

PRACTICAL GUIDANCE

What Nonprofits Need to Know About Lobbying in

FLORIDA

New in This Update:

This Practical Guidance resource updates the 12.14.21 version. Updates include:

- A new FAQ describing how to use this resource
- A new FAQ comparing federal and state lobbying rules

Inside This Guide:

This Practical Guidance resource is designed to help your nonprofit organization determine if lobbying rules in Florida might apply to your state or local work. It includes:

- Summary of registration and reporting triggers
- Key takeaways for nonprofit organizations
- FAQs
- Case study for a hypothetical small student voting rights organization
- List of helpful additional resources

What Lobbying Activities Trigger Registration in Florida?

DIRECT LOBBYING OF:	CAN THIS TRIGGER?	TRIGGER
State Legislators	Yes	Any person paid (any amount) to attempt to influence on behalf of your organization the passage or defeat of any legislative action, or to create goodwill with any member or employee of the Legislature; provided – that for any of your employees to trigger registration, one of their most significant job responsibilities must be overseeing your relationships with governmental officials.
State Executive Branch Officials	Yes	Same as above with respect to a policy or procurement decision of an agency, or creation of goodwill with any agency official or employee.
Local Legislators or Local Executive Branch Officials	Quite possibly!	The Florida state lobbying statute does not regulate lobbying at the local level, but hundreds of municipalities and counties in Florida do have their own lobbying statutes that may require registration.

- **Grassroots lobbying:** Grassroots lobbying (calling on members of the public to take action) is not regulated at the state level in Florida and will not trigger registration or reporting.
- **Procurement lobbying:** Note that if your nonprofit organization is involved in soliciting state grants or contracts to provide services to the government outside of an official request for proposals, then you should seek additional advice on how procurement lobbying of the executive branch might apply to you.

KEY LOBBYING TAKEAWAYS FOR NONPROFIT ADVOCACY ORGANIZATIONS IN FLORIDA:

- **Paid employees who only lobby sometimes will usually not trigger registration:** For any of your employees to trigger lobbyist registration under Florida state law, one of their most significant job responsibilities must be overseeing your relationships with governmental officials. Note however, that if your lobbyist is a **consultant** (as opposed to as an employee), registration is required for any amount of paid lobbying.
- **Unpaid lobbying does not trigger registration:** Florida does not regulate unpaid communications with public officials, so volunteer lobbyists do not need to register or report.
- **The state has helpful resources online and technical assistance is available:** The state Lobbyist Registration Office puts out the detailed and helpful Florida Registration and Compensation Reporting System User Guide and is also available to answer any questions nonprofit organizations may have about lobbyist registration or reporting.
- **Hundreds of local Florida jurisdictions have separate lobbying ordinances:** Seek additional advice if you are lobbying local public officials at the city or county level as local rules can be stricter than the state rules.

This resource is current as of May 2022. We do our best to periodically update our resources and welcome any comments or questions regarding new developments in the law. Please e-mail us at advocacy@afj.com or at info@democracycapacity.org with any comments.

This resource is meant to convey the basic principles of sections of state law that are most relevant for nonprofit advocacy and does not cover all aspects or all details of the state statutes. Please refer to the full text of the law for more details. This resource also does not cover details of federal lobbying disclosure law, IRS regulations related to lobbying, or any separate county or municipal regulations that may apply to lobbying-related activities. In some states there is an ongoing movement towards the enactment of additional local county and municipal level lobbying regulations, and organizations are urged to check with the appropriate local jurisdiction before undertaking local lobbying activity.

Q: How should we think about using this Practical Guidance resource?

This Practical Guidance – What Nonprofits Need to Know About Lobbying resource is designed to help your nonprofit organization determine if state or local regulations might apply to your existing or proposed advocacy work. The answer is surprisingly often – **YES!** – but there are also often many advocacy activities that do not require state lobbyist registration or reporting.

This Guide will help you identify which of your state or local activities might trigger registration and reporting, and also give you potential alternative program design ideas that would allow your program to be in compliance with the regulations but not require registration and reporting.

If you do need to register and report with the state, this Guide will also give you practical tips about what information needs to be included in your reports, and how to try to minimize your operational burden while remaining in compliance with the rules.

