

Becoming Influential in the State Legislative Process

A Legislative Action Guide to the
Wisconsin State Legislature

By James B. Gehrke, JD

First Edition

Copyright 2005

Published by:

GEHRKE & ASSOCIATES, S.C.
INTELLECTUAL PROPERTY AND TECHNOLOGY LAW

123 North 86th Street
Wauwatosa, Wisconsin, 53226
USA

414.774.0874 *voice*
414.774.4837 *fax*
www.gehrke-law.com

Introduction

The American system of government functions primarily as a result the demands placed on it by its citizens. Whether you are acting as a concerned citizen or on behalf of a group of people with a common goal, this guide will equip you with insights and perspectives that you can use to be more effective. This guide is intended to prepare you for the task of influencing the legislative process. It avoids lingering too long on the technical processes, but instead focuses on sharing the realities experienced by the author.

If you are reading this guide and are a legislator, please be assured that you are an ideal legislator and when the author discusses negative attributes of legislators, he is not talking about you.

About the author

Jim has been both a lobbyist and the person lobbied. He has participated in the legislative process at the federal level and throughout the nation at the state level since 1992. In the course of his legislative activities, he has developed a belief that the American system of government functions despite the inertia and mixed motives of its elected officials. While at times cynical about the particulars of the process, he believes that patience and persistence are critical to influencing legislation. His other core belief is that the best long-term strategy for influencing legislation is to build honest and professional relationships with decision-makers.

About Gehrke & Associates, SC

Gehrke & Associates, SC is a law firm that focuses on intellectual property and technology law. As part of its overall commitment to provide excellent service to clients, Gehrke & Associates, SC offers local, state and federal government relations and advocacy services. Consultation and educational services are also available to review and organize advocacy efforts.

Government Relations Services Provided by Gehrke & Associates, SC

Independent review, analysis, and reports on proposed rules, legislation or ordinances.

Drafting of model rules, legislation or ordinances.

Confidential analysis of the impact of government actions on private companies or on the interests of citizen groups.

Legislative committee and administrative agency testimony and regulatory comments.

Guidance with lobbying laws and campaign laws.

Zoning – Rezoning, permits, variances, special uses and appeals.

Local and state business licensing, fees and permits and appeals.

Assistance with local regulation of business activities.

Education of civic groups and private companies regarding upcoming state or local government processes, investigations or events.

Elections – recounts and procedural issues.

Disclaimer

This publication is for general information only and is not intended to create or solicit an attorney-client relationship. Nothing this publication constitutes "legal advice." If you think you may need legal advice, you should consult a lawyer to discuss your unique circumstances.

Comments or Constructive Criticism

Looking for more information or have something important to add? Please contact the author via e-mail at jgehrke@gehrke-law.com with any comments or constructive criticism of this publication. Contributions may be integrated into revisions and future publications. Such contributions become the intellectual property of the author and may be used without acknowledgement.

