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## Texas – Law Firms

### Lobbying In The State of Texas – Changing The Rules Of The Game

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Texas is now home to more *Fortune* 500 companies than any other state. If it was its own country – which some think it should be – Texas would be the world's 10th largest economy. The state is thought to have created approximately 70 percent of all jobs created in the United States in 2008. And while some other state governments have been near bankruptcy and issuing IOUs, in 2009 the Texas Legislature adopted a balanced budget that included a small business tax cut. Yes, a tax cut.

Texas is not seeing the same economic problems experienced in other states. A good portion of the credit for the state's healthy economy must go to what is considered to be a business-friendly state government.

What has made Texas successful was recently summed up well in a July 13, 2009 *National Review* article by Kevin D. Williamson.

Texas' formula for success is classical conservatism: Low spending

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enables low taxes, while a liberal regulatory environment attracts the capital that makes capitalism work.

Texas has a state government that is structurally incapable of taking on the grand political ambitions that characterize states such as California and New York, which leaves the private sector with a relatively open theater of operation.

It is quite a challenge for a legal or government affairs department to take advantage of a pro-business bureaucracy and navigate through the multitude of legislative or rule proposals in each and every state. Instead of allowing the government to closely direct the activities of your business, you have the opportunity to work within the process and develop the laws and regulations that impact your business in the state of Texas.

As a result of this challenge, corporations are looking increasingly toward legislative and regulatory consultants or "lobbyists" to influence the actions of the Texas Legislature and state agencies. These lobbyists are an integral part of the enactment of laws and rules that improve or defend their client's position in the marketplace.



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#### **Legislative Lobbying**

Lobbying is attempting to influence government actions or inactions. Corporations are realizing the influence they can have and are becoming more involved in the

political process. For example, prior to the last legislative session, we were approached by two companies interested in selling their products in Texas. State laws, enacted years before, prevented each of them from being able to sell the products in the state. We worked with legislators to pass two bills that would remove the legal impediments that prevented the products from being sold in the state.

In both of these instances we identified the specific statutory and regulatory changes required to allow their businesses to operate in Texas. Once these were identified, we drafted the legislation, developed a message and supporting materials, and identified both House and Senate sponsors for the legislation. A few months later the bills had successfully made it through the legislature and are on the governor's desk for signature. The next step was to work with the state agencies that implement these new laws through the adoption of rules in order to develop a framework favorable to our clients. On September 1, 2009, the laws became effective and our clients began selling their new products in Texas.

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Not all lobbying experiences for corporations involved in the legislative process are as smooth. Typically, corporations are challenged with a competing or special interest group attempting to pass a bill which would harm their interests. This is not just hypothetical rhetoric. A few years ago, we received a call from a former client who had recently taken a key position with a new company and had just learned of a bill which would put his industry out of business in Texas. With less than a month to go in the 140-day legislative session, the bill had already passed unanimously through the Texas House of Representatives and was scheduled for a hearing the next day before a Texas Senate committee.

We immediately began to implement a legislative strategy, part of which was to develop a message to educate members of the Texas Legislature and their staff about the industry and, more importantly, about the shortcomings of the proposed bill. We ultimately were successful, as the bill was not able to advance through the process before the legislative clock ran out and the session was concluded.

As a result of this experience, the client and others in its industry have become active in the legislative process in Texas and other states around the country, to assure that they never again face this same type of surprise attack. As the client learned, it is best to be proactively involved in the Texas legislative and regulatory process than to wait until your back is against the wall. We suggest the following to clients looking to become involved in legislative lobbying:

- *Get involved prior to the legislative session:* For those considering working with a lobbyist to either create opportunities or protect current business practices, use the time you have prior to the legislature convening to become more educated and involved in the process.

- *Get involved in your trade association:* If you can find a good trade association that matches your goals, it can be a useful source of information and sometimes may influence the legislative process. Many trade associations have in-house lobbyists or retain outside lobbyists. It is important, however, to do more than pay your dues and review their written materials. In order to have a real voice in a trade association, become involved in its legislative committee.

- *You should also hire your own lobbyist:*

*ist:* Sometimes a trade association's diverse membership will render it neutralized on certain issues. As a result, if your company is large enough, you may want to consider hiring your own lobbyists who will protect your specific interests. Your lobbyists can work in concert with the trade association's lobbyists, yet they will be able to represent your individual interests in the event the trade association must remain neutral on – or take an adverse stance on – an issue that is vital to your business interests.

- *Know your elected officials:* Too often a business' key decision makers do not have any relationship with their elected representatives. Take the time to reach out to the state senator and state representative from the district in which your business is located. If you have multiple locations, do this for each location. Have your officers, directors and key personnel do the same based upon their home address as well. You would be surprised how many of these elected men and women are willing to learn more about the businesses located in his or her district. By fostering these relationships, you create allies to call upon when your business needs help before the Texas Legislature or state regulatory agencies. It is also better to see these people for the first time when you are not in the midst of a crisis, or the heat of the last few days of the legislative session. We believe it is much easier to get the attention of a legislator when he or she has a preexisting relationship with a company.

- *Make sure your lobbyist is free of conflicts and complies with the laws of your jurisdiction:* Typically, nonlawyer lobbyists do not have the same ethical requirements as lawyers who lobby. In Texas, lawyers who are lobbyists are subject to the state bar's requirements regarding professional responsibility. Thus, if you select a lobbyist who is not a lawyer licensed by the state bar, make sure he or she has cleared their legislative conflicts so that they are not simultaneously working for and against the same bill.

### Regulatory Lobbying

Though lobby activities may seem to focus only on the legislative process, it is important to remember that the development of laws are not the only factor in creating a positive or negative business climate. If a state agency is implementing and interpreting statutes in a way that

does not consider the impact on the state's businesses, then the actions of pro-business legislators may be wasted.

In Texas, most regulatory agencies are governed by boards or executive directors appointed by the governor. However, state agencies regulating taxation and revenue, oil and gas, and agriculture are governed by people elected statewide.

It is important to remember that regulatory agencies provide yet another opportunity for input by a business wishing to influence the state business climate, rule-making, enforcement activities, and future legislative recommendations. It is at this level that lobbying can also prove beneficial and place your business at an advantage compared to others .

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Most state regulatory agencies in Texas will actively seek input from stakeholders on the development of initiatives or draft agency rules. Having lobbyists take part in these activities allows you to influence policy development instead of reacting to the agency's proposed rules in the formal rulemaking process.

As is the case for getting to know your legislator, businesses regulated in Texas should also become acquainted with the staff at state agencies with oversight over their business. We often accompany clients to meet with agency staff and provide updates on the state of his or her industry. By developing these relationships we, and our clients, are often contacted by regulators to become stakeholders in certain policy development issues.

In conclusion, lobbying in the legislative or regulatory arena is an essential part of overall corporate strategy and should be given serious consideration for accomplishing your business goals.