While this Guide does provide some information about the federal IRS rules that apply to nonprofit lobbying, it is designed to cover state and local regulations. Links to resources containing more information about federal IRS rules can be found in the federal lobbying FAQ below and on the Additional Resources page of this Guide.

We also hope that this Guide will prove useful to legal counsel and other advocacy advisors who are working to assist nonprofit advocacy organizations, as well as the funders who generously support this work. Advisors and funders are invited to use our free Bolder Advocacy Technical Assistance Hotline and the written legal resources available in our resource library at <https://bolderadvocacy.org/>

Q: What activities count as lobbying?

There are two types of lobbying in Florida – legislative and executive branch lobbying.

In general, Florida defines lobbying as (i) influencing or attempting to influence **legislative** or **executive action** or (ii) an attempt to obtain the goodwill of a legislator, **agency** official, or a legislative or executive employee.

- **“legislative action”** means introduction, testimony, sponsorship or any other official action on any resolution, amendment, appointment, or any matter that falls under the purview of either house of the legislature or any committee.
- **“executive action”** means any action of an agency of the executive branch of state government with respect to a policy or procurement decision.
- **“agency”** means the Governor, Cabinet, any department, division, bureau, board, commission, or authority of the executive branch, and the Constitution Revision Commission.

Q: What triggers lobbyist registration and reporting with the state?

Lobbyist registration may be triggered when an individual is paid compensation in any amount, whether through employment or contract, to lobby the legislative or executive branches on behalf of your nonprofit organization. Reimbursement for travel, meals, and lodging expenses are not considered pay or compensation.

If the person doing the lobbying work is your employee, the work **does not** trigger lobbyist registration and reporting unless the employee is principally employed for governmental affairs and one of the **most significant responsibilities** of the employee is overseeing your nonprofit’s relationships with governmental officials.

As a practice tip, your nonprofit organization should generally only need to register any members of your paid staff whose core job duty is work on governmental affairs or lobbying efforts. However, there is an exception where more of your staff may need to register if your organization is lobbying on a bill of particular interest to your organization and other members of your staff participate in the lobbying. In this special

case, additional staff members where a primary element of their job performance will be evaluated on their lobbying work, or who are spending a majority of their time working on governmental relations or lobbying for this purpose may need to register. Staff members do not have to register if their activities are “merely ministerial,” have no contact or communication with legislative staff, and whose efforts are not “tied” to legislative affairs. Because lobbyist registration for your staff members does not require any periodic reporting by them or by your organization, it is possible to err on the side of caution when faced with this special situation without adding disclosure burdens.

Any lobbyist hired by your organization through a lobbyist firm, or as a solo independent contractor lobbyist, will automatically be required to register, even if they are also hired to do other work for you.

Volunteers or other unpaid persons lobbying on your behalf (for example, a Board member) are not required to register. Reimbursement of expenses for such otherwise unpaid persons also does not trigger registration.

Q: Are there exceptions to what counts as lobbying?

Yes! The exceptions most likely to be relevant to nonprofit organizations are:

- Responding to an inquiry for information from legislative or executive branch officials or their staff, including appearing at hearings on such requests
- Submitting grant or service contract proposals under an official request for proposal, or performing under an existing contract between your organization and a governmental body or agency

Note that any person who appears before a legislative committee will be requested to submit a Committee Appearance Record. This applies whether or not the appearance counts as lobbying or if one is a registered lobbyist. The form for the House appearance can be found here if any committee hearings are scheduled:

<https://www.myfloridahouse.gov/> and the form for the Senate appearance can be found here: <https://www.flsenate.gov/usercontent/committees/committeeappearanceform.pdf>

The Florida House of Representatives also has a special rule (called Rule 17) that requires registered lobbyists to file a House Committee Appearance Record that identifies the specific reason for which the lobbyist is appearing, and that the lobbyist is appearing on behalf of your organization. Registered lobbyists can log in here to file this notice of appearance: <https://www.myfloridahouse.gov/LD/default.aspx>

Q: How does this work together with federal IRS lobbying regulations?

All tax-exempt organizations must follow both federal tax law (regulated by the IRS) **and** any state and local lobbying laws that apply to their work.

