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“The 2011 Utah Legislature: A Guide”

**Presented to the Corporate Counsel
Section of the Utah State Bar**

**Mike Bailey
Parsons Behle & Latimer**

May 16, 2011

Goals of Today's Presentation

- **Educate.**
- **Prepare you for discussions at parties and backyard barbeques.**
- **Prepare you for discussions with your Management Team.**



Outline of Presentation

- **I. The 2011 Session by the Numbers.**
- **II. 2011 Session Recap (Using Themes).**
- **III. Protecting your Business.**
- **IV. What We Can Expect in 2012.**

- **Please ask questions throughout.**



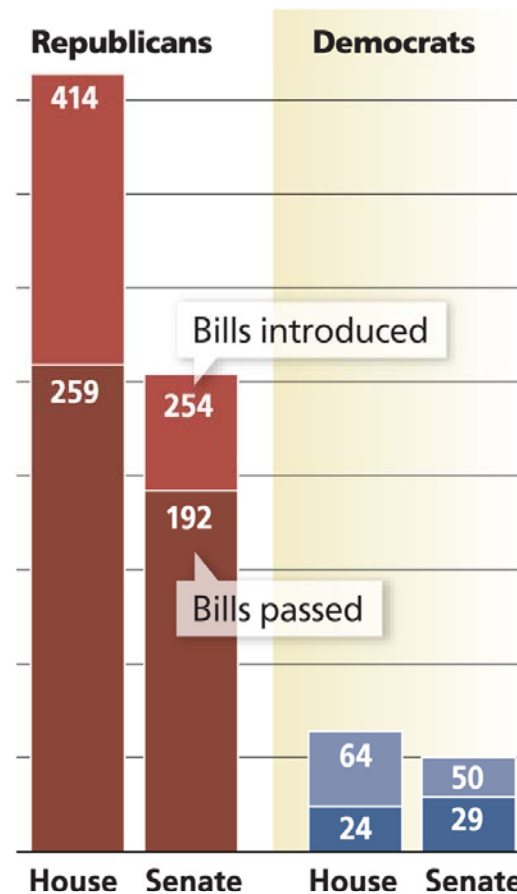
2011 Session by the Numbers

The bills introduced and passed in the 2011 Utah Legislature demonstrate power.

The Republicans ($58 + 22 = 80$) have the power. (Passed 90% of all bills; 68% of its bills passed.)

The Democrats ($17 + 7 = 24$) only have a little. (47% of its bills passed)

- Met 33 days - Passed 504 bills.
- 243 (half) passed in last 4 days.
- 123 bills passed on last day.



It was a Very Busy Session

- **782 bills were introduced; 504 bills passed.**
- **The Governor vetoed four bills (two vetoes were overridden).**
- **The legislators admitted in the press that keeping track of it all is difficult.**
- **Especially the bills in the last few days of the Session.**

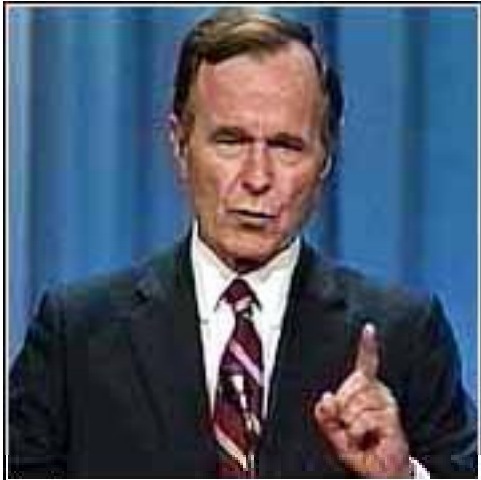


2011 Legislative Session

- **The Session had some broad themes.**
- **No new taxes.**
- **Don't tread on me.**
- **If you really need it, we can do it.**
- **So many bills, so little time.**
- **We saw many of the same issues that we have seen in the past (déjà vu).**



2011 Theme Number One



Bush

(CNWfile)

