

2005: The Year in Microbusiness Policy

*Legislative report on the 109th Congress,
First Session*

December 19, 2005

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Overview

If there is one thing you can say about 2005 in general, it's that the year was dominated by really big news stories originating from both ends of Pennsylvania Avenue.

President George W. Bush returned for a second term, fortified by slightly larger majorities in both the House and the Senate and determined to tackle some of his really big-ticket items and cement his place in history.

Unfortunately for him, those larger majorities didn't seem to help him out much and it turned out that he didn't seem to have as much of a mandate as he mendaciously asserted he did in January. For a White House that had demonstrated a truly uncanny ability to market their ideas to the masses, the Bush Administration fell down badly when it came time to sell its Social Security reform proposals to the American public.

The President still occasionally talks about it, which leads one to suspect that he still wants to get it done, but pretty much everybody in Congress consider it to be dead.

Another of his big-ticket items, tax reform, has not exactly floundered. The advisory panel the President appointed did its work, although it didn't complete that work as quickly as he had hoped. They came up with recommendations, too. It's even possible that Congress will start to tackle them but if they do so before next year's midterm elections, I'll be astonished.

As matters evolved, other items have killed any momentum that Republican leaders on Capitol Hill might have been able to gather to get it done this year. That's because of a string of other big-ticket items: the Iraq war, ethical issues for high profile folks in Congress (Tom DeLay and Bill Frist) and in the White House (L. "Scooter" Libby and Karl Rove), two Supreme Court nominations, three devastating hurricanes in the Gulf Coast, and the federal budget and appropriations dance made more complicated by those huge disasters.

Generally speaking, this was not really a good year to be a federal legislator.

It wasn't a good year for small business policy, either. With all this going on, I suppose it would have been too much to expect policy makers to pay attention to small business issues when they are not inclined to do that under the best of circumstances. Perhaps the best way to summarize the year in microbusiness policy is 'out to lunch.'

Over in the House, Small Business Committee Chairman Don Manzullo (R-IL) spent his time working away at a variety of items that, for the most part, are irrelevant to microbusinesses even if they were, for the most part, not irrelevant to non-micro small businesses. Being a party loyalist, his chief concerns jived nicely with President Bush's agenda: tort reform, permanent estate tax repeal, AHP legislation, federal contracting, and regulatory reform. He also spent a lot of time on what seems to be one of his pet projects: addressing global market issues and, particularly, allegations of currency manipulation on the part of China.

For all that he has been a good party man, Manzullo still has not fallen in line with the President's repeated attempts to eliminate the Microloan program. His continued support for that programs is probably one reason why there have been no big fights between the House and Senate over the SBA budget — in spite of the Senate's tendency to be more generous to that agency than the more conservative House.

The story in the Senate is a bit more murky, due in part to some staffing changes in Chairperson Snowe's Small Business Committee office. As noted in July 4, 2005 issue of the Journal, Senator Snowe's Committee has been disappointingly moribund for most of the year. Once the budget hearings were over with and she had held her annual hearing on AHP legislation, there was no action from that Committee until Hurricane Katrina woke her up.

Like her counterpart in the House, Senator Snowe has not been inclined at any time to join the President in his evident determination to get rid of the Microloan program and she is willing to use much stronger language to say so. At the same time, she does not appear to have followed up on her stated wish to look further into services for the nation's microbusinesses to see where there may be gaps in

service or needs not being met. This is disappointing; there are indeed large swaths of geography that are lacking in services to microbusiness owners, and little input from them about what their needs are and how they can best be addressed.

It is to be hoped that all this ball-dropping will change in the coming year. In addition to the Committee's annual budget review process, next year will begin another of those lovely SBA re-authorization episodes that we all remember with such fondness from 2003 and 2004. And, of course, there is quite a bit of pending legislation awaiting mark-up that, one hopes, will not die in this Committee again.

It is also to be hoped that both of these Committees will return to the bipartisanship they enjoyed before President Bush took office. If there is one thing that has become crystal clear, it is that neither is as effective at accomplishing anything for small businesses when partisan strong-arm tactics are favored over a willingness to compromise across the aisle.

Special Issue Legislation

Health Care Insurance

What would any small business policy report be without a section voted to health care insurance costs, which has topped the list of small business headaches for the last several years?

