

PRACTICAL GUIDANCE

What Nonprofits Need to Know About Lobbying in

NORTH CAROLINA

New in This Update:

This Practical Guidance resource updates the 11.04.21 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 state lobbying rules in North Carolina might apply to your 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 North Carolina?

DIRECT LOBBYING OF:	CAN THIS TRIGGER?	TRIGGER
State Legislators	Yes	<p>Directly lobbying a state legislator or legislative employee (or their families) about a particular legislative action, or interacting with them to develop goodwill for future lobbying efforts, triggers lobbying registration and reporting if done by:</p> <ul style="list-style-type: none"> • an employee of the nonprofit if such activities add up to more than 5% of any employee's paid time (approximately 8 hours for full time employees) in any given 30-day period during the year, or • a non-employee paid any amount to do such work for the organization. <p>Volunteers engaging in lobbying activities will not usually trigger registration requirements but be careful of what could be considered "payments" to non-employee volunteers.</p>
State Executive Branch Officials	Yes	<p>Same triggers as above, for lobbying or developing goodwill with executive branch officials or their families.</p>
Local Legislators or Local Executive Branch Officials	No	<p>The North Carolina state lobbying statute does not regulate lobbying at the local level, and there is not a current movement to enact separate rules at the county or municipality level in the state.</p>

Grassroots lobbying: North Carolina no longer regulates grassroots (indirect) lobbying at the state level, so nonprofit organizations who do only grassroots lobbying calling on members of the public to take action are not required to register and report such activities.

KEY LOBBYING TAKEAWAYS FOR NONPROFIT ADVOCACY ORGANIZATIONS IN NORTH CAROLINA:

Both individual lobbyists and nonprofits need to register: If any individual staff members or consultants lobbying on behalf of your nonprofit organization must register, then your organization must also register, and you will be required to report certain kinds of internal lobbying expenses.

Consider lobbyist restrictions on personal activities: Your individual staff members who register to lobby should be aware that they will not be allowed to personally give or bundle any state campaign contributions, or to serve in certain campaign, state boards or commission roles, even in their individual capacity, while they are registered to lobby on behalf of your organization.

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?

North Carolina defines lobbying as any direct communication influencing or attempting to influence legislative or executive action with (or the development of “goodwill” for such future actions), a state legislator, legislative employees, and certain other policy making public servants in the executive branch, or any of their immediate families. The full list of these persons that are covered by the lobbying rules is available at: <https://ethics.nc.gov/coverage/covered-persons>.

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

Not all lobbying activities trigger the need to register. The requirement to register a nonprofit organization’s lobbyist with the state is triggered by either hiring a consultant to do lobbying (of any amount), or by having paid employees spending over 5% of their paid time doing lobbying work in any 30-day period. In this trigger calculation, the only activities that count towards the 5% of paid time are the direct communications or goodwill activities aimed at public official lobbying targets, not the time required to plan, prepare for, or travel to those activities. An employee working regular 40 hour work weeks would need to spend approximately 8 hours in a 30-day period directly lobbying to trigger this threshold.

Since individuals who are not employees can trigger lobbyist registration if they are paid any amount to perform lobbying activities for an organization, nonprofits using volunteers in their lobbying programming are urged to carefully structure their work to avoid giving the volunteers any money, thing of value, or economic benefit in connection with such activities, other than reimbursement for actual travel or meal expenses.

Q: Are there exceptions to what counts as lobbying?

YES! In addition to lobbying work carried out by your staff before the trigger level is reached, certain types of lobbying-like activities will not on their own trigger lobbyist

registration and reporting if there is no other requirement to register. The exceptions that are most likely to apply to nonprofit advocacy organizations' staff or volunteers include:

- Responding to inquiries
- Being invited to appear before a committee, commission, or other collective body
- An individual solely engaged in expressing their own personal opinion and not acting on behalf of another person or organization

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 North Carolina ballot measure is not regulated as a lobbying activity under North Carolina law (even though the IRS does count it as a lobbying activity). Instead, North Carolina regulates activity to support or oppose a ballot measure under the state's campaign finance laws. Nonprofit organizations considering working on ballot measures in North Carolina (either working to get a measure on the

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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?

