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***Regulatory Oversight Podcast: Navigating Facility Relocation: Legal and Practical Considerations*****Hosts: Stephen Piepgrass and Chris Willis****Guest: David Dove****Stephen Piepgrass:**

Welcome to another episode of *Regulatory Oversight*, a podcast that focuses on providing expert perspective on trends that drive regulatory enforcement activity.

I'm Stephen Piepgrass, one of the hosts of the podcast and the leader of the firm's Regulatory Investigations Strategy and Enforcement Practice Group. This podcast features insights from members of our practice group, including its nationally ranked State Attorneys General practice, as well as guest commentary from business leaders, regulatory experts and current and former government officials. We cover a wide range of topics affecting businesses operating in highly regulated areas.

Before we get started today, I want to remind all our listeners to visit and subscribe to our blog at [regulatoryoversight.com](http://regulatoryoversight.com) so you can stay up to date on developments and changes in the regulatory landscape.

From time to time, we share episodes from other podcasts throughout our firm that touch on issues we think will interest you, our listeners. Today, we are pleased to share an episode from our [Consumer Finance Report Podcast](#) on the legal and practical considerations for businesses looking to locate a facility in a new state. The podcast features David Dove, a partner in our practice group. We hope you enjoy.

**Chris Willis:**

Welcome to *The Consumer Finance Podcast*. I'm Chris Willis, the co-leader of Troutman Pepper's Consumer Financial Services Regulatory Practice. And today we're going to have a really interesting change of pace. I'm going to introduce you to one of my partners who can tell you all about the legal and other considerations with locating a facility in a new state and trying to make all the pieces come together in doing so.

But before we jump into that very interesting topic, let me remind you to visit and subscribe to our blogs, [TroutmanPepperFinancialServices.com](http://TroutmanPepperFinancialServices.com) and [ConsumerFinancialServicesLawMonitor.com](http://ConsumerFinancialServicesLawMonitor.com). And don't forget about our other podcasts. We have lots of great ones. We have the [FCRA Focus](#), all about credit reporting. We have [The Crypto Exchange](#), about everything crypto. We have [Unauthorized Access](#), which is our privacy and data security podcast. And we have [Payments Pros](#), which is all about the payments industry. All of those are available on all popular podcast platforms.

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directory of all of our financial services lawyers and a handy calendar to show you what conferences that we'll be attending and speaking at in the near future. Just look for it in your app store. It's available for both [iOS](#) and [Android](#). Just search for Troutman Pepper and you'll find it.

Now, as I said, today we're going to be taking a change of pace. And you know if you listen to this podcast regularly that one of the things I love to do is to introduce our clients and the financial services community at large with all the great capabilities that we have to serve them here at Troutman Pepper. And I'm going to introduce another one of those today.

Joining me today is David Dove. David is a partner in our RISE group, which stands for regulatory investigation, strategy and enforcement. That's the group in our firm that contains our nationally prominent state attorney general practice. And David is here in the Atlanta office with me. I'm going to let him introduce himself in a minute. But David, thanks for being on the podcast today.

**David Dove:**

Chris, it's great to be here. I've heard so much about the Consumer Finance podcast. I'm excited and honored that, only two months into being with the firm, I've been invited to join. Thank you for having me.

**Chris Willis:**

And I'm really glad you're here too. Because you're giving me the opportunity to introduce our listeners to you and your specialty in practice, which I think is going to be really interesting. Today we're going to be talking about the sort of practical considerations and legal considerations when somebody locates a facility in a new state. Like they want to open a call center. Or move their headquarters. Or do something like that.

But before we get into the nuts and bolts of that, why don't you tell the audience a little bit about yourself? Can you give the audience a little bit of your background, David?

**David Dove:**

Yeah. Absolutely, Chris. I recently joined, as I mentioned, Troutman Pepper two months ago after spending a combined total of eight and a half years in state government here in Georgia. And, particularly, over the last 5 years, I served as general counsel in the governor's office, which gave me a front-row seat to record-breaking economic investment that we had here in the state.

Over a hundred billion dollars in economic investment has been placed in Georgia during that time. And as part of the governor's staff, as counsel, I was at the tip of the spear helping recruit that investment. We had exposure to competition with other states and really had some unique experiences that I think will be beneficial to clients in terms of being able to appreciate and anticipate what it's like to sit down at the deal table with a state when you're coming to open a new facility. As you mentioned, relocate a headquarters. Make an investment with the state. There's lots of different economic incentives that are available both from the federal state and local government. And so, excited to help our clients take advantage of those things.