Just when it seemed things couldn't get any more dire, they do. In September, the Kaiser Family Foundation's annual study on the subject found that health insurance costs rose another 9% over the last year, and have increased by a shocking 73% in the last five years. In addition, the average premium for family coverage, at \$10,880, is now higher than a year's full-time salary at minimum wage.

Besides that, a survey released in October by the National Association for the Self-Employed found that the coverage situation is worse for microbusinesses than for non-micro small businesses, with the smallest companies in both employees and earnings having the least in health care benefits for themselves, their families, and their employees. More than six in ten of those uninsured microbusinesses cited cost as the prohibitive factor.

There is almost no one who would argue against the fact that what we have here is a certified crisis situation. Calling health insurance costs "out of control" seems like a gigantic understatement at this stage of the game.

Enter the folks on Capitol Hill, who have been trying for more than a decade to pass legislation that would allow national small business organizations and trade associations to offer health insurance to their members across state line, allowing small firms to pool together to reduce their costs in Association Health Plans (AHPs). The ongoing saga of AHP legislation has been an annual drama in Washington for quite some time now.

Many Democrats have been against the proposal because of the way it removes AHPs from the supervision of state insurance commissioners and supercedes applicable consumer protection regulations. In their role as the party of small business, Congressional Republicans were purportedly in favor of AHP legislation as a solid block but that block was not as solid as they would have liked us to believe.

In fact, Senate Republicans were divided on AHPs, although their concern had less to do with consumer protections than it had to do with the opposition of the health insurance industry. However, rather than coming clean about which of them opposed the measure, they would simply fail to act on it and would blame “obstructionist Democrats” for that failure.

And that’s been the dance for years now. AHP legislation would be introduced early in each Congressional session in both the House and the Senate, usually by the respective Chairs of those Committees. In the House, it would pass by a large margin within six months of being introduced. In the Senate, various Senators expressed their growing sense of urgent concern about the plight of small businesses with respect to health care insurance. And in the meantime, the bill would just sit there until the session was over, eventually dying of neglect in the Health, Education, Labor and Pensions (HELP) Committee pending tray. Lather, rinse, repeat.

This year was different, thanks largely to the fact that there was a new Committee Chairman over at the HELP Committee. Senator Mike Enzi (R-WY) has been a member of the Senate Committee on Small Business and Entrepreneurship for years, and might thus be expected to be more sympathetic to this small business issue than his predecessor. He came to the job determined to get something done on the issue, although he also shared some of the concerns of those Democrats about AHPs falling under ERISA-like Labor Department supervision without state-level consumer protections.

As usual, the Small Business Health Fairness Act (H.R. 525, S. 406) was introduced early in this congressional session — in the House by Congressman Sam Johnson (R-TX) and in the Senate by Small Business Committee Chairperson Olympia Snowe (R-ME). Also as usual, it was passed in the House in July.

Enter Senator Enzi. Instead of simply ignoring the concerns of Senate Democrats, he worked with them (not so hard to do, since he shared them) to craft legislation that would address those concerns. Enzi's work on his bill was also remarkable because he chose to step back from the 'my way or the highway' tactics that have been favored by the Congressional Majority in recent years, during which genuine bipartisan efforts have grown to be few and far between.

Enzi's legislation, Health Insurance Marketplace Modernization and Affordability Act (S. 1955), retains the small business pooling idea in something he calls Small Business Health Plans (SBHPs) that are very similar to the previously proposed AHPs. However, rather than letting these SBHPs simply ignore state rules, the bill requires them to include types of coverage that are mandated by at least 45 states. Conversely, the SBHPs may opt out of benefits that are mandated by fewer than 45 states.

At the same time, SBHPs are required to be federally certified and organizations offering them are required to be more than three years old and to have been formed for purposes other than offering insurance. Such organizations also will not be permitted to admit or deny membership or coverage based on health status, a provision no doubt put into place to address concerns about cherry picking.

The bill also sets up a mechanism through which the states can get together and create more uniformity among their various insurance regulations under the auspices of the Department of Health and Human Services.