The IRS rules regulate how much lobbying a nonprofit organization can do, while state and local regulations are transparency rules designed to help the public understand what funds are being spent to influence decision making and by whom. As a result, federal tax law rules related to lobbying and state lobbying regulations are quite different, and state lobbying regulations also vary greatly state to state.

In general, the IRS requires 501(c)(3) organizations to report on their annual Form 990 legislative lobbying at the federal, state, and local levels, but does not count as lobbying advocacy activities relating to executive branch or administrative officials at any level. There is no additional requirement for organizations or individuals to “register” with the IRS to report lobbying activities.

Nonprofits that are public charities under IRS exemption 501(c)(3), including grantmaking public charities like community foundations, can lobby within the generous limits allowed by federal tax law. The amount of lobbying is determined by either using the insubstantial part test or the 501(h) expenditure test. See our

resource <https://bolderadvocacy.org/resource/public-charities-can-lobby-guidelines-for-501c3-public-charities-2/>

Organizations that are tax-exempt under 501(c)(4) (social welfare organizations), 501(c)(5) (labor organizations), and 501(c)(6) (trade associations) can do unlimited lobbying. See our <https://bolderadvocacy.org/resource/being-a-player-a-guide-to-the-irs-lobbying-regulations-for-advocacy-charities/>

Your organization will need to ensure that you are keeping track of your lobbying staff time and your expenses in a way that works for both your IRS reporting, and for any required state or local reporting, since the information required in each regime will be different.

Note that there is also a federal law called the Lobbying Disclosure Act that requires some organizations to register and report their federal level lobbying activities. Organizations that have only occasional contacts at the federal level (having occasional meetings with members or staff or sending occasional letters to Congress) will not need to register under the LDA. The thresholds are designed to require only those organizations with sustained lobbying activities and expenses to file. For more information see: https://bolderadvocacy.org/wp-content/uploads/2018/06/Understanding_the_Lobbying_Disclosure_Act.pdf

Q: Does supporting or opposing a ballot measure count as lobbying?

Supporting or opposing a Florida ballot measure is not regulated as a lobbying activity under Florida law (even though the IRS does count it as a lobbying activity). Instead, Florida regulates activity to support or oppose a ballot measure under the state's campaign finance laws. Nonprofit organizations considering working on ballot measures in Florida (either working to get a measure on the ballot or supporting or opposing an existing measure) should seek advice on how to comply with any applicable state or local campaign finance reporting requirements.

Q: If we are required to register, how does the process work?

Lobbyists that are required to register under state lobbyist regulations can register through the Lobbyist Registration and Compensation Reporting System (LRCRS), available at <https://floridalobbyist.gov/>

Lobbyists can use this portal to register for both legislative and executive branch lobbying. More detailed instructions are available at: https://floridalobbyist.gov/reports/LRCR_User_Guide.pdf?cp=0.3510907525376763

There is an important difference in the timing of the registration depending on whether one is lobbying the legislative branch or the executive branch. Legislative branch lobbyists must register **before engaging in lobbying**. Executive branch lobbyists must register **upon initially being retained by the organization to lobby**. This means that when a nonprofit organization specifically contracts or hires a lobbyist for executive branch lobbying, that lobbyist must immediately register even if no lobbying is imminent. If the lobbyist is to engage in legislative branch lobbying, registration can wait until the lobbying activity commences (but still before lobbying takes place).

The fee to register one of your employees is \$50 to lobby both houses of the Legislature, or \$25 for executive branch lobbyist registration. The fees cover the calendar year only.

Q: When are periodic lobbying reports due?

Only lobbying firms that are businesses charging for their lobbying services (or solo practice independent contractors) are required to file periodic lobbying reports.

If your nonprofit has paid employees whose **most significant responsibilities** include governmental affairs and lobbying public officials, then such employees will need to register as lobbyists, but neither your organization, nor your lobbyist employees will need to file periodic reports.

FAQS

If your nonprofit uses a lobbyist firm to lobby on your behalf, then the lobbyist firm is responsible for filing quarterly Compensation Reports, which your organization will need to sign and date before the lobbyist firm submits them.

Q: What information do the periodic lobbying reports include?

