

103^D CONGRESS
1ST SESSION

H. R. 278

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

JANUARY 5, 1993

Mr. MFUME introduced the following bill; which was referred jointly to the Committees on Banking, Finance and Urban Affairs and Small Business

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 1993”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

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

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

7 (2) that many such individuals are socially dis-
8 advantaged because of their identification as mem-
9 bers of certain groups that have suffered the effects
10 of discriminatory practices or similar invidious cir-
11 cumstances over which they have no control;

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

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

19 (5) such conditions can be improved by provid-
20 ing the maximum practicable opportunity for the de-
21 velopment of business concerns owned by members
22 of socially and economically disadvantaged groups;

23 (6) such opportunity cannot be fully realized
24 unless the Federal Government secures the partici-
25 pation and cooperation of the private sector in a

1 joint effort to promote the development of business
2 owned by disadvantaged individuals; and

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

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

9 (1) establish an Administration within the De-
10 partment of Commerce which will promote and ad-
11 minister programs in the private and public sectors
12 to assist the development of business owned by the
13 disadvantaged; and

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

18 **SEC. 3. DEFINITIONS.**

19 As used in this Act the following terms have the fol-
20 lowing meanings:

21 (1) The term “Secretary” means the Secretary
22 of Commerce.

23 (2) The terms “State”, “States”, and “United
24 States” include the several States, the District of
25 Columbia, the Commonwealth of Puerto Rico, the

1 territories of the Virgin Islands, Guam, and Amer-
2 ican Samoa, the Commonwealth of the Northern
3 Marianas, and the Trust Territory of the Pacific Is-
4 lands.

5 (3) The terms “socially and economically dis-
6 advantaged business concerns” and “disadvantaged
7 business” means any for-profit business enterprise
8 which is at least 51 percent owned by one or more
9 socially and economically disadvantaged individuals;
10 or, in the case of any publicly owned business, at
11 least 51 percent of the stock of which is owned by
12 one or more socially and economically disadvantaged
13 individuals; and whose management and daily busi-
14 ness operations are controlled by one or more of
15 such individuals.

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

21 (5)(A) The term “economically disadvantaged
22 individuals” means those socially disadvantaged indi-
23 viduals whose ability to compete in the free enter-
24 prise system has been impaired due to diminished
25 capital and credit opportunities as compared to oth-

1 ers in the same business area who are not socially
2 disadvantaged.

3 (B) The Assistant Secretary shall presume that
4 socially and economically disadvantaged individuals
5 include Black Americans, Hispanic Americans, Na-
6 tive Americans, Asian Pacific Americans, Asian In-
7 dian Americans, individuals found to be disadvan-
8 taged by the Small Business Administration pursu-
9 ant to section 8(a) of the Small Business Act, other
10 individuals so designated by the Minority Business
11 Development Agency under section 1400.1 of title
12 15 of the Code of Federal Regulations (as in effect
13 on October 1, 1986), and other individuals belonging
14 to other minority groups which the Small Business
15 Administration may, from time to time, determine to
16 be socially and economically disadvantaged groups
17 pursuant to Public Law 95-507.

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

21 (7) The term “Assistant Secretary” means the
22 Assistant Secretary of the Minority Business Devel-
23 opment Administration.

24 (8) The term “agency” means any executive
25 agency as defined in section 105 of title 5, United

1 States Code, and the military departments as de-
2 fined by section 102 of title 5, United States Code.

3 (9) The term “public sector” means any State,
4 State agency, political subdivision of a State, or
5 agency of such a political subdivision.

6 (10) The term “private sector” means any en-
7 tity which is not in the public sector excluding the
8 Federal Government, its agencies and instrumental-
9 ities.

10 **SEC. 4. MINORITY BUSINESS DEVELOPMENT ADMINISTRA-**
11 **TION.**

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

24 (b) REPORT TO CONGRESS.—Within 120 days after
25 the effective date of this subsection, the Secretary shall

1 inform appropriate committees of both the Senate and
2 House of Representatives of—

3 (1) the organizational structure established
4 within the Administration;

5 (2) the organizational position of the Adminis-
6 tration within the Department of Commerce; and

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

10 **TITLE I—MARKET** 11 **DEVELOPMENT**

12 **SEC. 101. PRIVATE SECTOR DEVELOPMENT.**

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

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

23 (2) to encourage disadvantaged firms to estab-
24 lish joint ventures and projects either among them-
25 selves or in cooperation with public or private sector

1 organizations for the purpose of increasing the share
2 of any market activity now being performed by dis-
3 advantaged business.