- **The House said to the Senate, “Read my lips, no new taxes.”**
 - **Gas tax failed. (No 5¢ for roads)**
 - **Bill to change payment of state taxes failed. (would have required self-employed to pay quarterly – like feds do) (one time windfall of \$130,060,000)**
 - **SL County police tax removed, to be effective December 31, 2012 (HB 226).**
 - **Turned down proposal to reinstate the full state sales tax on food.**

2011 Theme Number Two



- **Don't tread on me (well, maybe just a little bit).**
- **Restrictions on businesses are now more in play.**
 - **HB 73 (freedom of contract).**
 - **Immigration (potential revocation of business licenses).**

2011 Theme Number Three

- **“We’re from the Government and we’re here to help you.”**
 - Tax equalization bill.
 - Alcoholic Beverage Amendments (increased number of licenses).
 - SL County police fee was removed (effective 2012).
 - Mechanics’ Liens (banks and title insurers needed help and got it).
 - Moratorium on Yalecrest Historic District (SB 243)



2011 Theme Number Four



- In the words of Sir Winston, “so much to do, so little time.”
- Things moved very fast at end; Issues are now being revisited.
 - GRAMA (HB 400).
 - Closing Liquor Stores (longtime workers lose jobs - \$2.2M must be cut).
 - SB 116 (Guest Worker) (Chamber backed it. Sen. Lee & Rep. Chaffetz hated it).
 - “Fair Boundaries” (Redistricting/ Reapportionment).

2011 Theme Number Five



- **With apologies to Yogi Berra, the 2011 Session had elements of “déjà vu all over again.”**
 - **Immigration.**
 - **Guns.**
 - **Mechanics’ Liens.**
 - **Alcohol Laws.**

How do you Protect Your Business?

- **Employ the Chicago Rule: “Get involved early and often.”**
- **Play Offense.**
- **Play Defense.**
- **Get Involved or Hire Someone to be Involved (during the interim process, not just the session).**
- **Famous old saying: “You’re either at the table or you’re on the menu.”**



Play Offense

- **38-15-1 is the Lobbyist Rule of Thumb:**
- **38 votes in the House of Representatives.**
- **15 votes in the Senate.**
- **1 “vote” from the Governor.**

Disadvantages of Offense

- **It costs more.**
- **The odds are longer (not as favorable).**

Advantages Of Playing Offense

- **Instead of just defending against the bad you can achieve great things.**
- **The specific law or practice that has impeded your business goes away.**
- **You never know the ways in which the government will help you until you ask.**



Steps for a Good Offense

- **Analyze what assistance your business needs from the government.**
- **Craft a solution that negatively impacts as few other entities as possible.**
- **Shoot for the stars. Think big. You never know what you can get passed until you try (clean-up standards bill).**
- **Sometimes “the best defense is a good offense.”**

Play Defense

- **Lobbyist Ancient Proverb:**

“There is only one way to pass a bill but many ways to kill it.”

Arrows in the Defensive Quiver

- **Kill the bill in interim stage.**
- **Kill the bill by lobbying the agencies that are recommending the bill.**
- **Kill the bill by lobbying the agencies that are effected by the bill.**
- **Kill the bill in the drafting stage.**
- **Kill the bill in committee.**
- **Kill the bill on the floor.**



And When All Else Fails...

- **Amend, amend, amend.**
- **Sometimes a really good amendment actually kills a bill.**

What Can We Expect in 2012?

- **The Effects of the 2011 Session will be Felt for Quite Some Time.**
 - The public will have more say and grassroots initiatives will be followed more closely.
 - The media has likely increased its power.
 - Due to the large number of bills, lobbyists will likely be relied upon more heavily by legislators.

What Issues will Businesses Face During the 2012 Session?

- **Clean-up Issues from 2011 (“it’s not over until the Legislature says it’s over.”)**
- **New Initiatives.**
- **Government Competition v. Private Sector.**
- **Employer/Employee Issues.**
- **Other Issues.**



Clean-up Issues from 2011

- **GRAMA.**
 - Fee issue is important to businesses.
- **Immigration.**
 - The only place where immigrants touch the system is where they work.
- **Guns.**
 - Tension between private property rights and the gun lobby.