CHAPTER ONE: THE PLAYERS.....	7
THE LEGISLATOR.....	8
<i>The Ideal.....</i>	8
<i>Get to Know Your Legislator.....</i>	8
<i>The Universal Rule of Legislators.....</i>	9
<i>Types of Legislators.....</i>	9
Mr. or Ms. Popularity: Please All of the People All of the Time.....	9
Radicals: When Only One Issue Counts.....	10
The \“Known for\“.....	10
Party People: The Republican or Democrat Lap Dog.....	11
Ruler of the Roost: This is the Top.....	11
Future Ruler of the World: This is Just the Beginning.....	12
Nodding Politely: The Fools Who Rush In.....	12
POSITIONS O’POWER.....	13
<i>Political Party does make a difference.....</i>	13
<i>In theory, Party Caucuses control of their party members.....</i>	13
<i>Committees are chaired (controlled) by the majority party chair.....</i>	13
THE LEGISLATIVE STAFF.....	15
<i>Rule Number One: Don’t Anger the Staff.....</i>	15
<i>Rule Number Two: Make Their Job As Easy As Possible.....</i>	15
<i>Rule Number Three: Make Sure They Do Not Dread Calling You Back.....</i>	15
<i>Rule Number Four: You Represent More Work for Staffers.....</i>	16
<i>Rule Number Five: Respond Quickly and Acknowledge Assistance.....</i>	16
<i>Rule Number Six: Don’t Ask for What You Don’t Need.....</i>	17
THE PARTIES.....	18
SPECIAL INTEREST GROUPS.....	20
THE MEDIA.....	21
<i>Selling to the Media.....</i>	21
ALTERNATIVES TO \“THE MEDIA\“.....	22
THE AVERAGE CITIZEN.....	23
THE ABOVE AVERAGE CITIZEN.....	23
HIRED GUNS.....	24
CHAPTER TWO: THE PLAY.....	26
WHAT YOUR LEGISLATOR CAN AND CANNOT DO.....	27
<i>Federal Issues.....</i>	27
<i>The Executive Branch.....</i>	27
<i>The Judiciary.....</i>	28
THE LEGISLATIVE PROCESS.....	30
<i>Drafting a Bill.....</i>	31
<i>Introducing the Bill.....</i>	32
<i>On the Floor.....</i>	32
THE HIDDEN LIFE OF ADMINISTRATIVE RULE MAKING.....	34
<i>When to Act.....</i>	34
THE ALL TOO PUBLIC LIFE OF THE JOINT FINANCE COMMITTEE.....	37
CHAPTER THREE: HOW TO BEST COMMUNICATE WITH LEGISLATORS.....	39
IN PERSON.....	40
CALL.....	40
LETTERS.....	41
E-MAIL.....	41
POST-CARDS.....	41
PETITIONS.....	41

CHAPTER FOUR: THE LAW	43
LEGAL TRAPS TO AVOID.....	44
CAMPAIGNS.....	44
UNINTENTIONAL LOBBYING.....	44
A WORD OF WARNING ABOUT WRITTEN COMMUNICATIONS.....	45
USEFUL INTERNET RESOURCES	46

Chapter One: The Players

The Legislator

The Ideal

What is the ideal legislator? The voice of the people? The one with a clear agenda? The staunch advocate for local interests? The one looking out for the common good? Regardless of your philosophical views on the role of a legislator, it is a good bet that your legislator is none of these things. If you're lucky, he or she may be "looking out" for someone other than himself or herself, but in reality, most have a personal reason why they have chosen (or settled for) a career in politics. There is no doubt that people who run for office have some form of courage. Not everyone is willing to endure the intense work of a political campaign and be exposed to public criticism. In that sense, I admire anyone willing to run for public office. Also, while some of the descriptions of legislators that follow are not flattering (and are intended to be humorously demonstrative), we should keep in mind that everyone to some degree has faults, ulterior motives, and acts from self-interest.

Legislators certainly want to be seen as ideal. They always are "looking out" for someone or something. If you ask them to "promote the common good", that is not a problem. The problem is in the details and very often, the work. Your task in trying to influence legislation is to 1) persuade the legislator that your specific request is, or will be seen as, a common good and 2) give him or her a reason why they should personally care enough about promoting the common good that they will do the necessary work.

Keep in mind that we have freedom of speech in American not because it is a good idea, but because the British "enlightened" American politicians regarding the dangers of not having it. In other words, legislators must be persuaded that failing to act in a particular way is against their self-interest. In this regard, having less than ideal legislators can be an advantage because once you understand what motivates them, you can use that to your advantage.

Get to Know Your Legislator

Finding out more about your legislator will often help you understand what motivates him or her. Think of it as market research for whatever it is you are advocating. The Wisconsin State Legislature homepage (www.legis.state.wi.us) is the first stop you should make. Your legislator will have a page that has their "official bio" which, of course, is something they wrote, so it is not objective or necessarily accurate. Read it as carefully as a resume because the exact words are critical – "attended UW Madison" means something very different than "graduated from UW Madison".

