

PRACTICAL GUIDANCE

What Nonprofits Need to Know About Lobbying in

MICHIGAN

Inside This Guide:

This Practical Guidance resource is designed to help your nonprofit organization determine if lobbying rules in Michigan 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 Requirements in Michigan?

DIRECT LOBBYING OF:	CAN THIS TRIGGER?	TRIGGER
State Legislators	Yes	Expending more than the current threshold amount on direct communications with lobbyable state level public officials to influence the official's legislative or administrative actions. All threshold amounts are indexed annually. For 2022 the thresholds are: Organization: More than \$2,675 on lobbying in total or more than \$675 on lobbying a single public official in a 12-month period. Staff: More than \$675 in prorated compensation or reimbursement for lobbying in a 12-month period.
State Executive Branch Officials	Yes	Same as above. Michigan has one combined registration threshold for executive and legislative lobbying.
Local Legislators or Local Executive Branch Officials	Maybe	The Michigan state lobbying statute does not regulate lobbying at the local level, but some local jurisdictions, including Detroit, do have their own lobbying statutes that may require registration.

Grassroots lobbying: Grassroots lobbying (indirectly calling on the public to contact public officials) is not generally regulated at the state level in Michigan but note that some kinds of grassroots lobbying can veer into activities that can trigger registration and reporting. Some grassroots expenses may also be reportable if they are made in connection with a **direct** lobbying campaign.

KEY LOBBYING TAKEAWAYS FOR NONPROFIT ADVOCACY ORGANIZATIONS IN MICHIGAN:

- **Michigan's lobbying terminology is different than in most states:** Michigan defines the organization that employs individuals to lobby on its behalf as the "Lobbyist" and calls the staff doing the lobbying "Lobbyist Agents."
- **Lobbying can begin before registration:** Because your nonprofit organization and your lobbying staff are only required to register once certain expense thresholds are met, you may begin lobbying before registering, but expenses need to be carefully tracked because registration is required within 15 days of crossing the expense threshold for the organizational registration, and three days for any required individual staff registrations.
- **There is a reportable category of non-registered lobbying employees:** If your organization is required to register, the twice-yearly Financial Summary Reports require that you list the name and addresses of all employees that are compensated or reimbursed for even very minor amounts of lobbying (the 2022 threshold for needing to report on this list is \$27). It can ease compliance burdens to do all your reportable lobbying work only through your registered lobbyists.

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?

Lobbying is any **direct communication** with a **lobbyable state level public official** to **influence** the official's **legislative** or **administrative actions**.

- **“direct communication”** does not need to be face-to-face or a live communication, and can include letters, e-mails, telephone calls, or any other means of direct communication.
- **“lobbyable state level public officials”** are generally those public officials that may use personal discretion in deciding whether or not to take legislative or administrative action. The list of such officials was originally included in the text of the statute itself, but has shifted with executive branch reorganizations over time and a list of lobbyable public officials is now kept current on the Bureau of Elections website at: <https://www.michigan.gov/sos/elections/Disclosure/lobby/public-officials-information/about-michigan-lobbyable-public-official>
 - **Lobbyable legislative officials** currently include state senators, state representatives, the auditor general and the deputy auditor general, the director of the legislative retirement system, and any non-clerical policy making employee of the legislature.
 - **Lobbyable executive branch officials** currently include the governor, lieutenant governor, secretary of state, attorney general, certain classified directors and deputy directors, the presidents of Michigan public state universities, and any non-clerical individual in the executive branch that is not under civil service. Executive branch officials are considered lobbyable from the time they are elected, nominated, or appointed, even if they are not yet serving.
- **“influencing”** means promoting, supporting, affecting, modifying, opposing, or delaying by any means, including the providing of or use of information, statistics, studies, or analysis.
- **“legislative action”** means introduction, sponsorship, support, opposition, consideration, debate, vote, passage, defeat, approval, veto, delay, or an official action

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by an official in the executive branch or an official in the legislative branch on a bill, resolution, amendment, nomination, appointment, report, or any matter pending or proposed in a legislative committee or either house of the legislature.

- **“administrative action”** means the proposal, drafting, development, consideration, amendment, enactment, or defeat of a non-ministerial action or rule by an executive agency or an official in the executive branch of state government.

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

Once a decision has been made to pursue direct lobbying activities, a registration requirement is triggered when direct lobbying expenditures in any 12-month period following the date of the decision exceed the current lobbying registration thresholds.