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

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

1 proval, shall be published in the Federal Register.
2 The authority conferred by this on the Assistant
3 Secretary shall not be delegated.

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

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

24 (d) FINANCIAL ASSISTANCE.—In order to carry out
25 the purposes of this section, the Administration is hereby

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

14 **SEC. 102. PUBLIC SECTOR DEVELOPMENT.**

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

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

24 (A) procurement programs and goals for
25 the utilization of disadvantaged business,

1 (B) management and technological assist-
2 ance programs,

3 (C) financial and marketing assistance pro-
4 grams,

5 (D) mobilization activities designed to at-
6 tract skilled labor for use by disadvantaged
7 firms, and

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

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

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

22 (c) PUBLICATIONS IN THE FEDERAL REGISTER.—(1)
23 At least 120 days before the beginning of each fiscal year,
24 the Administration shall publish for public comment in the
25 Federal Register the actual or anticipated amount of fi-

1 nancial assistance that will or may be available in the im-
2 mediately succeeding fiscal year for grants, contracts and
3 cooperative agreements planned to be awarded pursuant
4 to this section. Such publication shall also identify the pro-
5 posed allocation of funds between the several States (and
6 cities within such States) and the exact methodology used
7 by the Administration to make such proposed allocations.

8 (2) At least 60 days prior to the beginning of each
9 fiscal year, the Administration shall publish in the Federal
10 Register its response to comments received pursuant to
11 paragraph (1) and any change in the allocation methodol-
12 ogy which may be adopted as a result thereof including
13 its effect on the allocation of funds on the several States
14 (and cities within such States) for the immediately suc-
15 ceeding fiscal year.

16 **TITLE II—CAPITAL FORMATION**

17 **SEC. 201. ACCESS TO EQUITY CAPITAL.**

18 (a) PILOT AND DEMONSTRATION PROJECTS.—The
19 Administration is hereby authorized to defray all or part
20 of the costs of pilot or demonstration projects conducted
21 by public or private organizations which are designed to
22 assist disadvantaged business in obtaining access to equity
23 capital.

24 (b) SEC CONSULTATION AND COOPERATION.—The
25 Securities and Exchange Commission shall consult and co-

1 operate with the Administration in an effort to promote
2 access by disadvantaged business to securities markets
3 and otherwise achieve the purposes of this title.

4 **SEC. 202. MBDA STUDY ON CAPITAL FORMATION ALTER-**
5 **NATIVES.**

6 (a) IN GENERAL.—The Administrator shall conduct
7 a study on alternatives for providing capital formation as-
8 sistance to qualified disadvantaged business concerns, in-
9 cluding—

10 (1) the implementation of a revolving fund the
11 proceeds of which would be used to provide financial
12 assistance to qualified disadvantaged business con-
13 cerns through the purchase of equity investment in
14 such concerns; and

15 (2) the implementation of a surety bond refer-
16 ral assistance program, specifically the implementa-
17 tion of an individual surety bond referral program.

18 (b) REPORT.—The Administrator shall submit a re-
19 port to the Committees on Small Business of the House
20 of Representatives and of the Senate within 6 months
21 after the date of the enactment of this Act that contains
22 the Administrator's findings of the study conducted under
23 subsection (a). Such report shall specifically address the
24 feasibility of the alternatives described in paragraphs (1)
25 and (2) of such subsection and any other alternative ex-

1 plored by the Administration concerning the provision of
2 capital formation assistance to qualified disadvantaged
3 business concerns.

4 **TITLE III—MANAGEMENT**
5 **EDUCATIONAL DEVELOPMENT**

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

7 It shall be the duty of the Administration and it is
8 hereby empowered, whenever it determines such action is
9 necessary or appropriate to—

10 (1) promote and assist the education and train-
11 ing of disadvantaged individuals in subjects directly
12 related to business administration and management;

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

22 (3) stimulate and accelerate curriculum design
23 and improvement in support of disadvantaged busi-
24 ness development; and

1 (4) encourage and assist private institutions
2 and organizations and State and local government
3 agencies to undertake similar activities.

