



SMALL BUSINESS
LEGISLATIVE
COUNCIL

SBLC WEEKLY

May 14, 2012

Volume XIV Issue 16

MIDNIGHT COWBOY

I know this bill is not going anywhere but I got to report on it☺ The House Oversight and Government Reform Committee has approved H.R. 4067, a moratorium on “Midnight Rules,” introduced by Rep. Reid Ribble (R-WI). The bill would prohibit federal agencies from proposing or finalizing major “midnight rules” during an outgoing President’s lame-duck period. Under the bill, major rules are those that have an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Now can you imagine Senate Majority Leader Harry Reid (D-NV) bringing this bill to the floor with his party’s President up for re-election? I don’t think so.

But this does remind me to refresh your memories about the Congressional Review Act (CRA). This is a law that came about

thanks to the efforts of former Senator Don Nickles (R-OK). It was attached to former Senator Kit Bond’s (R-MO) Small Business Regulatory Enforcement Fairness Act (SBREFA), which was enacted (with a little help from SBLC☺) in 1996. SBREFA made some improvements to the Regulatory Flexibility Act (which SBLC had a little hand in bringing into being too☺) the small business community’s main tool for fighting unfair regulations. The CRA was a freestanding portion of the legislation that included the SBREFA improvements but has nothing to do with the regulatory flexibility portions. (Miss those guys - Nickles and Bond, great champions for small business and they could work with the other side of the aisle☺)

The CRA allows Congress to overturn major new regulations it does not like. Congress has 60 days after it receives a report from an agency that a rule has been promulgated to start the process to pass a joint resolution of disapproval. The President can veto the joint resolution of disapproval. (Which is why you don’t hear us talk much about any CRA activity. How many Administrations are going to say “Oops, we made a mistake?”) Back in 2000 then President Clinton’s Administration

promulgated an ergonomics rule. SBLC was one of the first in 2001 to say “Hey we have the CRA thing we helped get passed in 1996. Can we use that to overturn the ergonomics rule?”

Up to that point and since, the CRA has not been used to overturn a rule. The reason is that you had a highly unlikely perfect storm in 2001. The Congress that took office in 2001 was all Republican (for a while) and we had a Republican President following on the heels of a Democratic President. CRA is a cool law but tough to use since the stars seldom align as they did in 2001. In fact, between 1996 and 2008 only 47 joint resolutions of disapproval were introduced and only the ergonomics one ran the whole gamut. During that period, the Congressional Research Service says there were 47,540 major and non-major rules reported by agencies. CRA’s tipping point probably could be adjusted but the midnight rule bill is probably not the best fix. Occasionally (admittedly rare) there are rules we like that we might want to get out during a pro-small business Administration’s last days. (Here’s some ironic trivia. Back in 1996, there was a Democratic co-sponsor for the Congressional Review Act – Senator Harry Reid☺)