The thresholds in 2022 for any 12-month period are:

- **For organizations:** \$2,675 in total or \$675 on lobbying a single public official
- **For individuals:** compensated or reimbursed more than \$675. Employees engaged only in clerical, research, or other activities to support your organization’s lobbying efforts do not need to register if they do not engage in direct contact with public officials

Note that relevant expenditures for calculating the registration threshold include prorated compensation (not including fringe benefits) paid to any employees who are engaged in lobbying. Accordingly, most organizations who have employees doing any significant amount of lobbying are likely to reach both the organizational and individual thresholds very quickly. See below for more details regarding expenditures.

Q: Are there exceptions to what counts as lobbying?

Yes! The following are the exceptions that most often apply to nonprofit advocacy:

- An expert providing empirically verifiable technical information before a legislative committee or executive department hearing panel
- Communications with public officials concerning ministerial actions where the official does not have discretion, such as encouraging a public official to enforce the law
- Voluntary appearances before a legislative committee at the committee’s request

Q: Can our grassroots (indirect) lobbying work trigger registration?

Michigan does not expressly regulate grassroots lobbying, but elements of your grassroots efforts may be reportable, and, in some limited cases even trigger registration.

Amounts spent by your organization on grassroots lobbying (for example, social media and paid digital ads calling on the public or your members to take action and call their state representatives with respect to legislative or administrative action) generally **do not count** towards the spending limit for the lobbyist registration threshold. However, the exception to this would be where you have grassroots spending that directly facilitates communications with lobbyable officials (spending that helps the public to connect with officials, rather than simply asking the public to reach out entirely on their own accord).

For instance, if you launched a grassroots lobbying campaign that spent \$5,000 on direct patch-through dialing technology in which the member of the public’s call was routed through to the legislator’s office when they clicked on a link in your digital ad, the cost of the patch-through technology **would count** towards the registration threshold, but the cost of the digital ads **would not**.

It can be confusing, but the chart below describes the basic reporting requirements.

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Grassroots Activity	Registration?	Reporting?	Explanation
Simple grassroots lobbying, not connected to any direct lobbying campaign by your organization (e.g., social media or email blasts encouraging the public to contact legislators and support or oppose a bill)	No	No	Where your organization is only pushing a message out encouraging citizens to contact a lobbyable official on their own accord, using their own resources, this does not trigger registration, and related expenses are not reportable
Simple grassroots lobbying in conjunction with a direct lobbying campaign (e.g., your organization is actively lobbying directly, and rallying public support with mass outreach)	No	Likely	Assuming your organization is already registered based on its direct lobbying efforts, then costs of advertising and mailing are generally reportable, and this would include costs of a grassroots print mail campaign or any digital advertising campaign on the related topic
Grassroots activities in which you directly facilitate communication between the public and lobbyable officials (e.g., setting up a dialing patch-through system to connect members' calls directly to legislators)	Yes	Yes	Because your organization, in this case, is providing a direct, physical link between your grassroots network and lobbyable officials, this activity could trigger registration if the cost exceeds the thresholds, and would also be reportable

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

Your organization must file a paper "Lobbyist" registration form with the Secretary of State no later than 15 calendar days after making lobbying expenditures more than the current threshold (for 2022 \$2,675 total lobbying expenditures or more than \$675 on a single public official in a 12-month period).

Your individual staff members doing lobbying activities must each file a separate paper "Lobbyist Agent" registration form within three calendar days of receiving compensation or reimbursement of more than \$675 for lobbying.

It does not matter if your staff are only lobbying as part of their job duties. If the prorated portion of their compensation or reimbursement related to lobbying activities exceeds the threshold they will need to separately register.

The registration forms with detailed instructions, as well as information relating to current thresholds, can be accessed at:

<https://www.michigan.gov/sos/elections/Disclosure/lobby>

There is no registration fee.

Q: When are periodic lobbying reports due?

The winter and summer Financial Report Summary reports are due by 4 pm on January 31 (for the period August 1 through December 31 the prior year) and August 31 (for the period January 1 through July 31) each year. The reports can be filed online via the e-Lobby electronic program or via hard copy.