On the surface, it seems to do everything that AHPs promised to do but without sacrificing state regulations or consumer protections. Early on, the bill has been co-sponsored in a bipartisan fashion with Senators Ben Nelson (D-NE) and Conrad Burns (R-MT) joining Senator Enzi to introduce the bill. I've heard from HELP staffers that Senator Jim Talent (R-MO), former House Small Business Committee Chair and long-time champion of AHPs, will support the bill.

There still has been no word about whether either Senator Snowe or the Senators from Massachusetts, both Democrats, will line up in favor of the bill. Senator Ted Kennedy is the Ranking Member of the Senate HELP Committee, while Senator John Kerry holds that position on the Senate Small Business Committee, so they

will both have input here.

Senator Enzi had wanted to hold a hearing before the first session ended but, because of those messy, lengthy budget and appropriations shenanigans that have occupied everybody's time and attention over the last several weeks, that didn't happen. Expect Enzi to hold a hearing and/or markup session on this one early next year. Senator Snowe may hold her own hearing, especially if she is inclined to favor her own bill over Enzi's, but given how little activity has come from the Small Business Committee this year, it is equally possible that she won't.

This time, it looks like this legislation *will* get out of committee. At that point, there will be nothing standing between it and a vote other than Senator Majority Leader Bill Frist, who has already pledged his support to more than one small business outfit. Even then, there would still be a House-Senate Conference to get through. But small business lobbying organizations can take comfort in the fact that they are closer to realizing this goal than they have ever been before.

Regulatory Flexibility Reform

This year marked the 25th anniversary of enactment of the Regulatory Flexibility Act into law, and so it seemed to make sense that there was a mini-flurry of legislation introduced in Congress this year seeking to improve the bill and the inclination of federal regulators to comply with it.

In some ways it is deliciously ironic that so many federal regulatory agencies, whose job it is to make sure businesses comply with federal laws and regulations, are themselves so recalcitrant when it comes to complying with this particular set of federal laws and regulations.

In any event, it's been recognized that those agencies need to be helped toward that compliance and the two pronged strategy that has come into being under the Bush Administration is perhaps the only thing they've done for small businesses that gets the Journal's unqualified approval.

That strategy is very simple. First, President Bush signed Executive Order 13272, which requires that federal regulating agencies create plans and procedures to comply with RegFlex (as it is affectionately called). It also requires those agencies to listen to the SBA's Office of Advocacy on matters involving RegFlex compliance, and it requires Advocacy to conduct training sessions for those agencies on same.

One of this year's bits of small business regulatory legislation, the Regulatory Flexibility Reform Act (S. 1388), takes the success of that Executive Order a step further. The bill, which was introduced by Senator Olympia Snowe (R-ME) in July, codifies E.O. 13272 into law in a way that would give Advocacy more authority to enforce compliance.

Another piece of relevant legislation was introduced in the House earlier in the year. The Regulatory Flexibility Improvements Act (H.R. 682), introduced in February by House Small Business Committee Chairman Don Manzullo (R-IL), seeks to close the loopholes in RegFlex that regulating agencies have been using for years to dodge compliance. It also requires regulators to respond in writing to Advocacy comments on proposed regulations, and gives them their own rule-making authority.

Of the two bills, Advocacy's Chief Counsel Tom Sullivan is inclined to favor the Senate version because, he says, it gives him enough enforcement authority to work with federal bureaucrats toward RegFlex compliance without giving him so much authority that Advocacy is perceived as a pack of bullies. It's a 'more bees with honey than vinegar' strategy that seems to be yielding some results.

Manzullo's bill was referred to both the House Judiciary Committee and the Small Business Committee. Hearings were held by Chairman Manzullo in March but the bill still has not been scheduled for markup. There has also been no further action on this legislation by the Judiciary Committee. Over in the Senate, Snowe's bill was not referred to the Small Business Committee, which seems rather odd. Instead, it awaits review by the Senate Committee on Homeland Security and Government Affairs.

It is possible that one or the other of these bills will be addressed early in the

second session, before President Bush submits his fiscal 2007 budget. As important as this stuff is, especially for microbusinesses, nobody seems to be making much noise about it at present. That may change, especially if AHP legislation (or a reasonable facsimile) is passed, taking that issue off the front burner for awhile.

Gulf Coast Hurricane Recovery

The devastation that wreaked havoc in Louisiana, Mississippi and Alabama and, to a lesser extent, Texas and Florida, made international headlines — initially because of the bungling initial response on the part of the federal government.