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**Chris Willis:**

Okay. Great. Well, let's start sort of at the beginning of a thought process associated with this. And let's say a company, like a financial services company, is looking to place a facility in a new area. As I said, they may be starting a new one or maybe relocating something that's already existing. What are the things that they should be keyed into to look for when placing a facility?

**David Dove:**

Yeah. There's a lot of things that go into that consideration. I mean, in terms of the type of facility that a company's going to have, obviously, the availability of land, the availability of a skilled workforce to work with whatever expansion or new facility a company is investing in are obviously key components to that. Particularly in the manufacturing space, looking at connectivity to rail, to seaports, to an airport are all going to be considerations that a company has. But those are kind of agnostic as to which state that you might look at in terms of what your needs are.

And one of the things that we really try to help clients with in the RISE group is looking particularly at what strategies they can employ to maximize the investment that they're going to have by taking advantage of state, federal, and local incentives when placing that new facility and making that investment.

**Chris Willis:**

Okay. And we hear about those kinds of state and local incentives a lot on the news. But I don't really know that much about them. And probably a lot of our listeners don't either. Would you mind just taking a minute to tell the audience what type of incentives are available to make an investment in creating a new facility in a state?

**David Dove:**

No. Absolutely. And, generally, this is – to your point, Chris, this is something that's not kind of naturally known in the business world. And it changes over time particularly with new legislation or new ordinances at the local level.

At the federal level, there's kind of some general overarching programs that I think our listeners need to be keyed in on. One is federal opportunity zones. This has been extraordinarily popular, particularly over the last six or eight years with the proliferation of these zones around the country to recruit investment into areas where there may not have been as much economic activity in the past.

There's also federal grants that are available, particularly with burgeoning industries. We've seen this a lot in the electric vehicle space and alternative fuels, different grants that are available for companies to take advantage of. As well as low-interest loans through the Small Business Administration depending on the size and scope of a project.

States are going to have the widest range of these types of incentives. There's tax incentives, job training programs that might be available, grants for placing businesses in either certain geographic area, as well as making investments in certain industry sectors. And particularly with

capital investment that might be a part of your business plan, some states will actually make investments in those capital expenditures purchasing machinery, building out buildings, purchasing buildings for your investment.

Some states even offer cash incentives straight to companies in what is commonly referred to as a Governor's Closing Fund. There's a kind of a wide range of options that are available there. And then at the local level, you're going to have property tax abatements, different local grants, tax allocation districts, and enterprise zones, which has become a very popular way of dealing with investment that in some instances allow for public financing to offset development costs. As you can see, Chris, there's kind of a wide range of different incentives that might be available.

**Chris Willis:**

You mentioned grants as one of the types of things that state or local governments might sometimes offer. Can you break down some of the grant types that might be available for a company deciding to invest in a state or a municipality?

**David Dove:**

Yeah. No. Absolutely. The federal government has, as I mentioned before, some relatively standard programs. Some that are market-specific. But largely, these are going to be applicable regardless of where a company might decide to invest or relocate across the United States.

I think looking specifically at state and local grants are kind of key for our listeners. Grants can come in a lot of different forms. They can be fixtures or other investment on the site, like the construction of buildings, ownership of machinery, or generous lease terms. Some governments will offer grants for specific industries, whether it's in the context of payroll offsets or other grants paid directly to the business.

There's two types of grants that I want to highlight for the listeners from Georgia. Because I think these are indicative not only of the types of grants that are available but also some of the considerations that a company has to be thinking about on the front end so that you are ensuring that you take advantage of all the different things that might be available.

In Georgia, the state has a grant called the Regional Economic Business Assistance Grant. Now that's an incentive program that has helped used to close the deal when companies are considering Georgia versus another state or country for the location of their expansion. These are commonly referred to as REBA funds and may use to finance various fixed asset needs of a company, including infrastructure, real estate acquisition, construction, or machinery and equipment costs.

But here's the catch, a local development authority or another local government entity has to be the applicant for these types of funds. What's important about that is this is not the type of grant that you can back into after you've already decided to make an investment. For a business to be able to take advantage of this when you're thinking about relocating, thinking about making an investment, it's really important to have a plan on the front end and have quality engagement on the front end to ensure that you're taking advantage of what all might be available.

That particular grant is also limited to rural areas of the state. If someone's looking to invest in Atlanta, in the metro area, REBA funds may not necessarily be available. The state also offers EDGE grants, which provide financial assistance to applicants that are being considered for investment in Georgia where Georgia's competing with another state for the location of a project. And particularly, where the EDGE fund is used to enhance the health, welfare, safety or economic security of the citizens in its vicinity.

