

112TH CONGRESS  
1ST SESSION

# S. 236

To eliminate the preferences and special rules for Alaska Native Corporations under the program under section 8(a) of the Small Business Act.

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IN THE SENATE OF THE UNITED STATES

JANUARY 31, 2011

Mrs. McCASKILL (for herself and Mr. CARPER) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

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## A BILL

To eliminate the preferences and special rules for Alaska Native Corporations under the program under section 8(a) of the Small Business Act.

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. AMENDMENT TO DEFINITION OF INDIAN TRIBE.**

4 Section 8(a)(13) of the Small Business Act (15  
5 U.S.C. 637(a)(13)) is amended—

6 (1) by redesignating subparagraphs (A) and  
7 (B) as clauses (i) and (ii), respectively, and adjust-  
8 ing the margins accordingly;

1           (2) by striking “the term ‘Indian tribe’ means”  
 2           and inserting the following: “the term ‘Indian  
 3           tribe’—

4                       “(A) means”;

5           (3) by striking “, including any Alaska Native  
 6           village or regional or village corporation (within the  
 7           meaning of the Alaska Native Claims Settlement  
 8           Act)”;

9           (4) in subparagraph (A)(i), as so designated, by  
 10          striking “, or” and inserting “; or”;

11          (5) by striking the period at the end and insert-  
 12          ing “; and”; and

13          (6) by adding at the end the following:

14                       “(B) does not include an Alaska Native  
 15                       Corporation or Alaska Native Village.”.

16 **SEC. 2. SOCIAL AND ECONOMIC DISADVANTAGE.**

17          (a) IN GENERAL.—Section 29(e) of the Alaska Na-  
 18          tive Claims Settlement Act (43 U.S.C. 1626(e)) is amend-  
 19          ed—

20               (1) in paragraph (1), by striking “For all pur-  
 21               poses of” and inserting “Except as provided in para-  
 22               graph (5), for all purposes of”;

23               (2) in paragraph (2), by striking “For all pur-  
 24               poses of” and inserting “Except as provided in para-  
 25               graph (5), for all purposes of”; and

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

2 “(5) For purposes of sections 7(j)(10) and 8(a) of  
 3 the Small Business Act (15 U.S.C. 636(j)(10) and  
 4 637(a)), whether a Native Corporation or Native village  
 5 or a direct and indirect subsidiary corporation, joint ven-  
 6 ture, or partnership of a Native Corporation or Native vil-  
 7 lage is socially or economically disadvantaged shall be de-  
 8 termined in accordance with paragraph (5) or (6), respec-  
 9 tively, of section 8(a) of the Small Business Act.”.

10 (b) STANDARDS.—Section 8(a) of the Small Business  
 11 Act (15 U.S.C. 637(a)) is amended—

12 (1) in paragraph (4)—

13 (A) in subparagraph (A)—

14 (i) in clause (i)—

15 (I) in subclause (II), by striking

16 “or” at the end; and

17 (II) by adding at the end the fol-

18 lowing:

19 “(IV) a socially and economically disadvan-

20 taged Alaska Native Corporation or Alaska Na-

21 tive Village, or”; and

22 (ii) in clause (ii)—

23 (I) in subclause (II), by striking

24 “or” at the end;

1 (II) in subclause (III), by strik-  
2 ing the period at the end and insert-  
3 ing “, or”; and

4 (III) by adding at the end the  
5 following:

6 “(IV) a socially and economically disadvan-  
7 taged Alaska Native Corporation or Alaska Na-  
8 tive Village.”;

9 (B) in subparagraph (B)—

10 (i) in clause (ii), by striking “or” at  
11 the end;

12 (ii) in clause (iii), by striking the pe-  
13 riod at the end and inserting “, or”; and

14 (iii) by adding at the end the fol-  
15 lowing:

16 “(iv) members of a socially and economically  
17 disadvantaged Alaska Native Corporation or Alaska  
18 Native Village described in subparagraph (A)(i)(IV)  
19 or subparagraph (A)(ii)(IV).”; and

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

21 “(D) The Administrator may not waive the require-  
22 ment under this paragraph that the management and  
23 daily business operations of a business concern partici-  
24 pating in the program under this subsection are controlled  
25 by one or more socially and economically disadvantaged

1 individuals for a business concern owned by an Alaska Na-  
 2 tive Corporation or Alaska Native Village.”;

