially and economically disadvantaged groups;

25 (6) such opportunity cannot be fully realized
26 unless the Federal Government secures the partici-

1 pation and cooperation of the private sector in a
2 joint effort to promote the development of business
3 owned by disadvantaged individuals;

4 (7) such effort will result in a more equitable
5 share of productive resources being devoted to busi-
6 ness owned by the disadvantaged and will promote
7 a balanced economy and increased competition;

8 (8) while other Federal agencies focus on
9 broader demographic and emerging businesses,
10 MBDA focuses exclusively on the unique needs of
11 minority-owned businesses and enhancing the capac-
12 ity and reach of medium and large scale minority-
13 owned firms; and

14 (9) MBDA's national network of business cen-
15 ters is critical to assisting minority-owned businesses
16 gain access to capital, contracts, and new markets
17 through public-private engagement. Therefore, Con-
18 gress must continue to invest in the MBDA business
19 centers, as they provide direct services to minority-
20 owned businesses.

21 (b) PURPOSE.—It is, therefore, the purpose of this
22 Act to—

23 (1) establish an Administration within the De-
24 partment of Commerce which will promote and ad-
25 minister programs in the private and public sectors

1 to assist the development of business owned by the
2 disadvantaged; and

3 (2) achieve such development through the con-
4 duct of programs which will result in increased ac-
5 cess to skilled labor, capital, management, and tech-
6 nology by such business.

7 **SEC. 3. DEFINITIONS.**

8 As used in this Act the following terms have the fol-
9 lowing meanings:

10 (1) The term “Secretary” means the Secretary
11 of Commerce.

12 (2) The terms “State”, “States”, and “United
13 States” include the several States, the District of
14 Columbia, the Commonwealth of Puerto Rico, and
15 the territories of the Virgin Islands, Guam, Amer-
16 ican Samoa, and the Commonwealth of the Northern
17 Mariana Islands.

18 (3) The terms “socially and economically dis-
19 advantaged business concerns” and “disadvantaged
20 business” means any for-profit business enterprise
21 which is at least 51 percent owned by one or more
22 socially and economically disadvantaged individuals;
23 or, in the case of any publicly owned business, at
24 least 51 percent of the stock of which is owned by
25 one or more socially and economically disadvantaged

1 individuals; and whose management and daily busi-
2 ness operations are controlled by one or more of
3 such individuals.

4 (4) The term “socially disadvantaged individ-
5 uals” means those who have been subjected to racial
6 or ethnic prejudice or cultural bias because of their
7 identity as a member of a group without regard to
8 their individual qualities.

9 (5)(A) The term “economically disadvantaged
10 individuals” means those socially disadvantaged indi-
11 viduals whose ability to compete in the free enter-
12 prise system has been impaired due to diminished
13 capital and credit opportunities as compared to oth-
14 ers in the same business area that are not socially
15 disadvantaged.

16 (B) The Assistant Secretary shall presume that
17 socially and economically disadvantaged individuals
18 include Black Americans, Hispanic Americans, Na-
19 tive Americans, Asian Pacific Americans, Asian In-
20 dian Americans, individuals found to be disadvan-
21 tagged by the Small Business Administration pursu-
22 ant to section 8(a) of the Small Business Act, other
23 individuals so designated by the Minority Business
24 Development Agency under section 1400.1 of title
25 15 of the Code of Federal Regulations (as in effect

1 on October 1, 1986), and other individuals belonging
2 to other minority groups which the Small Business
3 Administration may, from time to time, determine to
4 be socially and economically disadvantaged groups
5 pursuant to Public Law 95–507.

6 (6) The term “Administration” means the Mi-
7 nority Business Development Administration estab-
8 lished by this Act.

9 (7) The term “Assistant Secretary” means the
10 Assistant Secretary of the Minority Business Devel-
11 opment Administration.

12 (8) The term “agency” means any executive
13 agency as defined in section 105 of title 5, United
14 States Code, and the military departments as de-
15 fined by section 102 of title 5, United States Code.

16 (9) The term “public sector” means any State,
17 State agency, political subdivision of a State, or
18 agency of such a political subdivision.