After the initial shock wore off, members of Congress did what one might have expected them to do under the circumstances: introduce a blizzard of recovery legislation, much of which was duplicative and most of which will not be acted on even when Congress returns in January.

It would be impossible to review all this hurricane recovery legislation in this report (unless I decided to make it much longer than it is) and, while most of it has a few provisions that impact small businesses, most of it is not small business specific.

The small business recovery picture has been a bit muddied by the accusations and denials that swirled around the SBA's response in the context of its disaster loan program. In late September, members of both the House and Senate Small Business Committees and the entire Congressional delegation from the effected states (especially those from Louisiana) were suffering an agony of frustration with what seemed to be a sluggish, inadequate response from the SBA.

That agency, more recently, has been operating something of a face-saving operation via press releases and press events, to make sure those of us in the Fourth Estate know that the agency has nobly risen to the occasion after a slow start and that it continues to be uniformly wonderful.

Most of the high-profile wrangling happened on the Senate Committee on Small Business and Entrepreneurship, which was particularly well-positioned to get involved. In addition to the concern about effected small businesses that might have been expected from the Committee leadership on both sides of the aisle, it so happens that both Senators from Louisiana sit on that Committee as well.

Two legislative proposals emerged from their bipartisan efforts on behalf of Gulf Coast small business storm victims. The Small Business Hurricane Relief and Reconstruction Act (S. 1807), among other things, defers disaster loan payments for up to a year, creates a supplemental disaster loan program similar to the STAR post-9/11 loan program, and authorizes spending for counseling, training, and grants to state governments.

Meanwhile, the Small Business, Homeowners, and Renters Disaster Relief Act of 2005 (S. 1724) has as its central provision the establishment, under the Commerce Department and the SBA, of bridge loans for small businesses either directly or indirectly impacted by the disaster. There are also some additional provisions here to provide emergency funding to small businesses in the effected areas.

Both of these bills have been referred to the Senate Small Business Committee. As to whether anything will be done with them in light of the other things Congress has done to address the disaster, that is difficult to say with Congress flying off in twenty different directions trying to provide needed relief in the area.

In the House, Small Business Committee Ranking Member Nydia Velázquez (D-NY) introduced her own legislation, called the Small Business Gulf Coast Revitalization Act of 2005 (H.R. 4234). This bill has absolutely no chance of even making it out of the Small Business Committee pending tray, since it spends more money than Congress wants to spend and resuscitates programs, like the New Markets Venture Capital program, that the SBA wants to quietly put to bed.

Another bill, introduced by Congressman Bobby Jindal (R-LA) and entitled the Gulf Coast Small Business Recovery Act (H.R. 3988), mostly concerns itself with small business contracting issues around re-construction. It requires federal agencies to award 30% of prime contracts and 40% of subcontracts to small businesses located in the effected areas, and gives those small businesses

HUBZone status.

Of all these proposals the only one that has gotten anywhere, somewhat predictably, was President Bush's own GO Zone proposal. It was enshrined in the Gulf Opportunity Zone Act (H.R. 4440). This bill tackles reconstruction of the devastated areas with a string of tax breaks and tax incentives that had Congressional Democrats howling in protest at what they called the President's callousness at using the disaster area as a laboratory for his economic development ideas.

The measure passed in the House, then approved by the Senate with the addition of an amendment offered by Senator Trent Lott (R-MS). That means this legislation will need to go through a House-Senate conference, and the conference report will have to acquire bicameral approval before it lands on the President's desk.

Other Microbusiness Legislation

National Small Business Regulatory Assistance Act - H.R. 230

This rerun from previous sessions of Congress provides both authority and funding for Small Business Development Centers to provide small business owners with regulatory compliance assistance and to act as liaison between small business owners and federal regulating agencies. In prior years, there was a certain amount of controversy attached to it as the SBA maintained that SBDC's were already doing this stuff and this legislation (and resultant budget authority) was unnecessary.

There's a bit more here, too. The bill requires the SBA to act as an clearinghouse for information on which federal regulations were causing small businesses the most grief, as that information is supplied by the SBDCs, tell Congress about it and offer compliance assistance information via the Internet. It requires the Office of Advocacy to review that list for particularly problematic federal regulations, chase down the regulators and request a review, and report annually to Congress on their progress.