Once a registration requirement is triggered both your individual employee or consultant lobbyist and your organization (called the “lobbyist principal” by the state) will need to register online at https://www.sosnc.gov/online_services/account/register. Note that lobbyist information is made available to the public online so organizational contact information should be provided when registering as opposed to personal.

Lobbyists must register within one business day of triggering the requirement, and your organization must register within 20 business days, but it is best practice to take care of both registration filings at the same time once registration is triggered.

Note that if your nonprofit’s lobbyist employees are lobbying for any related organization, for example, a 501(c)(3) and a sister 501(c)(4), North Carolina has advised that both organizations will need to register as a lobbyist principal, even if the lobbying staff members are only technically employed by one of the related organizations.

There is an annual registration fee of \$253 (including an online service fee) for each individual lobbyist and each organization that covers the calendar year, and registrations must be renewed every year if your nonprofit’s activities still trigger registration.

Q: When are periodic lobbying reports due?

Both your individual lobbyists and your organization must file reports within 15 business days of the end of each calendar quarter, whether or not any lobbying was done, or any reportable expenditures were made. During the legislative session, lobbyists and organizations must file additional monthly reports (within 10 business days of month end) if they made reportable expenditures to legislators or legislative staff. Quarterly reports must be notarized (even though they are electronically filed) and the original hard copy notarized report must either be kept on file with the lobbyist/organization for three years or delivered to the Lobbying Compliance Division of the Secretary of State within seven days of the electronic filing.

Q: What information do the periodic lobbying reports include?

Quarterly reporting is generally designed to disclose only expenditures made on the public officials being lobbied.

The end of year annual cumulative report made by your nonprofit organization will include more details about your internal organizational expenses, including compensation paid to staff and consultants to perform lobbying related activities on behalf of your organization.

Q: What is considered a reportable “expenditure”?

Quarterly reporting for both the lobbyist and the organization includes the transportation, lodging, entertainment, food and beverage, meeting and events, and gift expenditures related to the lobbying (or goodwill) activities. Generally, unless your organization is taking legislators and public servants (or their family members) out to meals, hosting larger events to which such persons are invited (say a cocktail party), or is paying for such persons’ travel, lodging, or meeting expenses, the quarterly lobbying reports will not require the reporting of any expenditures.

One the other hand, all registered nonprofit organizations will have reportable expenditures on their final year-end report, since your organization will be required to report the cumulative amount of compensation paid to each lobbyist for the time spent

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doing lobbying communications (or creating goodwill) during the year, as well as for time spent doing lobbying-related research, drafting direct lobbying communications, monitoring legislative or executive action, or advising and giving opinions about the proposed legislation or executive action. Lobbying organizations should plan ahead for the need to disclose this kind of information, and appropriately track staff time during the course of the year.

Gift ban: 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, and these rules often apply even when an organization has not reached the threshold required for lobbyist registration. Organizations should be certain that they understand the intricacies of both sets of rules before giving any gifts to, or paying expenses for, any public officials.

In North Carolina it is generally prohibited both for the lobbyist to give, and for the legislator or public servant to accept, any item of over \$10 in value. Note that there is an exception for informational materials, and for “plaques and non-monetary mementos” recognizing individual service to a charitable cause. Organizations considering handing out any “swag” type items are advised to seek advice that the item will not constitute a prohibited gift. See Section 138A-32(f) of the North Carolina Government Ethics Act referenced in the Additional Resources at the end of this guide for further details on the North Carolina gift ban rules.

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?

While there is no statutory lobbyist badge requirement in North Carolina, lobbyists are required to identify themselves as a lobbyist and disclose the identity of the organization they are lobbying for prior to engaging in lobbying communications. It is good practice to wear a lobbyist name tag so that lobbied individuals are made aware that lobbying communications may be taking place.

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

Yes.