19 (10) The term “private sector” means any enti-
20 ty which is not in the public sector excluding the
21 Federal Government and its agencies and instru-
22 mentalities.

1 **SEC. 4. MINORITY BUSINESS DEVELOPMENT ADMINISTRA-**
2 **TION.**

3 (a) ESTABLISHMENT.—The Minority Business Devel-
4 opment Agency in the Department of Commerce is hereby
5 redesignated and established as the “Minority Business
6 Development Administration”. The Administration shall
7 be headed by an Assistant Secretary of Commerce ap-
8 pointed by the President, by and with the advice and con-
9 sent of the Senate. The Assistant Secretary shall be com-
10 pensated at the rate now or hereafter provided for level
11 IV of the Executive Schedule and shall have responsibility
12 for the administration of this Act. This position shall be
13 in addition to the other positions of Assistant Secretary
14 which are authorized by law.

15 (b) MBDA BUSINESS CENTERS.—The Minority
16 Business Development Administration is directed to allo-
17 cate up to 25 percent of its total appropriation toward
18 cooperative agreements, external awards, and grants to
19 continue the traditional Business Center program and
20 Specialty Project Center program of the Minority Busi-
21 ness Development Administration.

22 (c) REPORT TO CONGRESS.—Within 120 days after
23 the effective date of this subsection, the Secretary shall
24 inform appropriate committees of both the Senate and
25 House of Representatives of—

1 (1) the organizational structure established
2 within the Administration;

3 (2) the organizational position of the Adminis-
4 tration within the Department of Commerce; and

5 (3) a description of how the Administration
6 shall function in relation to the operations of other
7 agencies within the Department.

8 **TITLE I—MARKET** 9 **DEVELOPMENT**

10 **SEC. 101. PRIVATE SECTOR DEVELOPMENT.**

11 (a) DUTIES OF THE ADMINISTRATION.—It shall be
12 the duty of the Administration and it is hereby empow-
13 ered, whenever it determines such action is necessary or
14 appropriate—

15 (1) to assist disadvantaged business concerns
16 penetrate domestic and foreign markets by making
17 available to such concerns, either directly or in co-
18 operation with private sector organizations, manage-
19 ment, and technological assistance, a skilled labor
20 pool, and financial and marketing services; and

21 (2) to encourage disadvantaged firms to estab-
22 lish joint ventures and projects either among them-
23 selves or in cooperation with public or private sector
24 organizations for the purpose of increasing the share

1 of any market activity now being performed by dis-
2 advantaged business.

3 (b) JOINT PROGRAMS PERMITTED.—For purposes of
4 subsection (a)(2):

5 (1) The Assistant Secretary may, after con-
6 sultation with the Attorney General and the Chair-
7 man of the Federal Trade Commission, and with the
8 prior written approval of the Attorney General, ap-
9 prove any agreement between such disadvantaged
10 firms or public or private sector organizations pro-
11 viding for a joint program for market development
12 if the Assistant Secretary finds that the joint pro-
13 gram proposed will maintain and strengthen the free
14 enterprise system and the economy of the Nation.
15 The Assistant Secretary or the Attorney General
16 may at any time withdraw approval of the agree-
17 ment and the joint program for market development
18 covered thereby, if either finds that the agreement
19 or the joint program carried on under it is no longer
20 in the best interests of the competitive free enter-
21 prise system and the economy of the Nation. A copy
22 of the statement of any such finding and approval
23 intended to be within the coverage of this paragraph,
24 and a copy of any modification or withdrawal of ap-
25 proval, shall be published in the Federal Register.

1 The authority conferred by this on the Assistant
2 Secretary shall not be delegated.

3 (2) No act or omission to act, pursuant to and
4 within the scope of any joint program for market de-
5 velopment under an agreement approved by the As-
6 sistant Secretary under this subsection, shall be con-
7 strued to be within the prohibitions of the antitrust
8 laws or the Federal Trade Commission Act. Upon
9 publication in the Federal Register of the notice of
10 withdrawal of his approval of the agreement granted
11 under this paragraph, either by the Assistant Sec-
12 retary or by the Attorney General, the provisions of
13 this paragraph shall not apply to any subsequent act
14 or omission to act.