The first thing you may want to note is when they came to the legislature and what other jobs they have had. A career politician is very different to deal with than a newcomer who was coaxed out of the private sector into politics. Local newspapers and asking

around are probably the only way to get the real feel of who you are dealing with. If your legislator is high-profile enough, you may pick up some chatter about him or her on talk radio. It may not be accurate chatter, but it helps form a picture. Of course, there will be some partisan information floating around from the last election and from political griping blogs. With a couple grains of salt, these sources can also help you better know with whom you are dealing. I would like to say that meeting the legislator personally is the best way to get to know them, but I have run into too many of politicians with the ability to charm to believe this. To be truly influential in the legislative process, you must meet with your legislator, but your general rule of operation should be “verify, then trust” and not the other way around.

The Universal Rule of Legislators

Every legislator’s dream is to scare away all competition and to have an uncontested race –which happens all too often. Regardless of the type of legislator, they all work within a political system in which Election Day is the focus and the test for which they all prepare. Contested election campaigns are very hard work. They believe that work done between elections makes the election easier or, ideally, eliminates the contest completely. In order to achieve an uncontested race, it must appear to potential competitors and the opposing party that running someone against that legislator is futile and would be a waste of resources. In other words, all legislators want to appear to be Wal-Mart and will work very hard to obtain and retain that status. While each type of legislator described below has different motives and methods, they all believe – rightly or wrongly – that their work needs to be directed toward becoming a political Wal-Mart.

Types of Legislators

There are many less than ideal types of legislators, the following are a sampling. Each has positive and negative traits. Keep in mind that you may want something other than legislation from your legislator. A legislator who is good at passing bills may not be as good at helping you through the maze of state agencies. Some legislators do better working quietly behind the scenes to help their voters instead of offering bills.

Mr. or Ms. Popularity: Please All of the People All of the Time

We all know people who want to please everyone. Mix that personality trait with someone who has a manic desire for external affirmation of worth and you have this type of legislator. This type of person craves being before the public and loves the election process (presuming they win). Once in office, their main focus becomes keeping everyone happy. Of course, this is impossible, so it tends to become keeping everyone happy long enough to be reelected. This type loves to agree and promise. They avoid making public stands absent a prior knowledge that the stand will be very popular. Instead they usually try to operate by quietly trying to satisfy citizen demands in the way least likely to cause any public objection.

In order to gain public support for something from this type of legislator, it is very important to be able to demonstrate strong to universal support for the particular idea. Remember, it cannot be idle support – legislators do not expend real energy without an expected reward.

Since they so desperately want you to like them, these types of legislators will often bend over backwards (or, more likely, have their staff bend over backwards) to get things done for you quietly. This is great if you need help with a very particular thing from a state agency, for instance.

Remember: This type of legislator will never disagree with you, but he or she will also not take risks for you.

Radicals: When Only One Issue Counts

Some radicals come to office in bitterly contested races and, at times, intra-party electoral contests. As a result, they believe that they won due to one issue and that is all they need to deal with. Other radicals come to office by hiding their focused agenda and appearing to be a vanilla Democrat or Republican. These sometimes convert to Party Lap Dogs (discussed later), but some lower their façade to become their true radical self. If you are on the other side of the issue that defines them as a radical, look to the next election as your remedy. However, most people looking to influence legislation are not focused on hot-button issues. In this case, the challenge is persuading the radical to care about an issue that seems irrelevant to him or her. Often, this really translates into persuading the legislator that it is in principle a good idea and then persuading legislative staff that it is important and politically advantageous. (Often legislative staff has a different – or even opposite – view of what is important for reelection. Since the future of their jobs rests upon their legislator’s reelection, they will at times work on your issue much harder than the legislator would want them to.) This is not to say that the radical or the radical’s staff will not be of help to you, but typically, the enthusiasm for non-radical issues is lacking.

Remember: Unless you are advocating the other side of what makes this legislator a radical, you can usually count on this type to provide some staff effort. You will need to work extra-hard to help the staff move things forward to overcome the legislator’s objection that your issue is a distraction.

