

When to Turn to a Law Firm for Lobbying

Navigating local, state, and federal regulations can be tricky and time-consuming for legal departments, but it is a critical part of the job. Laws enacted at the local, state, and federal levels have a significant impact on a corporation's day-to-day business operations, and getting blindsided by a dis-

advantageous piece of legislation can have serious consequences. That is why many companies maintain close, long-standing relationships with lobbyists and other government affairs experts. Lobbyists help legal departments keep up-to-date and informed about pending bills, working to amend those that could have negative repercussions and supporting those that are business-friendly.

Developing relationships with trusted lobbyists, who can build relationships with legislators, is an important part of government affairs. Successful lobbyists come from varying backgrounds, but in many cases,

“Lobbying involves several different skill sets. In complex situations, a lawyer’s skills can be invaluable.”

working with a lobbyist who is also a lawyer or affiliated with a law firm is particularly effective.

Different Skill Sets

“Lobbying involves several different skill sets,” says Richard H. Bryan, a shareholder with Lionel Sawyer & Collins and a former U.S. Senator and Governor of Nevada. “In complex situations, a lawyer’s skills can be invaluable.”

“Legislative action, particularly at the state and local level, often occurs very rapidly and without a great deal of advance notice,” says Dan Riley, a lawyer-lobbyist at Bernstein

Shur in Maine and chair of Lex Mundi’s Government Affairs practice group. “The ability to quickly identify potential issues and draft legislative solutions can be critical to ensure a client’s interests are protected in this fast-paced process.”

A lawyer-lobbyist or a lobbyist affiliated with a law firm can be especially helpful when a company knows a bill would be disadvantageous as proposed. This is particularly true when the bill involves complex legal areas and the lobbyist can bring legal skills to bear, says Bryan.

Lawrence E. Pope, director of the Center for Legislative Practice at the Drake University School of Law in Des Moines and former majority leader of Iowa’s House of Representatives, suggests proposed changes or new labor laws and bonding issues as other areas where identifying potential legal ramifications can save future time and expense.

There are times when a change in a law or the rules of engagement could help companies deal with litigation. John DiLorenzo, a partner and co-chair of the government relations practice group of Davis Wright Tremaine LLP, cites a complex environmental insurance claim in which a conflict of laws issue was resolved legislatively. The change allowed Oregon law to apply to pending cases and the interpretation of various insurance policies covering environmental claims.

Making Change Happen

A lawyer-lobbyist or a lobbyist affiliated with a law firm also has an advantage when litigation is the best way to change legisla-

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tion. “In this case, litigation is commenced which either alters the legal landscape or threatens to do so, thereby necessitating a legislative response,” says DiLorenzo.

Companies should also consider working with a lawyer-lobbyist or a lobbyist affiliated with a law firm when they realize a change in legislation may result in future litigation. DiLorenzo says his firm has advocated for bills that used a combination of litigation or alternative dispute resolution as part of the legislative scheme.

In addition, having a law firm handle legislative issues provides the important advantage of the protections of the attorney-client privilege.

“Legislation often produces litigation,” says Riley. “The work product in the legislative process can be protected from discovery in litigation.”

Plan Ahead

When working with lobbyists of all types, planning ahead is the key to any successful effort, Bryan says. Companies should retain lobbyists who are familiar with important issues and can develop relationships with key legislators long before a critical bill comes up for a vote. “Begin the dialogue long before the legislative session begins,” says Bryan. “You’ve got to have someone there every day, tracking the scuttlebutt and getting the state of play. You can’t get that from the Internet.” ■

IOWA

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Success Story

For the past several years, Davis Brown has been involved in most major tax legislation passed in Iowa. For example, we helped a major Iowa health care system obtain a sales tax exemption in connection with their hospital operations. However, this exemption was not intended to cover hospital construction projects.

Later on, two separate Iowa hospitals obtained informal letter opinions from the Iowa Department of Revenue stating that construction purchases were not subject to sales tax. Subsequently, the Department reversed itself, but not before the two hospitals initiated projects without taking sales tax into account.

Since the exemption could not be expanded, legislation was carefully drafted to specifically correct the inequitable result retroactively for the two hospitals in question, without expanding the exemption to other hospitals.

This effort involved a combination of legal and lobbying expertise, which

included constitutional, statutory, bonding, and contract matters as well as the explanation and marshalling of support for passage of corrective legislation.