3 (2) in paragraph (5)—

4 (A) by inserting “(A)” after “(5)”; and

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

6 “(B) For purposes of this subsection and section  
 7 7(j)(10), the Administrator shall determine whether an  
 8 Alaska Native Corporation or Alaska Native Village is, as  
 9 an entity, socially disadvantaged in accordance with the  
 10 factors described in subparagraph (A).”; and

11 (3) in paragraph (6), by adding at the end the  
 12 following:

13 “(F) For purposes of this subsection and section  
 14 7(j)(10), the Administrator shall annually determine  
 15 whether an Alaska Native Corporation or Alaska Native  
 16 Village is economically disadvantaged in the same manner  
 17 as for an applicant for or participant in the program under  
 18 this subsection that is a Native Hawaiian organization.”.

19 **SEC. 3. AFFILIATION.**

20 Section 7(j)(10)(J)(ii)(II) of the Small Business Act  
 21 (15 U.S.C. 636(j)(10)(J)(ii)(II)) is amended by inserting  
 22 “, as defined in section 8(a)(13)” after “Indian tribe”.

23 **SEC. 4. SOLE SOURCE CONTRACTING DOLLAR LIMITS.**

24 (a) **COMPETITIVE THRESHOLDS.**—Not later than  
 25 270 days after the date of enactment of this Act, the Ad-

1 administrator shall amend the regulations issued under sec-  
2 tions 7(j)(10) and 8(a) of the Small Business Act (15  
3 U.S.C. 636(j)(10) and 637(a)) in accordance with this Act  
4 and the amendments made by this Act to apply to small  
5 business concerns owned by an Alaska Native Corporation  
6 or Alaska Native Village the competitive thresholds for  
7 awarding sole source contracts under section 8(a)(1)(D)  
8 of the Small Business Act (15 U.S.C. 637(a)(1)(D)) that  
9 are applicable to small business concerns that are owned  
10 by a socially and economically disadvantaged individual.

11 (b) MAXIMUM TOTAL DOLLAR AMOUNT.—Section  
12 8(a)(1)(D) of the Small Business Act (15 U.S.C.  
13 637(a)(1)(D)) is amended by adding at the end the fol-  
14 lowing:

15 “(iii) For purposes of eligibility for the  
16 award of a contract on the basis of restricted  
17 competition under this subparagraph, the Ad-  
18 ministrator may not establish a maximum total  
19 dollar amount of such awards during the period  
20 of Program Participation for participants that  
21 are owned by an Alaska Native Corporation or  
22 Alaska Native Village that is different from the  
23 amount for Program Participants that are  
24 owned by a socially and economically disadvan-  
25 taged individual.”

1 **SEC. 5. ONE TIME ELIGIBILITY.**

2 Section 7(j)(11)(B)(iii) of the Small Business Act (15  
3 U.S.C. 636(j)(11)(B)(iii)) is amended in the matter pre-  
4 ceding subclause (I) by inserting “(as defined in section  
5 8(a)(13))” after “Indian tribe”.

6 **SEC. 6. GRADUATION.**

7 (a) IN GENERAL.—Section 7(j)(15) of the Small  
8 Business Act (15 U.S.C. 636(j)(15)) is amended—

9 (1) by redesignating subparagraphs (A) and  
10 (B) as clauses (i) and (ii), respectively;

11 (2) by inserting “(A)” after “(15)”; and

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

13 “(B) The Administrator may not extend or waive the  
14 time limitations under this paragraph for a business con-  
15 cern owned by an Alaska Native Corporation or Alaska  
16 Native Village.”.

17 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

18 The Small Business Act (15 U.S.C. 631 et seq.) is amend-  
19 ed—

20 (1) in section 7(j) (15 U.S.C. 636(j))—

21 (A) in paragraph (10)(E)(ii), by striking  
22 “paragraph (15)” and inserting “paragraph  
23 (15)(A)”; and

24 (B) in paragraph (11)(D), by striking  
25 “paragraph (15)” and inserting “paragraph  
26 (15)(A)”; and

1           (2) in section 8(a)(1)(C) (15 U.S.C.  
2           637(a)(1)(C)), in the matter preceding clause (i), by  
3           striking “section 7(j)(15)” and inserting “section  
4           7(j)(15)(A)”.