Here, again, a local development authority is going to have to request that grant. And that is why it's so important to ensure that your business is thinking around the curve in terms of the strategies that you're going to employ when making that investment or relocation. Because, ultimately, at the end of the day, you have to these things planned out. And these are going to vary from state to state, right?

If you're looking to base in the Southeast, you're going to be comparing similar types of grants from Alabama, Tennessee, South Carolina, Georgia, Mississippi. And then weighing through all those things and ensuring that all of your timelines for those grants are syncing up as you move towards your investment is very, very important.

Just one other grant that I want to touch on as it relates to economic investment, some states still have American Rescue Plan Funds available. Now these funds, generally called ARPA funds, were first instituted back in 2021. And they primarily were made available in response to COVID.

However, under the treasury guidance that we received from the federal government, states can use these for water and sewer projects, broadband infrastructure. And, quite frankly, Chris, I think we could do a whole podcast on the applicability of ARPA funds and their different uses.

But what I want our listeners to know is that states are still sitting on this cash and they actually have to have it allocated by December 31st of this year and then invested by December 31st of 2026. For these states that are still sitting on tens, if not hundreds of millions of dollars from the federal government and a listener has a business that they're looking to invest where they're going to need infrastructure connectivity, either through broadband or water infrastructure, this should be a first box that they look at checking when talking to a state.

**Chris Willis:**

That is really interesting, David. Now I know that grants are an important aspect of this. But, surely, tax incentives are also an important tool in state and municipalities tool belt to try to attract new investment. What are some of the tax incentives that companies should be on the lookout for when they're considering making an investment in the state?

**David Dove:**

Yeah. No. Absolutely. What's interesting here is, just like grant programs, there's going to be a wide variety of different specific tax incentives that might be available depending on where a company's looking to invest. Tennessee is going to have different tax incentive programs than Florida.

But, generally, I think these incentives kind of break down into a couple of categories. Generally, I think our listeners should be aware that they're generally going to fall into either a sales tax exemption, or an income tax offset, or payroll tax withholding. And that's generally how states look at these. But then they're also going to fall into a lot of different silos that are industry-specific.

For example, in Georgia, we have a very popular film tax credit that is there just to support the film industry and recruit that investment from businesses. That's been widely taken advantage of. But that's not available in all states. There's also technology tax credits, manufacturing tax credits, and a lot of this is going to depend on which state our listeners are planning to invest in as to which ones they might want to take advantage of.

But like I said before, these things change over time. One thing that we've been watching over the last several weeks while the Georgia General Assembly has been in its legislative session, there are some pretty heavy-handed amendments to the high-technology data center tax credit that has been around in the state for a while. And this tax credit has been utilized by real estate developers as well as data center customers to take advantage of sales tax exemptions for the growth of these businesses in Georgia.

But the general assembly has actually recently passed legislation just a couple of weeks ago that's going to put a pause on this tax credit. And so, now it's very important that, if you're sitting on a site in the state of Georgia where you're looking to build out a data center, you're going to have to have your application in by July 1.

And so, there's been a lot of conversations about ensuring that the so-called run on the Department of Revenue to get these applications filed is managed in an efficient way by the state and it's going to be something that's going to be a challenge for certain owners and operators out there to get these applications in in the next 90 days or so to ensure that they can still take advantage of that tax credit for the investment that they've made here.

That's just another reason why I think our listeners should be mindful, that if you make these investments, whether it's in Georgia or other states, that you're engaging with quality counsel to ensure that you're on the cutting edge of what changes might be actually happening in the market because of legislation or ordinances. It's very important to make sure that you're not missing out because there's been a recent change in that area.

**Chris Willis:**

Well, listening to you talk about all these things, David, it seems like there's an overwhelming sort of variety of incentives and other programs that are available both at the federal, state, and local level. Is there one go-to source where a company can learn about all these programs? Like a handbook or something?

**David Dove:**

Yes. The short answer is yes. Many state Departments of Commerce or Departments of Economic Development generally have guides that are available to different businesses. Obviously, there's a whole market for economic development consultants and then resources that you can use to learn about these as it depends on the state. But this is what you really need

to know, unless you're making a record-breaking investment, many of these opportunities, especially grant funds, have caps or appropriation limits that are set by the state, which means you're in competition in your business for those dollars against other companies that are looking to move or expand in the same state.

As you engage with a state Department of Commerce or a state Economic Development Department, they may make you an offer for what incentives would be available for your business. But the bottom line is, is they are approaching this from the state perspective and they are mindful of these limits and caps that they might have. And their interests are still going to reign supreme over that. That is why it is so critical to have an experienced counsel engaged in these types of negotiations to ensure your opportunity is getting completely maximized. And it's all the better when your counsel used to be in the state shoes and understands where those pressure points are from the state side. And so, that's one of the things that we're really looking to offer here from the RISE practice at Troutman.