Under state lobbying regulations, only lobbying firms – businesses (or solo practice independent contractors) that receive compensation for lobbying – are required to file periodic Compensation Reports. Your nonprofit will not need to file any periodic reports.

Q: What is considered a reportable “expenditure”?

Under state law the only lobbying expenses disclosed are the amounts of compensation paid to a lobbying firm. The lobbying firm (including any solo practice independent contractor) is responsible for making the filing, and your nonprofit organization will only be required to review and sign the filing.

Gift Ban: Note that lobbyists, and nonprofit organizations employing lobbyists, are prohibited from directly or indirectly giving gifts of any value to an official, except for celebratory items of minor value such as flowers or a plaque commemorating service. Gifts valued over \$100 are permissible only if the official donates it to the government or a charity. However, best practice is not to give any public official a gift regardless of its value – it may violate the gift ban even to provide bottled water to a legislator – and to limit anything you provide to a public official to informational literature.

It is important to note that regulations relating to lobbying expenditures almost always intersect in complicated ways with state and local ethics and “gift ban” laws. Those state and local rules often apply even if your organization has not triggered lobbyist registration and may apply to a broader range of officials. You should be certain that you understand the intricacies of both sets of rules before giving any gifts to, or paying expenses for, any public officials at the state or local level.

Q: Do our organization’s donors need to be disclosed on any lobbying reports?

No.

Q: How are our lobbyists required to identify themselves while lobbying?

There are no identification requirements in Florida, but the best practice is to identify oneself as a lobbyist when engaging in lobbying.

Q: Are there any other restrictions on lobbyists that we should be aware of?

A lobbyist’s compensation may not be contingent upon the outcome of the legislation or executive agency decision they are advocating for or against.

The Florida House of Representatives has a special rule that requires registered lobbyists to file a House Committee Appearance Record that identifies the specific reason for which the lobbyist is lobbying and that the lobbyist is appearing on behalf of your organization. <https://www.myfloridahouse.gov/LD/default.aspx>

Lobbyists are also prohibited from communicating electronically with members while they are on the floor of the House (e-mail, text, social media, sending images etc.)

Effective December 31, 2022, the Florida Constitution will prohibit former public officials from lobbying for compensation as their principal duties for six years after their public service. Your organization will want to avoid engaging such former officials for this purpose during the prohibited period.

Case Study STUDENTS VOTE NOW

Students Vote Now is a hypothetical small 501(c)(3) advocacy organization considering being vocal about Bill 101 currently pending in the Florida House of Representatives

STUDENTS VOTE NOW IS CONSIDERING:

- Reaching out to its student constituents, via direct physical mailings, e-mails, and volunteer phone banking, in order to get the students to call their state house representative about the bill.
- Doing an in-person Lobby Day at the state capital about Bill 101 to meet with legislators, or alternatively arranging a virtual Zoom lobby event. The Lobby Day activity might potentially include renting a bus, buying T-shirts for the volunteer participants, and handing out some small swag type items from the organization to the legislators, or if done by Zoom, the purchase of an upgraded Zoom account.
- Testifying before a committee of the Florida House of Representatives regarding the student perspective on Bill 101.
- Having an employee engage with the Mayor of Jacksonville about a similar, but separate, local ordinance being considered.