The “Known for”: Don’t Bother Me with Anything New

The “known for” legislator is similar to the radical, but has grown intransigent over time. He or she is able to obtain press coverage and guest spots on talk shows because he or she is “known for” this or that. Since it is easier for them to repeat instead of innovate, they simply keep to this pattern. Moving them to new fields can be difficult. If you can somehow persuade the legislator that your idea is the logical extension of his or her “known for” fame, this is a great advantage.

Often, these legislators know they are in rut and want something new – but easy. Being “known for” something does not hold the voters’ attention for long and, especially if the legislator has designs on higher office, expanding what he or she is “known for” is a great approach. If your idea is not similar to what he or she is “known for”, I recommend an approach similar to that of the radical. However, many times their legislative staff has also grown used to the ease of dealing with a well-worn issue and has little desire to change.

Remember: Persuading this kind of legislator that this is the logical extension of his or her previous work may garner some enthusiastic assistance.

Party People: The Republican or Democrat Lap Dog

Legislators who owe their positions to the work and funding of their party are similar to radicals in that if your idea conflicts with theirs, the best remedy will be during the next election. However, these are often legislators who are looking for opportunities to free themselves from the dictates of their parties by establishing themselves as free-standing legislators. In other words, if you want to promote something that is consistent (or at least not inconsistent) with the party that put them into power, they will likely be very helpful. Few legislators want to be a party lapdog for long. Gaining independent name recognition and personal supporters in their community is very important. They need to do it before the next election because they fear the party will not view their election as a priority.

Typically, if you make an effort to get to know these types of legislators, they can be very helpful – at least until they become “known fors”.

Remember: This kind of legislator is eager to stand on his or her own feet and may offer a great deal of support, provided what you are advocating does not offend his or her party.

Ruler of the Roost: This is the Top

Put bluntly, some people settle on a career in politics because they have failed in every other area of their life. Typically, these legislators have never had a private sector job, or jobs most people think of as after-school jobs for mall money. In other words, they have no concept of real life. They often base their decision on stereotypes, rumors and newspapers. Since they have no real world experience, they live in constant dread of losing their job (and having to become a lobbyist). This economic dependence on reelection means that the self-interest aspect of persuading them is critical. It is not merely character defects that drive these legislators, it is their livelihood.

Remember: While this type of legislator is unwilling to risk much, if the risk is low, they are eager to please you.

Future Ruler of the World: This is Just the Beginning

Some people who settle on a career in politics have the smarts (or the staff) and the confidence to become truly skilled at it. Of course, these people seldom are happy staying in a “stepping stone position” for long. They are focused on movement up the political food chain. Village trustee, then State Assemblyman, then State Senator, then Governor, then on to DC! Typically, these legislators are not as concerned with ideas as they are with people. They are the ultimate networkers. In other words, you need them to believe that you can help them in their advance toward world domination before they will seriously listen to your ideas. If those ideas help them gain your support, or even better, are ideas that help their career, you can expect real and effective help from them. If not, it is probably best to try another legislator.

Remember: If you are important or they think you are, you can get a lot done via this type of legislator.

Nodding Politely: The Fools Who Rush In

Probably the most sincere politicians are the fools who rushed in. No IQ tests are given (or sanity tests for that matter) before people are allowed to run for office. After all, our system of government is not about selecting the most “intelligent” people, but those who best represent us. If the system is working, average people should be in holding office. For the most part, this is the case; however, most legislators, consciously or not, suffer from a superiority complex and claim to be omniscient. This type of legislator has not been “informed” of his or her importance, so is more humble about his or her ability to comprehend the Universe.

This type of legislator needs little self-interest if your idea is good – at least until the other legislators try to “educate” him or her about “political reality”. Often this type of legislator will have an earnest interest in learning what you have to say and will work closely with you to try to get things accomplished. Your critical role is then to provide him or her with the information and persuasive arguments needed to keep things moving despite objection.

Remember: It is critical to educate this type of legislator and provide them with the support and encouragement they need to struggle through the resistance they will face from other legislators.

Of course, a legislator may change from one type of legislator to another as time goes on. Their position of power (the next subject) may also influence what type of legislator they are.