**Chris Willis:**

Are there any other practical considerations a company needs to keep in mind when selecting a particular site for a new operation?

**David Dove:**

Absolutely. And as you can imagine, Chris, there's a lot of different legal issues that can pop up particularly when you're building on a new site or making a large investment in a state. For instance, depending on the type of incentives that you're receiving, you may not own title to the land. Or there might be a public financing mechanism that's used to procure the site. You might have a lease that goes back to the local development authority.

And we've seen even in some instances where that's actually a usufruct as opposed to a lease with the local government. These types of issues have to be navigated on the front end to ensure that the site is actually the best site for your business. Because, ultimately, where you get the most incentives, if you have a state that's putting cash on the table or giving a really good deal in terms of the tax incentives that are available, it still may not create the best situation for you depending on what strings are attached to your investment in that state. Other considerations, as you can imagine, are environmental, as well as real estate issues.

When I was at the state, I actually served as Interim Environmental Protection Division Director. And as a part of that role, I worked with a lot of businesses that were looking to locate to ensure that necessary permitting was essentially talked through on the front end from a strategic perspective.

One of the things I think our listeners should be mindful of is just because you may not be ready to apply or even ready to make a decision about your investment, it doesn't mean that you can't sit down with all the regulators that you might have touch points with as you make this investment and go ahead and talk through the types of issues that you anticipate and ensure that the state government is going to – or the local government is going to be able to meet your timeline for investment.

We did this numerous times with a lot of different companies. And, look, sometimes there was hard conversations where, from the government's perspective, there might have been a more aggressive timeline from the business that we would just have to say under our kind of guidance or our regulations we're not going to be able to meet that. Or we can meet it if you, business, can actually guarantee that there are certain check boxes that you hit on the front end.

But there again, it's a reason why having quality representation and a knowledgeable counsel is so critical in these. Because it's not uncommon that you start moving down the road, particularly on a site development, particularly if it's manufacturing facility, and you start learning things about the site.

We had one instance where we had an investment kind of coming into the state and learned that there had been, after the site had been procured, an undisclosed hazardous chemical spill on that site decades and decades before. And as you can imagine, Chris, that automatically created some pretty serious issues for the company that was looking to invest in the state and had to work to get those issues resolved before they could move forward.

**Chris Willis:**

I want you to note, by the way, that you have sent me and probably most of our listeners Googling to see what a usufruct is. Because I think I remember that word from property. But I definitely don't today know what it is. Everybody, just google usufruct, okay?

**David Dove:**

It's funny you say that. I felt like I had – again, I had not heard that word since maybe first year of law school property. But you would be surprised at how often that arrangement shows up and that mechanism shows up in the economic development space.

**Chris Willis:**

Yeah. Well, kidding about funny property words aside, when a company is relocating or locating a new facility, how do they know that they're taking full advantage of the various incentives that are available from all three tiers of government?

**David Dove:**

Yeah. And this is what I've mentioned before that just about that this is a very dynamic process. Ordinances, programs, regulations, they're always in flux. They're always changing. Because governments are responding to the market just as businesses are responding to the market. They're trying to make adjustments to their incentives to ensure that what they are offering is actually having a meaningful impact on their communities.

Generally, most companies will hire a site consultant as their first move before expansion or relocation. But the second step and one that's absolutely necessary is ensuring that you have legal counsel that understands the space and has the resources of a broad platform to assist with whatever issues might arise with your investment or relocation.



I actually have some experience seeing the downside of this from my time with the state. There was a company that was dealing with a regulatory issue in Georgia and they had brought in an out-of-state counsel that was not necessarily familiar with Georgia administrative law. And the fix for this company was a very easy, very simple administrative process. But they chose instead to litigate this and I'm sure ended up spending millions of dollars trying to find a workaround on a particular issue that could have literally been resolved with a couple of filings, and conversations, and a hearing with the state administrative body.

Just an example of why it's so important to ensure that the resources that you bring into this investment that you're making are ones that are qualified and have experience in this area to ensure that you're really getting the best bang for your buck with growing your business.

**Chris Willis:**

Okay. Well, David, I think that brings us to the end of our questions for you. I want to thank you for being on the podcast. And the thing is most of our listeners know about our very preeminent state attorney general practice. But one of the reasons that I wanted to have you on today was so that people understand that it's not just the state attorneys general that we deal with. We deal with the state financial services regulators and all aspects of state government. And your talk today about relocating a facility is just one example of the very broad base of services that Troutman Pepper can offer its clients. Thank you for being on the podcast.

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