5 **SEC. 7. REPORTING.**

6           Section 8(a)(6)(B) of the Small Business Act (15  
7 U.S.C. 637(a)(6)(B)) is amended—

8           (1) by redesignating clauses (i), (ii), and (iii) as  
9           subclauses (I), (II), and (III), respectively;

10          (2) by inserting “(i)” after “(B)”; and

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

12          “(ii) The annual report submitted under clause (i)  
13 by a Program Participant that is an Alaska Native Cor-  
14 poration or Alaska Native Village shall include, for the pe-  
15 riod addressed by the report—

16           “(I) the total revenue of the Alaska Native Cor-  
17 poration or Alaska Native Village;

18           “(II) the revenue of the Alaska Native Corpora-  
19 tion or Alaska Native Village attributable to the par-  
20 ticipation of the Alaska Native Corporation or Alas-  
21 ka Native Village in the program under this sub-  
22 section; and

23           “(III) the total amount of benefits paid to  
24 shareholders of the Alaska Native Corporation or  
25 Alaska Native Village.”.



1 **SEC. 8. REGULATIONS.**

2 Not later than 270 days after the date of enactment  
3 of this Act, the Administrator shall amend the regulations  
4 issued under sections 7(j)(10) and 8(a) of the Small Busi-  
5 ness Act (15 U.S.C. 636(j)(10) and 637(a)) in accordance  
6 with this section and the amendments made by this sec-  
7 tion, which shall include—

8 (1) establishing criteria for determining wheth-  
9 er an Alaska Native Corporation or Alaska Native  
10 Village is, as a group, socially disadvantaged, in ac-  
11 cordance with the factors described in section  
12 8(a)(5)(A) of the Small Business Act, as so des-  
13 ignated by this Act;

14 (2) establishing criteria for determining wheth-  
15 er an Alaska Native Corporation, Alaska Native Vil-  
16 lage, or Native Hawaiian Organization is economi-  
17 cally disadvantaged;

18 (3) repealing the provision that excludes certain  
19 affiliates of an Alaska Native Corporation or Alaska  
20 Native Village in determining whether a business is  
21 a small business concern;

22 (4) repealing the waiver for Alaska Native Cor-  
23 porations and Alaska Native Villages of the require-  
24 ment that the management and daily business oper-  
25 ations of a business concern participating in the pro-  
26 gram under section 8(a) of the Small Business Act

1 (15 U.S.C. 637(a)) are controlled by one or more so-  
2 cially and economically disadvantaged individuals;

3 (5) applying to small business concerns owned  
4 by an Alaska Native Corporation or Alaska Native  
5 Village the limitation on eligibility for a sole source  
6 award under section 8(a)(1)(D) of the Small Busi-  
7 ness Act (15 U.S.C. 637(a)(1)(D)) based on the  
8 maximum total amount of competitive and sole  
9 source awards under such section 8(a) that are ap-  
10 plicable to small business concerns that are owned  
11 by a socially and economically disadvantaged indi-  
12 vidual;

13 (6) prohibiting a single Alaska Native Corpora-  
14 tion or Alaska Native Village from conferring eligi-  
15 bility to participate in the program under section  
16 8(a) of the Small Business Act (15 U.S.C. 637(a))  
17 on more than 1 small business concern at any one  
18 time; and

19 (7) applying to small business concerns owned  
20 by an Alaska Native Corporation or Alaska Native  
21 Village the limitation on ownership of other firms  
22 participating in the program under section 8(a) of  
23 the Small Business Act (15 U.S.C. 637(a)) that is  
24 applicable to small business concerns that are owned

1 by a socially and economically disadvantaged indi-  
2 vidual.

3 **SEC. 9. DEFINITIONS.**

4 In this Act—

5 (1) the term “Administrator” means the Ad-  
6 ministrator of the Small Business Administration;

7 (2) the terms “Alaska Native Corporation” and  
8 “Alaska Native Village” have the meanings given  
9 those terms in section 3(p)(6) of the Small Business  
10 Act (15 U.S.C. 632(p)(6));

11 (3) the term “Native Hawaiian Organization”  
12 has the meaning given that term in section 8(a)(15)  
13 of the Small Business Act (15 U.S.C. 637(a)(15));  
14 and

15 (4) the term “small business concern” has the  
16 meaning given that term under section 3 of the  
17 Small Business Act (15 U.S.C. 632).

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