In summary, the client benefited from the firm’s “one stop” service—Davis Brown resolved the legal issues and used its lobbying expertise to secure legislative relief.

Overview of Government Affairs Practice

Davis Brown represents clients in the Iowa State Legislature on a wide range of legislative matters, including rule making. We also represent clients before various state agencies involving areas such as tax, environmental law, transportation, and utilities. In addition, we provide counsel relating to the passage of federal legislation. The firm has the current Democratic Party State Chair and the former Republican Party Chair among its members.

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INDIANA

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Success Story

Baker & Daniels represents a large manufacturing company which owned an industrial property in Indiana from 1899 to 1955. This property is involved in environmental litigation in which the plaintiff, a subsequent owner of the property, alleged that our client contaminated the property. The U.S. District Court ruled that the claim was barred by the applicable six-year statute of limitations and that the discovery rule applied.

While the case was pending on appeal, the plaintiff hired a lobbyist to introduce an amendment that retroactively applied a longer statute of limitations to the litigation and eliminated the applicability of the discovery rule.

We were engaged to defend our client against the proposed amendment. We tailored our arguments to address the controversy which resulted from the fact that the amendment was tied to legislation that the Chairperson of the

Environmental Committee had worked on for a long period. As lawyer-lobbyists, we worked closely with lawyer-legislators on this complex legal issue. At the same time, our advocacy skills—combined with our knowledge of the law—helped us persuade the General Assembly that this was bad law, and bad public policy.

Ultimately, we defeated the proposal.

Overview of Government Affairs Practice

Baker & Daniels’ government affairs practice group has a long history of collaborating with key decision makers to accomplish our clients’ goals on legislative and regulatory matters. As experienced advocates, Baker & Daniels professionals know how to craft strategic approaches that respond to the challenges and opportunities that state and local governments create for our clients.

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Success Story

In a move that created enormous opportunities for early-stage life sciences companies, last year the U.S. Congress revitalized the government’s program to develop medical countermeasures critical to protecting against bioterrorism and pandemic threats. The resulting legislation created an agency within the Department of Health and Human Services (HHS), the Biomedical Advanced Research and Development Authority (BARDA).

BARDA will inject more than \$1 billion into research, development and procurement of vaccines, antivirals and diagnostics. BARDA enhances coordination between government and emerging companies by supporting advanced research and development, the vital phase between basic research and commercialization.

On behalf of venture capital firm Kleiner Perkins Caulfield & Byers, Foley Hoag worked with HHS, Congressional members and staff to craft legislation strengthening

U.S. response to these threats. The key financing aspect of the legislation provides funding to allow early-stage companies to traverse the “valley of death” before product commercialization. The legislation authorizes the HHS Secretary to expedite contracts and grants, and the BARDA Director to identify areas of unmet need, spurring further innovation and investment. BARDA institutionalizes the partnership between the government and the life sciences industry, critical to safety, innovation and economic vitality.

Overview of Government Affairs Practice

Foley Hoag’s Government Strategies Practice is active at the state and federal levels, working with clients and the public sector to achieve mutually beneficial solutions to public policy issues. These lawyers have worked in senior-level positions within presidential administrations, on Capitol Hill, in regulatory agencies and industry trade associations.

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Success Story

One of Butzel Long's corporate clients had a six-figure filing fee liability with the State of Michigan. The liability was affecting the company's ability to raise capital. Our lawyers reached out to our government affairs practice to craft a solution. Our lobbyists utilized their relationships with state officials by making the case to the department director and executive staff to waive the fee. Our lobbyists succeeded in getting the fee waived and the company was able to proceed with its capital campaign.

regulatory process to positively position our clients for successful outcomes. BLGA provides strategic counsel regarding the political and regulatory climate, updating clients about emerging issues, proposed regulations and corporate compliance matters. Together, we develop strategies that allow our clients to directly influence the legislative process to address their issues effectively.