Clean-up Issues, Volume 2

- **Health Care/Medicaid/Medicare**
- **Taxes, Taxes, Taxes.**

New Initiatives

- **Pore Space.**
 - Does the pore space belong to the surface owner or the mineral owner?
- **Moving the Prison (HB 445 created panel to advise the Governor).**
- **Clean Air (“to study clean air and emissions issues”).**
- **Electric Generation Capacity (“including new load, new need and other factors”).**

Government Competition v. Private Sector

- **Privatization of Alcohol Sales (Rep. Wilcox).**
- **Recreation Centers.**
- **State Contracts Awarded to Out-of-State Companies (what is the effect to the State?)**
- **Unfair competition between School / Government Child Care & Private Child Care.**



Employer/Employee Issues

- **Non-Compete Contracts (RIF'd employees).**

Other Issues, Volume 1

- **Condominiums. (HB 117) / SB 167 passed in 2011.**
- **DAQ's Asbestos Rules.**
- **“Arbitration Reform” (whatever that means).**
- **Foreclosure (including consideration of mediation – SB 80 failed this year).**



Other Issues, Volume 2

- **Redistricting – Committee of 19 legislators**
 - 13 House, 6 Senate;
 - 14 Republicans, 5 Democrats
- **Construction Trades – Study Amendments to the Utah Construction Trades Licensing Act (HB 182).**
- **Mechanics' Liens (I promise).**



What is next year's Feral Cat Issue?

- **Attorney General (should it be appointed?) (Sen. Urquhart v. AG Shurtleff battling on this issue).**
- **Division I Basketball Schedule Requirements (whether D1 schools should have to play three in-state schools per year in basketball).**
- **A potential resurrection of the feral cat issue (there is always a chance).**

▪ Further Questions?

- **We're here to help – never be reluctant to call.**
 - **Even about the state gun...**
 - **or feral cats.**

Thank you

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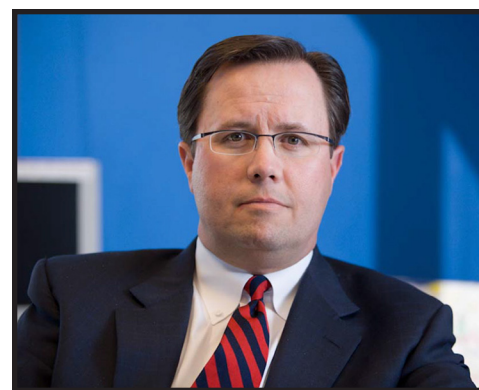


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Mike Bailey is a shareholder and concentrates his practice on governmental affairs, lobbying and political law. His governmental affairs practice includes extensive lobbying at the Utah State Legislature as well as petitioning county and city governments throughout the State of Utah. He has also lobbied before various state agencies. Mr. Bailey's legal advice has long been relied upon by candidates and elected officials from both political parties and for eleven years has served as chief legal counsel for a United States Congressman. His background in politics and legislative affairs with years of experience as a commercial trial lawyer provides him with unique skills and perspective that allows him to assist clients solve complicated problems with creative solutions.

In the area of election law, Mr. Bailey represented 37 former members of Congress in the landmark case, *McConnell v. FEC*, before the United States Supreme Court. He has also had significant experience before state and federal agencies. He is a member of the Utah State Bar, Arizona State Bar, American Bar Association, Order of the Barristers and American Inn of Court II. Mr. Bailey was an instructor of Elections Law and Politics at the J. Reuben Clark School of Law at Brigham Young University and has lectured at the Hinckley Institute of Politics at the University of Utah.

Mr. Bailey has served as a member of the firm's Board of Directors and as chair of the firm's Hiring Committee.



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Brigham Young University (J.D., 1986)

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Related Activities:

- Instructor, Election Law & Politics, Brigham Young University Law School
- American Inns of Court VII (Watkiss Inn)
- Order of the Barristers
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Court Admissions:

- United States Supreme Court, 2003
- United States Court of Appeals, 10th Circuit, 1990
- United States District Court, District of Arizona, 1988
- Arizona State Bar, 1988
- United States District Court, District of Utah, 1987
- Utah State Bar, 1987