This would essentially set up an entire apparatus within the existing institutional structure to act as a set of eyes and ears and brains helping small businesses with their regulatory compliance chores while simultaneously making those chores less onerous, which would be a wonderful thing.

Alas, it will have to wait until next session. The bill was introduced in January by Congressman John Sweeney (R-NY), marked up by the House Small Business Committee in July and placed on the calendar. There has been no companion legislation introduced in the Senate.

Rural America Job Assistance and Creation Act - H.R. 143

This legislation combines job training with business incubation, and appears to have a great deal of potential to help rural entrepreneurs. The job training part would be provided for through grants from the Labor Department to regional consortia (meeting certain specific requirements, of course). The business incubation part would be funded through grants from the Commerce Department to establish and maintain outfits that provide those services (including legal, intellectual property, and technology services and planning).

It does a few other things as well (like requiring the GAO to study how infrastructure, venture capital and federal programs can enhance rural economies), although they are not as relevant to microbusinesses.

This bill was referred to no less than four House Committees, if you can believe that: Ways and Means, Education and Workforce, Judiciary, and Financial Services. With all those panels to wade its way through, it's not especially surprising that not a thing has happened with this bill since it was introduced in January by Congressman John McHugh (R-NY). This bill might do some very nice things for rural economies in general and rural microbusinesses in particular, but don't hold your breath. Between lack of interest in small businesses and the bleeding budget, this kind of legislation is not a priority with very many people on Capitol Hill.

SBA Microenterprise Improvements Act - S. 138, H.R. 2640

This legislation, introduced in January by Senate Small Business Committee Ranking Member John Kerry (D-MA) is perhaps the only microbusiness specific piece of legislation that was introduced throughout the first session of the 109th Congress. It seeks to improve and expand the SBA's Microloan program by (1) permitting Microloan Intermediaries to offer revolving credit and longer term loan products, (2) making it easier for organizations to qualify as Microloan Intermediaries, (3) increasing budget authority for Microloan technical assistance grants and (4) requires the SBA to fix its subsidy rate for Microloan direct loans.

If the Senate would act on this bill, it would be wonderful stuff for microbusinesses. That's not going to happen, though. To begin with, these are proposed enhancements to a program that the White House has been trying to kill for the past two years and, while Congress hasn't permitted that, it's unlikely that they'll do much to enhance it either. There are also budget issues and partisan politics involved.

The bill was referred to the Senate Small Business Committee, where it has been collecting dust since January. A companion bill was introduced in the House in May by Congressman Bobby Rush (D-IL), where it was referred to both the House Small Business Committee and the House Finance Committee. There may be some movement on it during the second session of the 109th Congress — more likely in the Senate than in the House. But, again, I wouldn't hold my breath.

Vocational and Technical Entrepreneurship Development Act - S. 139

Another ghost from Congresses past, this bill ranks pretty high as one of the best small business policy ideas anybody on Capitol Hill has come up with in light of current economic trends. It simply establishes a program within the SBDC program to extend their business management training to vocational and technical schools, which are full of people learning trades that will someday allow them to start their own businesses but who are not learning business management skills in their schools.

There has been all kinds of bureaucratic silliness to explain the lack of previous action on this one, not least of which are jurisdictional disputes and budget concerns. This bill was introduced again in January by Senator John Kerry, and companion legislation was introduced in the House by Congressman Bob Brady (R-PA) a month later.

It was referred to the Small Business Committees in both chambers and the House Small Business Committee held a markup session and reported the bill out of Committee in July. It has been placed on the calendar for House vote. There has

been absolutely no action on the bill in the Senate.

Small Business Federal Contractor Safeguard Act - S. 137

Normally, microbusinesses don't lose much sleep over the federal contracting scene but, for those whose growth plans include competing for prime or subcontracts, this bill would have been welcome news if it weren't for the fact that the relevant parties are ignoring it. It basically does a series of things to discourage contract bundling, requires prime contractors to pay subcontractors as much as they said they would in their bids, and has the SBA monitor for contracting compliance.