<https://www.michigan.gov/sos/elections/Disclosure/lobby>

Filings must be made separately for your organization (the "Lobbyist") and for each of your registered staff ("Lobbyist Agents"), and all filings must still be submitted even if there are no expenditures to report. Note that Michigan lobbyist registrations do not expire automatically at year end, and instead remain in place continuously until they are terminated. This means that if your organization or any of your staff cease to meet the lobbying thresholds you will need to affirmatively terminate those registrations to avoid unnecessary ongoing reporting obligations.

The amount of late fees is updated by the state every year. In 2022 the late fee is \$27 per report per day, up to a total of \$810 per report.

Q: What information do the periodic lobbying reports include?

The summer and winter Financial Summary Reports request summary descriptions of the lobbying activity that took place during the period, as well as summary reporting of certain categories of lobbying expenditures.

A more detailed “Itemized Expenditure” form is required if financial transactions are made with public officials, or travel reimbursements, or food and beverage payments exceeding certain thresholds are made on behalf of or to public officials. For 2022 such totals are \$1,350 (financial transactions), \$875 (travel and lodging), and \$66 per month or \$400 total for the cumulative reporting period (food and beverage).

For most smaller nonprofit advocacy organizations, it is simpler, and eases your compliance burden if you do not make any such expenditures with, to on behalf of any public officials. In that case you will not need to report any of these types of itemized expenditures. See also the section on “gift bans” below.

Note that the Financial Summary Report that your organization files also requires that you list the names and addresses of your non-clerical employees that receive compensation or reimbursement for lobbying for your organization in excess of the then current threshold amount for non-registered employees. In 2022 this amount is only \$27. Given this very low threshold, your organization should consider limiting reporting requirements by ensuring that all of your non-clerical lobbying work is done through registered staff as opposed to spreading the work around to include a wide range of staff who would only spend minimal time on lobbying related activities.

Note that if you do need to report non-registered employee lobbyists, adding or removing staff from this section of your organization’s Lobbyist Financial Summary Report does not register an employee that is required to be registered (compensated or reimbursed over \$675 in a 12-month period) or terminate the registration of an employee no longer requiring registration. Separate filings will need to be made to effectuate such registrations or terminations.

Q: What is considered a reportable “expenditure”?

In general, there are three categories of lobbying expenditures that include:

- Payments made on behalf of or to public officials (that are allowable by the Gift Ban and any ethics rules) for travel or lodging reimbursement, or food and beverages.
- The actual lobbying expenses of your organization or your staff (other than costs of registered lobbyists to travel to communicate with public officials). This category includes costs of research and analysis, once your organization has decided to lobby, and prorated allocation of staff compensation, but not of fringe benefits.
- Separately reported are the costs of mass mailings and advertising where 1,000 or more pieces of mail are sent within a 7-day period. If these are grassroots lobbying expenditures, they are only reportable if they are expenses incurred in connection with a direct lobbying campaign (see table above). It is best practice to assume that digital advertising costs should be reported in this category if connected to a direct communication lobbying campaign.

Your organization (the “Lobbyist”) and each of your employees who are required to register as “Lobbyist Agents” must keep all records and receipts necessary to substantiate the expense reports for five years after the report is filed.

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. Those state and local rules often apply even if your organization has not triggered lobbyist registration, and they may apply to a broader range of officials.

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In Michigan, gift and expenditure thresholds also change year to year, and 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.

See the Michigan Lobbying Handbook and the most recent Reporting Thresholds, Fees and Penalties memo for more information:

<https://www.michigan.gov/sos/elections/Disclosure/lobby>

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?

Your lobbying staff are not required to wear a badge or other identification, however the best practice in Michigan is to identify oneself before engaging in lobbying activities.





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

Compensation or expenditures contingent on the outcome of a legislative or administrative action is prohibited.

Case Study STUDENTS VOTE NOW

Students Vote Now is a hypothetical small 501(c)(3) advocacy organization considering being vocal about House Bill HB4101 currently pending in the Michigan House of Representatives

- 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 Michigan house representative about the bill.
- Doing an in-person Lobby Day at the state capital about HB4101 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 Michigan House of Representatives regarding the student perspective on HB4101.
- Having an employee engage with the Mayor of Detroit about a similar, but separate, local ordinance being considered.