Overview of Government Affairs Practice

Butzel Long Government Affairs (BLGA) provides government relations and strategic counsel to corporations and trade associations using an integrated approach to solve clients' issues with government. With an in-depth knowledge of the issues, people, politics and business, we help our clients navigate through the legislative and

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Success Story

Following Hurricane Katrina's devastating effects on the infrastructure of Mississippi's six coastal counties, the State Legislature undertook development of new water and wastewater infrastructure laws for the area. In the 2006 legislative session, Butler Snow represented Mississippi's association of local governments in fashioning the best legislative solution for all. After the Legislature initially proposed a regional approach to the issue exclusive of local governance, Butler Snow acted as a liaison among the Governor, the Legislature and coastal governments to craft a solution that ultimately became the Gulf Region Water Utility Authority Act. Butler Snow's past legal representation of local governments and water and wastewater districts enabled us to bring needed environmental, engineering (an attorney on our staff is an engineer and operated a wastewater treatment facility), relational and legislative expertise to this

very significant initiative. Butler Snow's participation in the legislative process contributed significantly to the fact that the law as enacted secures the region's infrastructure for the future in a way that allows local governments to remain active and involved participants.

Overview of Government Affairs Practice

Butler Snow's Public Law and Finance Group assembles a team of attorneys from an array of legal disciplines to help clients deal with all aspects of public law and finance—from economic incentives to compliance, from the regulatory and legislative process to litigation. Areas of expertise within our group include public finance, administrative law, economic development, incentives, elections and campaign finance, governmental litigation, governmental relations, environmental, gaming, utilities and civil rights.

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Success Story

The growth of asbestos litigation throughout the nation led manufacturers and other defendants to seek legislative solutions to help address the massive caseloads of asbestos-related claims pending in state courts.

The Ohio General Assembly was the first to pass this type of legislation. Other states such as Texas, Georgia and Florida have also passed medical criteria asbestos legislation.

We represented a coalition of companies in Ohio that encountered large increases in asbestos-related claims being filed in Cuyahoga County Court of Common Pleas. Many of the claims filed did not have injuries that were caused by an asbestos product and were not diagnosed by a qualified medical physician.

Overview of Government Affairs Practice

Calfee represents clients in complex legislative and administrative arenas. Attorneys evaluate the impact of public policy decisions on client businesses and develop targeted strategies to favorably impact public policy. Our understanding of the governmental process, as both registered lobbyists and legal counsel, offers our clients an unusual combination of services at all levels of government. We anticipate emerging issues and devise and implement deliberate action plans. Our government relations attorneys have a strong understanding of the relationship between business and state and local governments.

We helped draft legislation to establish minimum medical requirements for filing certain asbestos claims, to specify a plaintiff's burden of proof in tort actions involving exposure to asbestos, to establish premises liability in relation to asbestos claims and to prescribe the requirements for shareholder liability for asbestos claims under the doctrine of piercing the corporate veil.

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Success Story

The Cities of Seattle and Tacoma, Washington signed electric transmission contracts with the Bonneville Power Administration allowing them to transmit power through Oregon to and from California. Oregon's Department of Revenue viewed the contracts as intangible property and sought from the Cities approximately \$500,000.00 per year in property taxes.

who feared that the Tax Court might also strike down the exemption for Oregon cities if we prevailed on the constitutional issue.

We represented the Cities in Tax Court and argued that an Oregon statute which exempted property owned by Oregon municipalities but not property owned by out-of-state municipalities violated the Dormant Commerce Clause of the U.S. Constitution.

Oregon's Legislature adopted our retroactive exemption amendment, covering our clients. Our clients paid no tax and could use the amounts saved to support municipal services in their own cities.

We drafted legislation exempting our clients, making it retroactive to the date the transmission contracts were executed to remove the matter of back taxes, and lobbied our bill through the Oregon House and Senate. We secured support for the legislation from other local governments

Overview of Government Affairs Practice

Davis Wright Tremaine represents clients in our state legislatures regarding pending legislation and before executive agencies with respect to rulemaking proceedings and administrative law matters. Our Government Relations group is best known, however, for its ability to meld the talents of litigators and lobbyists in an effort to utilize litigation as a catalyst for legislative changes.

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Success Story

Eckert Seamans' Government Affairs lawyers teamed with clients and experts to develop a working coalition which successfully drafted and lobbied the most sweeping changes to the Pennsylvania workers' compensation system in decades. Results include a new competitive insurance rating system, imposed limitations on medical cost payments and streamlined administrative procedures for handling and contesting claims, medical fees and medical utilization. Workers' compensation insurance premiums quickly dropped for many employers, resulting in a competitive and stabilized market. These reforms have served as a model, and various aspects have been adopted in several other states. Knowledge of workers' compensation law, administrative procedures and insurance regulatory and rating systems operations, combined with our Government Affairs lawyers' knowledge of the legislature and opposing interests, all contributed to

a significant victory after a long and bitter legislative campaign.