4 **TITLE IV—RESEARCH AND**
5 **INFORMATION**

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

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

19 (b) POWERS AND DUTIES.—(1) In order to achieve
20 the purposes of this Act, the Administration shall—

21 (A) collect and analyze data, including, but not
22 limited to, the causes for success or failure of busi-
23 nesses owned by the disadvantaged,

1 (B) perform evaluations of private and public
2 sector programs designed to assist the development
3 of disadvantaged business; and

4 (C) conduct research, studies, and surveys of
5 economic conditions generally and how such condi-
6 tions particularly affect the development of dis-
7 advantaged business.

8 (2) The Administration is hereby authorized to pro-
9 vide financial assistance by contract, grant, or cooperative
10 agreement to public and private organizations to assist the
11 Administration in carrying out the provisions of paragraph
12 (1).

13 (3) The Administration is hereby authorized to—

14 (A) develop and maintain, on a current basis, a
15 data bank on disadvantaged business, except that—

16 (i) such activity shall be conducted in co-
17 operation and consultation with the Associate
18 Administrator for Minority Small Business and
19 Capital Ownership Development of the Small
20 Business Administration, and

21 (ii) such data bank does not duplicate the
22 information stored or capable of being stored by
23 the procurement automated source system
24 (PASS) maintained by the Small Business Ad-
25 ministration; and

1 (B) establish and maintain an information
2 clearinghouse for the collection and dissemination of
3 demographic, economic, financial, managerial, and
4 technical data pertinent to disadvantaged business
5 and, to this end, to take such steps as the Adminis-
6 tration may deem necessary and desirable to search
7 for, collect, classify, coordinate, integrate, record,
8 and catalog such information.

9 **TITLE V—ADMINISTRATIVE AND**
10 **OTHER POWERS OF THE AD-**
11 **MINISTRATION; MISCELLANE-**
12 **OUS PROVISIONS**

13 **SEC. 501. ADMINISTRATIVE POWERS.**

14 In performing the duties under this Act, the Adminis-
15 tration is authorized to—

16 (1) adopt and use a seal for the Minority Busi-
17 ness Development Administration which shall be ju-
18 dicially noticed;

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

21 (3) acquire in any lawful manner any property
22 as the Administration may deem necessary or appro-
23 priate to conduct the activities authorized in this
24 Act;

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

3 (5) donate without cost (except for costs of care
4 and handling) for use in any Federal, State, or local
5 government or in any recipient nonprofit organiza-
6 tion for purposes of the development of disadvan-
7 tagged business any real or tangible personal property
8 acquired by the Administration under this Act. The
9 Administration may impose reasonable terms, condi-
10 tions, reservations, and restrictions upon the use of
11 any property donated under this section;

12 (6) enter into agreements with other Federal
13 agencies;

14 (7) employ experts and consultants or organiza-
15 tions thereof as authorized by section 3109 of title
16 5, United States Code, to compensate individuals so
17 employed at rates not in excess of the per diem rate
18 authorized for GS-18 of the General Schedule, in-
19 cluding traveltime, and allow them travel expenses
20 (including per diem in lieu of subsistence) while
21 away from their homes or regular places of business,
22 as authorized by section 5703 of title 5, United
23 States Code, for persons in the Government service
24 employed intermittently, while so employed;

1 contracts for such employment may be renewed
2 annually;

3 (8) sue and be sued in any court of record of
4 a State having general jurisdiction or in any United
5 States district court, and jurisdiction is conferred
6 upon such district court to determine such con-
7 troversies without regard to the amount in con-
8 troversy; but no attachment, garnishment, or other
9 similar process, mesne or final, shall be issued
10 against the Administration or its property; nothing
11 in this Act shall be construed to except the activities
12 under this Act from application of sections 507(b),
13 517, and 2679 of title 28, United States Code; and

14 (9) prescribe such rules, regulations, and proce-
15 dures as the Administration may deem appropriate
16 to carry out this Act.