ACTIVITY	LOBBYIST REGISTRATION/REPORTING REQUIREMENTS
 <p>Student Engagement</p>	<p>The proposed student engagement - reaching out to constituents to get them to call their representatives - is grassroots lobbying. Grassroots lobbying alone does not trigger registration, even if the work is done by paid nonprofit staff.</p>
 <p>Lobby Day</p>	<p>While this activity meets the definition of lobbying, registration is likely not required in this case. Paid Students Vote Now staff will only trigger registration if lobbying is one of their most significant job roles. Volunteers also do not trigger registration. Even if Students Vote Now staff do have to register, none of the expenses of the Lobby Day need to be reported because only lobbying firms are required to file periodic lobbying reports, and Students Vote Now is not a lobbying firm. It is best practice not to give legislators any gifts, even small swag items, and to give information about the organization instead.</p>
 <p>Committee Testimony</p>	<p>This activity also likely does not trigger registration. The only persons who would be required to register for testifying at a legislative hearing are any paid Students Vote Now staff whose principal job duty is lobbying. Paid staff who only more occasionally lobby, or volunteers, can testify on behalf of Students Vote Now without triggering registration. Note that any person who appears before a legislative committee will be requested to submit a Committee Appearance Record. This applies whether or not the appearance counts as lobbying or if one is a registered lobbyist. If the person is a registered lobbyist, then they will file the special House lobbyist appearance form.</p>
 <p>Mayor</p>	<p>Jacksonville, like hundreds of local jurisdictions in Florida, has a separate lobbying ordinance¹ which requires most paid lobbyists to register prior to engaging in lobbying officers or employees of the city. However, Jacksonville's ordinance exempts employees of an organization that is lobbying from registration. Thus, if Students Vote Now sends a paid employee, or a volunteer (including a Board member) to lobby, they will not need to register. If Students Vote Now were to use a contracted lobbyist they would need to register with the city.</p>
<p>Bottom Line</p>	<p>The proposed Students Vote Now activities both at the state and Jacksonville city level will likely not require any lobbyist registration or reporting unless an outside lobbying contractor is used. Only employees whose principal job duty is lobbying are required to register, and unpaid volunteers are also exempt. Students Vote Now should refrain from giving any swag to the legislators or the Mayor and give out only informational materials instead.</p>

¹<https://www.coj.net/city-council/lobbyist-information>

ADDITIONAL RESOURCES

BOLDER ADVOCACY'S TECHNICAL HOTLINE:

Bolder Advocacy's free Technical Hotline team is always happy to help nonprofits and advocacy attorneys with more specific questions. You can contact our team of experts by emailing us at advocacy@afj.org or calling us during standard business hours at 866-NP-LOBBY (866-675-6229).

BOLDER ADVOCACY'S MORE DETAILED STATE LAW RESOURCES:

- See our *Florida Lobbying Disclosure Guide* for more details on the actual text of the Florida lobbying statute, and related advisory opinions. <https://bolderadvocacy.org/resource/florida-lobbying-disclosure/>
- Also see our *Florida Campaign Finance and Ballot Measure Guide* for rules related to state ballot measure advocacy, which Florida regulates as a campaign finance activity, unlike the IRS which regulates such activities as direct legislative lobbying. <https://bolderadvocacy.org/resource/florida-campaign-finance-and-ballot-measure-guide/>

FLORIDA STATE RESOURCES:

- **Lobbyist Registration Office**

While the Florida Legislature monitors legislative lobbying and the Florida Commission on Ethics monitors executive branch lobbying, the process of registration and reporting for both legislative and executive branch lobbying is handled jointly through the Lobbyist Registration Office: <https://floridalobbyist.gov/>

- **Legislative Lobbying FAQs**

<https://www.floridalobbyist.gov/LobbyistInformation/FAQsLegislative>

- **Executive Branch Lobbying FAQs**

<https://www.floridalobbyist.gov/LobbyistInformation/FAQsExecutive>

- **Full Text of the Florida Lobbying Statutes and Rules**

Consolidated links for the relevant Florida statutes and rules covering legislative and executive branch lobbying can be found at: <https://www.floridalobbyist.gov/LobbyistInformation#l-rules>

- **Florida Lobbying Registration and Compensation Reporting User Guide**

This user guide has detailed instructions about how to use the online registration and reporting system: https://floridalobbyist.gov/reports/LRCR_User_Guide.pdf?cp=0.3510907525376763

- **Additional Questions**

Additional questions about lobbyist registration and reporting can be directed to a representative at the Lobbying Registration Office: 850-922-4990; or email help@floridalobbyist.gov

BOLDER ADVOCACY'S FEDERAL LAW RESOURCES:

While state and local laws regulate which lobbying activities require registration and reporting, the IRS also regulates how much lobbying a 501(c)(3) tax-exempt organization is allowed to do, including at the state and local levels. The way the IRS counts lobbying will almost always be different than how state and local laws count it, and organizations are urged to review our federal law resources to ensure all IRS compliance obligations are being met. See our *Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities*. <https://bolderadvocacy.org/resource/being-a-player-a-guide-to-the-irs-lobbying-regulations-for-advocacy-charities/>



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