15 (c) REQUIREMENT OF PARTICIPATION OF SMALL
16 BUSINESS CONCERN IN JOINT PROGRAM.—At least 1
17 party to each agreement for a joint program for market
18 development approved under subsection (b) shall be a
19 small business concern, as defined pursuant to section 3
20 of the Small Business Act (15 U.S.C. 632). If there are
21 more than 2 parties to such an agreement, a majority of
22 the parties shall be small business concerns.

23 (d) FINANCIAL ASSISTANCE.—In order to carry out
24 the purposes of this section, the Administration is hereby
25 authorized to provide financial assistance in the form of

1 contracts, grants, or cooperative agreements to and with
2 public and private sector organizations, including any as-
3 sociation, business firm, trade association, or business or-
4 ganization. No assistance may be provided under the au-
5 thority of this subsection if such assistance is primarily
6 intended to facilitate the use by disadvantaged business
7 of federally administered programs (not otherwise estab-
8 lished by this Act) unless the Assistant Secretary obtains
9 the prior concurrence and written approval of the Small
10 Business Administration.

11 **SEC. 102. PUBLIC SECTOR DEVELOPMENT.**

12 (a) DUTIES OF THE ADMINISTRATION.—It shall be
13 the duty of the Administration and it is hereby empow-
14 ered, whenever it determines such action is necessary or
15 appropriate—

16 (1) to consult and cooperate with State and
17 local governments for the purpose of leveraging local
18 resources to promote the position of disadvantaged
19 business in the local economy, including, but not be
20 limited to, assisting such governments to establish—

21 (A) procurement programs and goals for
22 the utilization of disadvantaged business;

23 (B) management and technological assist-
24 ance programs;

1 (C) financial and marketing assistance pro-
2 grams;

3 (D) mobilization activities designed to at-
4 tract skilled labor for use by disadvantaged
5 firms; and

6 (E) an informational program designed to
7 inform local disadvantaged business of the
8 availability of programs conducted under the
9 authority of this section; and

10 (2) to convene meetings with leaders and offi-
11 cials of State and local governments for the purpose
12 of recommending and promoting local administrative
13 and legislative initiatives needed to advance the posi-
14 tion of disadvantaged business in the local economy.

15 (b) FINANCIAL ASSISTANCE.—In order to carry out
16 the purposes of subsection (a) the Administration is here-
17 by authorized to provide financial assistance to State and
18 local governments in the form of contracts, grants, or co-
19 operative agreements.

20 (c) PUBLICATIONS IN THE FEDERAL REGISTER.—

21 (1) At least 120 days before the beginning of
22 each fiscal year, the Administration shall publish for
23 public comment in the Federal Register the actual
24 or anticipated amount of financial assistance that
25 will or may be available in the immediately suc-

ceeding fiscal year for grants, contracts, and cooperative agreements planned to be awarded pursuant to this section. Such publication shall also identify the proposed allocation of funds between the several States (and cities within such States) and the exact methodology used by the Administration to make such proposed allocations.

(2) At least 60 days prior to the beginning of each fiscal year, the Administration shall publish in the Federal Register its response to comments received pursuant to paragraph (1) and any change in the allocation methodology which may be adopted as a result thereof including its effect on the allocation of funds on the several States (and cities within such States) for the immediately succeeding fiscal year.

TITLE II—CAPITAL FORMATION

SEC. 201. ACCESS TO EQUITY CAPITAL.

The Securities and Exchange Commission shall consult and cooperate with the Administration in an effort to promote access by disadvantaged business to securities markets and otherwise achieve the purposes of this title.

1 **SEC. 202. MBDA STUDY ON CAPITAL FORMATION ALTER-**
2 **NATIVES.**

3 (a) IN GENERAL.—The Administrator shall conduct
4 a study on alternatives for providing capital formation as-
5 sistance to qualified disadvantaged business concerns.

6 (b) REPORT.—The Administrator shall submit a re-
7 port to Congress within 6 months.