17 **SEC. 502. AUDITS.**

18 (a) RECORDKEEPING REQUIREMENT.—Each recipi-
19 ent of assistance under this Act shall keep such records
20 as the Administration shall prescribe, including records
21 which fully disclose the amount and the disposition by the
22 recipient of the proceeds of such assistance, the total cost
23 of the undertaking for which such assistance is given or
24 used, the amount and nature of that portion of the cost

1 of the undertaking supplied by other sources, and such
2 other records as will facilitate an effective audit.

3 (b) ACCESS BY GOVERNMENT OFFICIALS.—The As-
4 sistant Secretary, the Inspector General of the Depart-
5 ment of Commerce, and the Comptroller General of the
6 United States, or any of their duly authorized representa-
7 tives, shall have access for the purpose of audit, investiga-
8 tion, and examination to any books, documents, papers,
9 records, and other materials of the recipient which are
10 pertinent to the assistance received under this Act.

11 (c) REVIEW BY COMPTROLLER GENERAL.—Not later
12 than 18 months after the date of the enactment of this
13 Act, the Comptroller General of the United States shall
14 conduct a thorough review of the programs authorized by
15 this Act and shall transmit to the Congress a detailed re-
16 port of the Comptroller's findings, including therein an
17 evaluation of the effectiveness of the programs authorized
18 to achieve the purpose of this Act, a description of any
19 failure to comply with the requirements of this Act, and
20 recommendations for corrective legislative or administra-
21 tive action.

22 **SEC. 503. ANNUAL REPORT.**

23 The Assistant Secretary shall, not later than 120
24 days after the close of each fiscal year, submit to the
25 President a full report of the Administration's activities

1 hereunder during the previous fiscal year. Further, the As-
2 sistant Secretary shall, from time to time, submit to the
3 President recommendations for legislation or other actions
4 as the Assistant Secretary deems desirable to promote the
5 purposes of this Act. Each Federal agency shall consult
6 with the Assistant Secretary on a timely basis so that the
7 Assistant Secretary may consider them for the Assistant
8 Secretary's report and recommendations to the President.

9 **SEC. 504. SEPARABILITY.**

10 If any provision of this Act or the application thereof
11 to any persons or circumstances shall be adjudged by any
12 court of competent jurisdiction to be invalid, such judg-
13 ment shall not affect, impair, or invalidate the remainder
14 of this Act or its application to other persons and cir-
15 cumstances, but shall be confined in its operation to the
16 provision of this Act or the application thereof to the per-
17 sons and circumstances directly involved in the con-
18 troversy in which such judgment shall have been rendered.

19 **SEC. 505. AUTHORITY OF ASSOCIATE ADMINISTRATOR FOR**
20 **MINORITY SMALL BUSINESS AND CAPITAL**
21 **OWNERSHIP DEVELOPMENT.**

22 (a) IN GENERAL.—Section 7(j)(11) of the Small
23 Business Act (15 U.S.C. 636(j)(11)) is amended to read
24 as follows:

1 “(11) The Associate Administrator for Minority
2 Small Business and Capital Ownership Development
3 shall be responsible for coordinating and formulating
4 policies relating to assistance provided by Federal
5 agencies (excluding the Minority Business Develop-
6 ment Administration) to small business concerns de-
7 scribed in section 7(i) and small business concerns
8 owned and controlled by the socially and economi-
9 cally disadvantaged as defined pursuant to section
10 8(d).”.

11 (b) CONSTRUCTION OF PROVISIONS.—Nothing in this
12 Act is intended to duplicate or limit any programs or
13 projects administered by the Small Business Administra-
14 tion.

15 (c) COOPERATION BY FEDERAL AGENCIES.—Each
16 Federal agency shall cooperate and consult with the Ad-
17 ministrator and the Small Business Administration to fa-
18 cilitate the accomplishment of the purposes of this Act and
19 the Small Business Act.

20 **SEC. 506. AUTHORIZATION FOR APPROPRIATIONS.**

21 There are hereby authorized to be appropriated such
22 sums as may be necessary and appropriate to carry out
23 the provisions and purposes of this Act other than those
24 for which appropriations may from time to time be specifi-
25 cally authorized.

1 **SEC. 507. TERMINATION OF AUTHORITY UNDER EXECUTIVE**
2 **ORDER NUMBERED 11625.**

3 Beginning on the date of the enactment of this Act,
4 the powers and duties of the Administration shall be deter-
5 mined without regard to Executive Order Numbered
6 11625.

○

HR 278 IH—2