Restrictions on lobbyist’s personal activities: Staff of your organization will need to weigh the restrictions on the lobbyist’s personal activities outside of their employment with your organization. For the period in which a lobbyist is registered the individual is prohibited from pursuing certain activities, even if they are being done in their own personal capacity.

- Making any campaign contributions to any state legislators or public servants
- Acting as a bundler for contributions made by others
- Serving as treasurer for a campaign committee, or on certain state board or commissions





Contingent payment prohibition: It is also prohibited for an individual to act as a lobbyist and receive payment for lobbying that is dependent upon the result or outcome of any legislative or executive action.

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 North Carolina 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 Legislative Building about Bill 101 to knock on legislators' doors there, 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 state House regarding the student perspective on Bill 101.
- Having an employee engage with the Mayor of Charlotte about a similar local ordinance there.

ACTIVITY	LOBBYIST REGISTRATION/REPORTING REQUIREMENTS
 <p>Student Engagement</p>	<p>The outlined student constituent outreach activities are grassroots lobbying, no longer regulated under North Carolina state lobbying law, and registration and reporting are not required.</p>
 <p>Lobby Day</p>	<p>This lobbying activity will not on its own require lobbyist registration unless any paid employee's time spent lobbying goes over the 5% trigger level. Time spent directly communicating with legislators is the only time that counts (not the preparation, travel time, or wait time between meetings). Lobby Day volunteers should not trigger lobbying registration since they are unpaid, and T-shirts identifying the students as volunteers of the organization should not be considered a "payment" for their lobbying efforts.</p> <p>Students Vote Now should carefully consider the details of the gift ban (Section 138A-32(f) in the NC Government Ethics Act) to make sure that any proposed swag for the legislators will not be deemed a prohibited gift.</p>
 <p>Committee Testimony</p>	<p>This activity should not trigger registration so long as the employee testifying has not spent more than 5% of their time actively lobbying during any 30-day period (Lobby Day direct communication meeting time and direct communication committee testimony time count, but not preparation, travel or wait time for either activity). This activity would also not trigger registration if Students Vote Now has either been invited to testify, or uses an unpaid person to testify (say a Board member or a student volunteer).</p>
 <p>Mayor</p>	<p>Lobbying of local executive branch officials is not regulated under the state lobbying statute. Charlotte does not have its own lobbyist statute but does have a statute requiring a permit prior to certain distributions of political and advocacy related materials at the airport.</p>
<p>Bottom Line</p>	<p>If Students Vote Now can structure the activities of their paid staff members so the direct lobbying time for all lobbying activities does not exceed 5% of any individual's paid time in any 30-day period (approximately 8 hours for full time employees), then Students Vote now should not need to register any individual lobbyists or as an organization to carry out the proposed programmatic activities.</p>

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

NORTH CAROLINA STATE RESOURCES:

- **North Carolina Secretary of State**
The North Carolina Secretary of State's office is responsible for administering lobbyist registration in the state. Their website can be found at: <https://www.sosnc.gov/divisions/lobbying>
- **North Carolina State Ethics Commission**
The State Ethics Commission at <https://ethics.nc.gov/> interprets and enforces the State Government Ethics Act and portions of the Lobbying Law. They also publish advisory opinions related to lobbying and gift ban issues at: <https://ethics.nc.gov/advisory-opinions>
- **Full Text of Relevant North Carolina Statutes**
The North Carolina lobbying statute can be found in a convenient pdf form here: https://www.sosnc.gov/documents/forms/lobbying/Law_and_Rules/Chapter120C.pdf
The North Carolina Government Ethics Act which contains some of the definitions that the Lobbying Statute refers to can be accessed at: https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_138A.html
- **Additional Questions**
Technical questions can be directed to a lobbyist specialist at the North Carolina Secretary of State's Office: Email: lobbyist@sosnc.gov; Phone: 919-814-5400
- **North Carolina Center for Nonprofits**
North Carolina's Center for Nonprofits also has some additional publicly available resources relating to nonprofit advocacy: <https://www.ncnonprofits.org/public-policy/advocacy-tools>

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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