8 **TITLE III—MANAGEMENT**
9 **EDUCATIONAL DEVELOPMENT**

10 **SEC. 301. DUTIES OF THE ADMINISTRATION.**

11 It shall be the duty of the Administration and it is
12 hereby empowered, whenever it determines such action is
13 necessary or appropriate to—

14 (1) promote and assist the education and train-
15 ing of disadvantaged individuals in subjects directly
16 related to business administration and management;

17 (2) join with and encourage accredited colleges
18 and universities, leaders in business and industry, or
19 other public or private entities, particularly for prof-
20 it entities owned and operated by socially and eco-
21 nomically disadvantaged individuals, to develop pro-
22 grams to offer scholarships and fellowships, appren-
23 ticeships, internships, and to sponsor seminars and
24 conferences and similar activities related to business
25 for the benefit of disadvantaged individuals;

1 (3) stimulate and accelerate curriculum design
2 and improvement in support of disadvantaged busi-
3 ness development; and

4 (4) encourage and assist private institutions
5 and organizations and State and local government
6 agencies to undertake similar activities.

7 **TITLE IV—RESEARCH AND**
8 **INFORMATION**

9 **SEC. 401. DUTIES OF THE ADMINISTRATION.**

10 (a) REPORT ON REQUIRED PRODUCTIVE RE-
11 SOURCES.—Not later than 1 year after the effective date
12 of this subsection, the Administration shall submit to the
13 Congress a report detailing the types and amounts of pro-
14 ductive resources (both public and private) needed to ad-
15 vance and represent disadvantaged business at all phases
16 and levels of the economic system in numbers representa-
17 tive of the relative population of disadvantaged individuals
18 in the United States. The report shall provide separate
19 recommendations for achieving such representation
20 through a phased approach involving short-term and long-
21 term goals and objectives.

22 (b) POWERS AND DUTIES.—

23 (1) In order to achieve the purposes of this Act,
24 the Administration shall—

1 (A) collect and analyze data, including, but
2 not limited to, the causes for success or failure
3 of businesses owned by the disadvantaged;

4 (B) perform evaluations of private and
5 public sector programs designed to assist the
6 development of disadvantaged business; and

7 (C) conduct research, studies, and surveys
8 of economic conditions generally and how such
9 conditions particularly affect the development of
10 disadvantaged business.

11 (2) The Administration is hereby authorized to
12 provide financial assistance by contract, grant, or co-
13 operative agreement to public and private organiza-
14 tions to assist the Administration in carrying out the
15 provisions of paragraph (1).

16 (3) The Administration is hereby authorized to
17 establish and maintain an information clearinghouse
18 for the collection and dissemination of demographic,
19 economic, financial, managerial, and technical data
20 pertinent to disadvantaged business and, to this end,
21 to take such steps as the Administration may deem
22 necessary and desirable to search for, collect, clas-
23 sify, coordinate, integrate, record, and catalog such
24 information.

1 **TITLE V—ADMINISTRATIVE AND**
2 **OTHER POWERS OF THE AD-**
3 **MINISTRATION; MISCELLA-**
4 **NEOUS PROVISIONS**

5 **SEC. 501. ADMINISTRATIVE POWERS.**

6 In performing the duties under this Act, the Adminis-
7 tration is authorized to—

8 (1) adopt and use a seal for the Minority Busi-
9 ness Development Administration which shall be ju-
10 dicially noticed;

11 (2) hold hearings, sit and act, and take testi-
12 mony as the Administration may deem advisable;

13 (3) acquire in any lawful manner any property
14 as the Administration may deem necessary or appro-
15 priate to conduct the activities authorized in this
16 Act;

17 (4) make advance payments under grants, con-
18 tracts, and cooperative agreements;

19 (5) donate without cost (except for costs of care
20 and handling) for use in any Federal, State, or local
21 government or in any recipient nonprofit organiza-
22 tion for purposes of the development of disadvan-
23 taged business any real or tangible personal property
24 acquired by the Administration under this Act. The
25 Administration may impose reasonable terms, condi-

1 tions, reservations, and restrictions upon the use of
2 any property donated under this section;

3 (6) enter into agreements with other Federal
4 agencies;