Overview of Government Affairs Practice

Our Government Affairs practice group consists of attorneys and other professionals who have years of experience working with the legislative and administrative process of government in Harrisburg, Philadelphia, and Pittsburgh. Our team includes individuals who have held elected office, including a former Pennsylvania Attorney General and a former 20-year member of the House of Representatives, as well as those appointed to positions in congressional offices, state legislatures, federal and state agencies and municipal government. We provide complete services in all aspects of government representation, including developing and implementing solutions to address administrative and legislative concerns and serving as the client's "eyes and ears" as well as an advocate.

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Success Story

A large retailer was able to transfer ownership of its Rhode Island property to a Real Estate Investment Trust (REIT) in Delaware. The Rhode Island stores paid rent to the Delaware subsidiary, and the corporation deducted the rent payments from its Rhode Island corporate-tax liability.

credits that are beneficial to traditional investor-owned REITs. The state was able to collect additional taxes and the client was protected.

Legislation was introduced in the Rhode Island House and Senate to delete all tax breaks received from REITs.

Overview of Government Affairs Practice

Our strength lies in our ability to understand complex issues and execute successful strategies for our clients. With our extensive practical know-how and our years of high-level government experience in Rhode Island, we bring a public policy perspective to the many challenges faced by our clients in today's rapidly changing business environment. Our highly trained and experienced lawyers have a reputation for accomplishing advocacy goals effectively within a broad range of issues.

The Firm's client, the National Association of Real Estate Investment Trusts, was opposed to legislation as being too broad. It wanted to address certain large retailers, while preserving benefits for smaller retailers not part of large subsidiaries.

Result: Former Lt. Governor Richard Licht, with his keen understanding of tax laws and the legislative process, crafted a detailed legal argument along with a complex political strategy which resulted in a bill that preserved the tax

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TENNESSEE

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Success Story

In the first session of the 105th Tennessee General Assembly, we represented a hospitality and entertainment company to promote an economic incentive package designed to enable a major expansion. The incentive proposal extended to a private facility a tax increment structure already in place for public facilities.

The firm's government relations attorneys and staff represent clients in their relationships with state governmental entities, from the Tennessee General Assembly to the various departments, agencies, boards and commissions of state government.

The work included drafting the bill and numerous amendments, negotiating with state and local officials, lobbying members of the Tennessee General Assembly and executive branch personnel and coordinating with other lobbyists seeking to take advantage of our client's innovative financing structure.

Our government relations practice includes regular work in the areas of campaign finance and various administrative and regulatory proceedings. Our legislative practice includes the representation of Tennessee's famous sour mash whiskey distillery, telecommunications, insurance technology and healthcare interests, and Tennessee's organ procurement organization.

Overview of Government Affairs Practice

Bass, Berry & Sims PLC has been recognized for many years as an effective advocate of its clients' interests in matters involving state legislative and administrative actions.

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Success Story

In many instances, a successful legislative effort means that bills do not pass. Through the years, we have been instrumental in assuring that numerous pieces of legislation have died in committee.

legislation concerned civil justice reform to include: elements of proof, filing procedures, expert witnesses, caps on non-economic damages, several liability, collateral source payments, third-party claims and trauma care. Economic relief was provided for credit against provider tax, bankruptcy homestead exemption and physician's mutual insurance.

As for legislation passed, Jackson Kelly PLLC participated in West Virginia Governor Bob Wise's committee of three trial lawyers and three defense lawyers to draft consensus legislation to reform our medical malpractice law. Our lead medical malpractice attorney, Tom Hurney, and the firm lobbying team at Jackson Kelly were intimately involved with the efforts to amend the West Virginia Medical Professional Liability Act. In 2001, we participated in drafting the notice of claim and certificate of merit provisions that streamlined the tort process.

Overview of Government Affairs Practice

In addition to considerable experience in legislative drafting, Jackson Kelly PLLC lawyers render lobbying services to clients by advocating their interests through direct contact with legislators and legislative staff, regularly advising about the impact of pending legislation, preparing position statements and testifying at or preparing witnesses for committee appearances.

The 2003 legislation that the Jackson Kelly PLLC team was involved in developing provided for both economic relief for health care providers and tort reform in malpractice actions. This comprehensive

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