

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—116th Cong., 2d Sess.

S. 2757

To waive the imposition of a civil fine for certain first-time paperwork violations by small business concerns.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. LANKFORD (for himself and Ms.
HASSAN)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Harmless Error Lesser
5 Penalty for Small Businesses Act” or the “HELP for
6 Small Businesses Act”.

7 **SEC. 2. PAPERWORK VIOLATIONS BY SMALL BUSINESSES.**

8 (a) IN GENERAL.—Section 3512 of title 44, United
9 States Code, is amended by adding at the end the fol-
10 lowing:

11 “(c) SMALL BUSINESSES.—

1 “(1) DEFINITIONS.—In this subsection:

2 “(A) FIRST-TIME VIOLATION.—The term
3 ‘first-time violation’ means a violation by a
4 small business concern of a requirement regard-
5 ing collection of information by an agency,
6 where the small business concern has not pre-
7 viously violated any similar requirement regard-
8 ing collection of information by that agency.

9 “(B) SMALL BUSINESS CONCERN.—The
10 term ‘small business concern’, with respect to a
11 calendar year, means a business concern that
12 employed an average of not more than 50 full-
13 time employees on business days during the
14 preceding calendar year.

15 “(2) FIRST-TIME VIOLATION.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraph (C), in the case of a first-time
18 violation by a small business concern of a re-
19 quirement regarding the collection of informa-
20 tion by an agency, the agency shall not impose
21 a civil fine on the small business concern.

22 “(B) DETERMINATION.—For purposes of
23 determining whether to impose a civil fine on a
24 small business concern under subparagraph (A),
25 an agency shall not take into account any viola-

1 tion by the small business concern of a require-
2 ment regarding collection of information by an-
3 other agency.

4 “(C) EXCEPTION.—An agency may impose
5 a civil fine on a small business concern for a
6 first-time violation if the agency determines
7 that—

8 “(i) the violation has the potential to
9 impede or interfere with the detection of
10 criminal activity;

11 “(ii) the violation is a violation of an
12 internal revenue law or a law concerning
13 the assessment or collection of any tax,
14 debt, revenue, or receipt;

15 “(iii) the violation was not corrected
16 on or before the date that is 30 days after
17 the date on which the agency provided the
18 small business concern with actual notice
19 of the violation in writing;

20 “(iv) the violation presents, or has the
21 potential to present—

22 “(I) a danger to public health;

23 “(II) a danger to safety; or

24 “(III) a danger, or risk of harm,
25 to the environment; or

1 “(v) the violation has the potential to
2 cause serious harm, injury, or death.

3 “(3) AGENCY TRACKING OF FIRST-TIME VIOLA-
4 TIONS.—

5 “(A) IN GENERAL.—The Director shall
6 promulgate regulations requiring an agency to
7 track each first-time violation of a requirement
8 regarding the collection of information by the
9 agency.

10 “(B) REQUIREMENTS.—In promulgating
11 regulations under subparagraph (A), the Direc-
12 tor shall ensure that an agency—

13 “(i) does not make data compiled
14 under the regulations available to the pub-
15 lic; and

16 “(ii) maintains the data described in
17 clause (i) in a format that is consistent
18 across agencies.

19 “(4) ANNUAL REPORT.—Each year, any agency
20 that waived a civil fine under paragraph (2)(A) of
21 this subsection during the preceding year and any
22 agency (as defined in section 221 of the Small Busi-
23 ness Regulatory Enforcement Fairness Act of 1996
24 (5 U.S.C. 601 note; Public Law 104–121)) that
25 waived or reduced a civil penalty under section 223

1 of that Act during the preceding year shall submit
2 a report to Congress that describes, for each such
3 waiver or reduction—

4 “(A) the specific requirement that was vio-
5 lated, including the provision of law that au-
6 thorizes the agency to impose the civil fine or
7 civil penalty for the violation;

8 “(B) the amount of the civil fine or civil
9 penalty that the agency could have imposed;
10 and

11 “(C) the industry in which the small busi-
12 ness concern or small entity that committed the
13 violation operates.

14 “(5) RELATION TO OTHER LAWS.—In the event
15 of a conflict between section 223 of the Small Busi-
16 ness Regulatory Enforcement Fairness Act of 1996
17 (5 U.S.C. 601 note; Public Law 104–121) and this
18 subsection, this subsection shall control.

19 “(6) RULE OF CONSTRUCTION.—Nothing in
20 this subsection shall be construed to relieve a small
21 business concern from the obligation to comply with
22 all legal requirements.”.

23 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

1 (1) Section 3512(b) of title 44, United States
2 Code, is amended by striking “this section” and in-
3 sserting “subsection (a)”.

4 (2) Section 223(c) of the Small Business Regu-
5 latory Enforcement Fairness Act of 1996 (5 U.S.C.
6 601 note; Public Law 104–121) is amended—

7 (A) by striking “Agencies shall” and in-
8 sserting the following:

9 “(1) INITIAL REPORT.—Agencies shall”; and

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

11 “(2) ANNUAL REPORT.—Agencies shall submit
12 annual reports to Congress in accordance with sec-
13 tion 3512(c)(4) of title 44, United States Code.”.