5 (7) employ experts and consultants or organiza-
6 tions thereof as authorized by section 3109 of title
7 5, United States Code, to compensate individuals so
8 employed at rates not in excess of the per diem rate
9 authorized for GS-15 of the General Schedule, in-
10 cluding travel time, and allow them travel expenses
11 (including per diem in lieu of subsistence) while
12 away from their homes or regular places of business,
13 as authorized by section 5703 of title 5, United
14 States Code, for persons in the Government service
15 employed intermittently, while so employed; con-
16 tracts for such employment may be renewed annu-
17 ally;

18 (8) sue and be sued in any court of record of
19 a State having general jurisdiction or in any United
20 States district court, and jurisdiction is conferred
21 upon such district court to determine such con-
22 troversies without regard to the amount in con-
23 troversy; but no attachment, garnishment, or other
24 similar process, mesne or final, shall be issued
25 against the Administration or its property; nothing

1 in this Act shall be construed to except the activities
2 under this Act from application of sections 507(b),
3 517, and 2679 of title 28, United States Code; and
4 (9) prescribe such rules, regulations, and proce-
5 dures as the Administration may deem appropriate
6 to carry out this Act.

7 **SEC. 502. AUDITS.**

8 (a) **RECORDKEEPING REQUIREMENT.**—Each recipi-
9 ent of assistance under this Act shall keep such records
10 as the Administration shall prescribe, including records
11 which fully disclose the amount and the disposition by the
12 recipient of the proceeds of such assistance, the total cost
13 of the undertaking for which such assistance is given or
14 used, the amount and nature of that portion of the cost
15 of the undertaking supplied by other sources, and such
16 other records as will facilitate an effective audit.

17 (b) **ACCESS BY GOVERNMENT OFFICIALS.**—The As-
18 sistant Secretary, the Inspector General of the Depart-
19 ment of Commerce, and the Comptroller General of the
20 United States, or any of their duly authorized representa-
21 tives, shall have access for the purpose of audit, investiga-
22 tion, and examination to any books, documents, papers,
23 records, and other materials of the recipient which are
24 pertinent to the assistance received under this Act.

1 (c) REVIEW BY COMPTROLLER GENERAL.—Not later
2 than 18 months after the date of the enactment of this
3 Act, the Comptroller General of the United States shall
4 conduct a thorough review of the programs authorized by
5 this Act and shall transmit to the Congress a detailed re-
6 port of the Comptroller’s findings, including therein an
7 evaluation of the effectiveness of the programs authorized
8 to achieve the purpose of this Act, a description of any
9 failure to comply with the requirements of this Act, and
10 recommendations for corrective legislative or administra-
11 tive action.

12 **SEC. 503. ANNUAL REPORT.**

13 The Assistant Secretary shall, not later than 120
14 days after the close of each fiscal year, submit to the
15 President a full report of the Administration’s activities
16 hereunder during the previous fiscal year. Further, the As-
17 sistant Secretary shall, from time to time, submit to the
18 President recommendations for legislation or other actions
19 as the Assistant Secretary deems desirable to promote the
20 purposes of this Act. Each Federal agency shall consult
21 with the Assistant Secretary on a timely basis so that the
22 Assistant Secretary may consider them for the Assistant
23 Secretary’s report and recommendations to the President.

1 **SEC. 504. SEPARABILITY.**

2 If any provision of this Act or the application thereof
3 to any persons or circumstances shall be adjudged by any
4 court of competent jurisdiction to be invalid, such judg-
5 ment shall not affect, impair, or invalidate the remainder
6 of this Act or its application to other persons and cir-
7 cumstances, but shall be confined in its operation to the
8 provision of this Act or the application thereof to the per-
9 sons and circumstances directly involved in the con-
10 troversy in which such judgment shall have been rendered.

11 **SEC. 505. AUTHORIZATION FOR APPROPRIATIONS.**

12 There are hereby authorized to be appropriated such
13 sums as may be necessary and appropriate to carry out
14 the provisions and purposes of this Act other than those
15 for which appropriations may from time to time be specifi-
16 cally authorized.

17 **SEC. 506. TERMINATION OF AUTHORITY UNDER EXECUTIVE**
18 **ORDER NUMBERED 11625.**

19 Beginning on the date of the enactment of this Act,
20 the powers and duties of the Administration shall be deter-
21 mined without regard to Executive Order Numbered
22 11625.

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