

PRACTICAL GUIDANCE

What Nonprofits Need to Know About Lobbying in

COLORADO

New in This Update:

This Practical Guidance resource updates the 05.24.22.1 version. Updates include:

- A new FAQ describing additional issues to consider if you are a fiscally sponsored organization.

Inside This Guide:

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

DIRECT OR GRASSROOTS LOBBYING OF:	CAN THIS TRIGGER?	TRIGGER
State Legislators	Yes	Any communications by paid staff on your organization's behalf with any covered state official which are intended to influence legislation or other matters of the General Assembly.
State Executive Branch Officials	Yes	Any communications by paid staff on your organization's behalf with any covered state official which are intended to influence executive branch or agency decision making (including whether to sign legislation).
Local Legislators or Local Executive Branch Officials	Maybe	The Colorado state lobbying statute does not regulate lobbying at the local level, but Denver and Aurora have their own municipal lobbyist ordinances, and there is a trend towards more county and municipal lobbying regulation.

KEY LOBBYING TAKEAWAYS FOR NONPROFIT ADVOCACY ORGANIZATIONS IN COLORADO:

- **Nonprofits using any paid staff to lobby will need to have them register and report:** Paid nonprofit staff doing any direct lobbying communications with officials in the legislature, executive branch or rulemaking state agencies will likely need to register as lobbyists. If your organization plans to engage in grassroots lobbying (calling on the public or other organizations, to take action), then you'll also want to be sure that at least one of your paid staff directing those efforts is registering and reporting.
- **Unpaid lobbyists may have to do a simplified “volunteer lobbyist” registration:** Volunteers or anyone not paid by your organization to lobby are not required to follow the full Secretary of State registration and reporting requirements. That said, if any volunteers lobby the General Assembly on your organization's behalf, they should fill out a very simple one-page Volunteer Lobbyist Registration Form and will be included on a public list of volunteer lobbyists.
- **There are very strict limits on expenditures for covered officials:** The Colorado Constitution prohibits a paid lobbyist from gifting anything of value – including meals and drinks – to most public officials, including local governmental officials, and there are also strict restrictions on even unpaid lobbyists and organizations giving gifts to such officials.

This resource is current as of July 2023. We do our best to periodically update our resources and welcome any comments or questions regarding new developments in the law. Please e-mail advocacy@afj.org or 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 the free Bolder Advocacy Technical Assistance Hotline and the written legal resources available in Bolder Advocacy's resource library at <https://bolderadvocacy.org/>

Q: What activities count as lobbying?

Colorado defines **lobbying** as communicating directly, or soliciting others to communicate, with a **covered official** for the purpose of aiding in or influencing **legislative** or **rulemaking activities**.

- **Covered official** means:
 - The Governor, Lieutenant Governor, a legislator, the Director of research of the Legislative Council and Legislative Council staff, a member of a rulemaking board, a member of a rulemaking commission, or a rulemaking member of a board or commission or rulemaking official of a state agency which has jurisdiction over the subject matter of a rule, standard or rate
 - While the list of **covered officials** is limited, any effort to reach a covered official through other individuals – from the official's staff, to other lobbyists or other persons of influence, to a grassroots network – is considered “soliciting others to communicate” and is therefore also lobbying
- **Legislative activities** include:
 - The drafting, introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, or veto of any bill, resolution, amendment, nomination, appointment, or report, pending or proposed for consideration by either house of the General Assembly or committee thereof, whether or not the General Assembly is in session
 - The preparation of a fiscal summary for a ballot initiative, or an initial fiscal impact statement; or the convening of a special session of the General Assembly or the specification of business to be transacted as such special session
- **Rulemaking activities** include the drafting, consideration, adoption or defeat of any rule, standard or rate of any state agency having rulemaking authority.
- **Grassroots lobbying** is generally understood to include grassroots organizing campaigns urging your organization's members or mailing list to contact state officials regarding a pending bill or rulemaking. Because grassroots lobbying is an effort to

solicit others to lobby covered officials, it is considered **lobbying** under Colorado law (assuming paid staff are involved in the effort). If your organization's paid staff engage in grassroots lobbying more than once per year (see limited exceptions below), it will trigger registration, and you should ensure that at least one paid staff person is registered in order to report on these activities.

