

Proposed Bill Would Make Section 404 of the Sarbanes-Oxley Act Optional for Certain Smaller Companies

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On Thursday, September 15, 2011, U.S. Representative Ben Quayle (R-AZ-03) introduced the Startup Expansion and Investment Act (H.R. 2941), a bill that would make the internal control reporting and assessment requirements of SOX 404 optional for certain smaller companies. The Bill is aimed at making it easier for companies to go public and access the capital necessary to expand and create jobs. As explained by Congressman Quayle:

The Startup Expansion and Investment Act removes one of the many regulatory hurdles that inhibit many companies from going public. Access to the public capital markets is vital for a company to expand and hire new workers. Removing regulatory burdens results in economic freedom which leads to more economic growth.

In particular, the Bill would allow companies with a total market capitalization of less than \$1 billion to opt-out of the requirements under subsections (a)(2) and (b) of SOX 404 for the first 10 years after going public. These subsections relate to the management's assessment and the auditor's attestation of internal controls. Companies, however, would still have to comply with subsection (a)(1) of SOX 404, which requires the creation of an internal control report stating the responsibility of management for establishing and maintaining adequate internal control structures and procedures for financial reporting. To inform investors, companies would be required to disclose their decision to use the exemption in their annual reports filed with the SEC.

As current costs associated with SOX 404 compliance can reach over \$1 million per year, this bill should encourage more companies to go public given the reduced costs and regulation. Under existing law, companies with a market capitalization of under \$75 million do not have to comply with SOX 404.