ACTIVITY	LOBBYIST REGISTRATION/REPORTING REQUIREMENTS
 <p>Student Engagement</p>	<p>The student engagement activities are grassroots lobbying which are generally not regulated in Michigan, subject to a few key exceptions. If Students Vote Now is required to register for other direct lobbying activities related to HB4101, then the physical mailing expenses would be reportable because they are being done in connection with a broader direct lobbying campaign (note that the mailing expenses, as a stand-alone activity, would not trigger registration). If these efforts include a direct communication facilitation element (e.g., dialer technology that connects a student constituent directly to their legislator), those costs will count towards the registration threshold.</p>
 <p>Lobby Day</p>	<p>This activity involves facilitating direct communication with legislators, so some spending related to the Lobby Day would count as expenditures for lobbying. Preparation and research time do not count toward the organization's \$2,675 registration threshold. Only the prorated compensation paid to an employee for time spent in direct communication with a public official is counted. Likewise, staff time spent on travel to/from the lobbying day does not count toward the registration threshold. The bus expense would not count toward the registration threshold either as a specific exception exists for transportation costs. If any staff member is compensated more than \$675 to engage in direct communication with a public official (not including prep time), then they will be required to register as a Lobbyist Agent.</p>
 <p>Committee Testimony</p>	<p>Testimony is not expressly excluded from the definition of lobbying, and it is not exempted from the registration requirement, except when the person appearing is not a lobbyist and appears in order to provide "technical information," which means "empirically verifiable data provided by a person recognized as an expert in the subject area to which the information provided is related."</p>
 <p>Mayor</p>	<p>Detroit's separate lobbyist ordinance¹ defines a lobbyist as one who communicates with a public servant to influence legislative or executive action who is a registered lobbyist under Michigan law, or who spends in a 12-month period more than \$1,000 on lobbying generally, or more than \$250 on lobbying a single official.</p>
<p>Bottom Line</p>	<p>If the total cost of Students Vote Now direct communications activities can be kept below \$2,675, and the total compensation and reimbursement paid to any individual staff member for direct lobbying can be kept to below \$675 (for time in direct lobbying communications only), then neither the organization nor any staff will need to register now. The lobbying of the Mayor of Detroit may require registration under the Detroit city ordinance but can likely be avoided if Students Vote Now can choose a staff member to speak with the Mayor who is not a registered Lobbyist Agent under Michigan state law, and also ensure they spend less than \$250 in lobbying expenditures on this activity.</p>

¹ <https://detroitmi.gov/government/city-clerk/lobbyist-registration-and-reporting-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 *Michigan Lobbying Disclosure Guide* for more details on the actual text of the Michigan lobbying statute, and any related advisory opinions.
<https://bolderadvocacy.org/resource/michigan-lobbying-disclosure/>
- Also see our *Michigan Campaign Finance and Ballot Measure Guide* for rules related to state ballot measure advocacy, which Michigan regulates as a campaign finance activity, unlike the IRS which regulates such activities as direct legislative lobbying.
<https://bolderadvocacy.org/resource/michigan-campaign-finance-and-ballot-measure-guide/>

MICHIGAN STATE RESOURCES:

- **Michigan Secretary of State Lobbying Division**
The website of the Michigan Secretary of State's lobbying division can be accessed at: <https://www.michigan.gov/sos/elections/Disclosure/lobby>
- **Full Text of Michigan Lobbying Statutes**
The full text of the Michigan state lobbying statute can be accessed by using the "printer friendly" link at: <http://legislature.mi.gov/doc.aspx?mcl-Act-472-of-1978> and the Administrative Rules at: <https://ars.apps.lara.state.mi.us/AdminCode/DownloadAdminCodeFile?FileName=R%204.411%20to%20R%204.473.pdf&ReturnHTML=True>
Note that certain sections of the statute, especially those involving dollar amounts, have been revised via executive order or otherwise, and you should use these links together with the more frequently updated information in the Lobbying Manual and on the lobbying division's website.
- **Lobbying Manual**
The Secretary of State also puts out this helpful Lobbying Manual: https://www.michigan.gov/documents/sos/LobbyManual082911_377601_7.pdf
- **Filling Forms with Instructions and Current Threshold Numbers**
Various lobbying related forms, as well as a memo outlining the current lobbying threshold and expenditure reporting numbers can be found on the lobbying division's website at: <https://www.michigan.gov/sos/elections/Disclosure/lobby>
- **Additional Questions**
Additional questions about lobbyist registration and reporting can be directed to a Lobbyist Specialist at 800-292-5973 or disclosure@michigan.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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