I'm sure that there are a number of folks who would tell me that the legislation isn't necessary, that the same thing can be accomplished administratively. I might even be tempted to agree if it weren't for the fact that contract bundling has been a long-standing problem that hasn't yielded to any administrative attempts to solve it.

In any event, this legislation probably won't get the chance. There has been no companion bill introduced in the House and no action on it in the Senate. It's another bill that has been referred to the Senate Small Business Committee; that panel will have plenty to do when they return in January.

Increased Capital Access for Growing Businesses Act - H.R. 436, S. 1396

In April, the Journal reported on this legislation when it passed in the House. Introduced by Congresswoman Sue Kelly (R-NY) early in the year, it seeks to update securities laws relating to Business Development Companies (BDCs), firms that invest in small private and public businesses, and that fall under the

regulatory jurisdiction of the Securities and Exchange Commission (SEC). Given the growing number of micro-corporations in the country, this legislation may prove to be an important expansion in the access to capital arsenal.

Sadly, it is beginning to look like this bill will suffer the same fate it did during the 108th Congress, when it passed in the House and died in the Senate. Companion legislation was introduced by Senator George Allen (R-VA) in July, and the bill was referred to the Committee on Banking, Housing and Urban Affairs. As another of those items that doesn't seem to be on anybody's priorities list for the 109th Congress, the odds are that it will die there.

Business Checking Freedom Act - H.R. 1224

This bill would permit banks to pay interest on business checking accounts, among other things. It is another small business friendly financial bill from the office of Rep. Susan Kelly that passed the House in May with the blessings of both Small Business Committee Chairman Don Manzullo (R-IL) and Ranking Member Nydia Velazquez (D-NY) — which is itself an unusual occurrence anymore.

Once approved in the House, the bill made its way over to the Senate where it currently atrophies in the pending tray of the Committee on Banking, Housing and Urban Affairs.

Native American Small Business Development Act - H.R. 2981; Second Stage Small Business Development Act - H.R. 3207

These two bills are the final two elements of a package of Small Business Development Center legislation that was the subject of a House Small Business Committee hearing in July. H.R. 2981 would permit SBDCs in eligible states to apply for additional grants to improve services to Native American, Alaskan Native and Native Hawaiian business owners. H.R. 3207 provides for grants to

help SBDCs establish peer learning programs for growth oriented, so-called “second stage” small businesses, a term that is rather tortuously defined in the legislation.

It is interesting that these bills garnered as much attention in the House as they did, considering that they call for additional appropriations for the SBDC program. After all, nobody listened when the SBDCs told both Committees that they needed an additional \$20 million appropriation in fiscal 2006 simply to adjust their funding for inflation. Yet, the additional SBDC funding authorized in these four bills comes to — yes, you guessed it — about \$20 million.

Be that as it may, the entire package was reported out of Committee and now sits on the House calendar for a vote.

Small Employer Tax Relief Act - H.R. 3841

This is a surprisingly rare item for us this year: legislation that was actually introduced by the House Small Business Committee Chairman. It’s not that he hasn’t been doing anything during the 109th Congress. It’s just that most of what he has been doing has not had much relevance to the nation’s microbusinesses.

This bill is a curious item in a year in which Congressman Manzullo’s party’s president launched an effort to reform the tax code. If Mr. Bush succeeds in that project (which is by no means certain), the provisions in this bill will be rendered irrelevant.

In the meantime, there are sixteen separate provisions here designed to ease tax burdens on small employers and some of them are good news even for non-employers. Among other things, it allows the self-employed to deduct health insurance premiums as a business expense, phases out the Alternative Minimum Tax, provides for a business jointly owned by a husband-wife team to be treated by the IRS as a sole proprietorship rather than a partnership, and creates a

standard home office deduction.

The bill, which was introduced in September, was referred to the House Ways and Means Committee. Possibly that Committee will get around to this bill next year.

About **The MicroEnterprise Journal**

The MicroEnterprise Journal is the award-winning business news publication from Wahmpreneur Publishing, Inc. (WPI), covering politics and policy, economics and the market, providing exclusive articles on the issues from a uniquely microbusiness perspective. Originally published as *WAHM & Mompreneur Webzine*, and then as *Wahmpreneur News Magazine*, **The MicroEnterprise Journal** is the flagship publication of WPI and has been in continuous publication since September 1999.

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