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

Any person who does any lobbying (i.e., direct or indirect communications with covered officials), and who is paid to do so as part of their work for your nonprofit organization, whether as an employee or a consultant, will need to register and report their lobbying activities to the state. The state refers to any such individuals as **professional lobbyists** – everyone from seasoned pros who work for fancy lobbying firms, to an employee of an organization like yours whose job includes a variety of non-lobbying duties (but also includes some lobbying), are considered “professional lobbyists” under the law.

Because the trigger for registration is actual communications with covered officials, your organization can limit its registration and reporting burden by designating a point person to register as a lobbyist and handle all communications that might trigger lobbyist registration.

- For any direct lobbying communications with covered officials, it is important to remember that anyone on your staff who makes those communications (discussions over e-mail or text, phone calls, meetings, etc.), is technically required to register. If you designate a point person to serve as your registered lobbyist, you should make it clear to all staff that only that person should be having direct communications with covered officials.
- Because grassroots lobbying communications involve **indirect** communications, you might appoint as “point person” someone who broadly directs the grassroots lobbying effort, and have that person register and report on your organization's grassroots lobbying efforts. Doing so will ensure that those efforts are being reported to the Secretary of State, but will avoid obligating every single staff person involved in those efforts to register.

Designating a point person (or multiple point persons) in this manner can help your organization avoid having to register staff members who play only a supporting role in lobbying efforts (e.g., developing strategy, creating lobbying materials, etc.). Note, however, that the registered lobbyist/point person should still include in their reports any expenses incurred by other support staff.

A **volunteer lobbyist** is someone who would otherwise be considered a “professional lobbyist,” but who does not receive any payment for lobbying (other than reimbursements for reasonable personal expenses such as meals, travel, lodging and parking). Volunteer lobbyists are not required to register or report to the Secretary of State, but if they are lobbying the General Assembly on your behalf (either directly, or indirectly through coordinating grassroots campaigns in your organization's name), they must file a simple one-page registration form with the General Assembly.

Q: How does the trigger threshold work if we are a fiscally sponsored project?

You will need to be sure you are communicating transparently and in a timely fashion with your fiscal sponsor if you plan to undertake activities that might potentially count as lobbying activities!

Each fiscal sponsor will have its own ways of working with projects who wish to take on lobbying activities.

In general, for fiscally sponsored projects that do not have their own legal entity and the fiscal sponsor engages all of the project's independent contractors or employees, the lobbyist registration trigger must be analyzed together with all of the projects housed at the fiscal sponsor who are doing lobbying activities in the state.

FAQS

Your account manager at your fiscal sponsor will be able to help you understand how they track the registration threshold.

IMPORTANT NOTE: In states where registration is required prior to lobbying, or very shortly after the registration threshold is reached, or periodic lobbyist disclosure is due shortly after the end of a reporting period, special procedures may need to be worked out in order to process your project's registration or reporting on time. You should connect with your account manager as soon as you begin planning any potential lobbying strategy!

Q: Are there exceptions to what counts as lobbying?

Yes! The exceptions most relevant to nonprofit organizations are:

- **Public testimony:** Nonprofit staff can give testimony or provide information to committees of the General Assembly or at public hearings of state agencies without having to register as lobbyists.
- **One-time grassroots lobbying:** If an organization engages in grassroots lobbying only **one** time during the year, then the individual who directs the grassroots lobbying activity does not have to register or report. Note that this exception is very narrow, and generally can only be used for organizations that aren't actively pursuing any work that counts as lobbying under the Colorado regulations.

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 <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 <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?

Colorado has many paths by which a measure can be put before voters. Citizens can try to put proposed statutes and proposed amendments to the Colorado constitution on the ballot via petition, bypassing the legislature. Citizens can also petition to put a veto referendum on the ballot that would ask voters whether to reject a statute passed by the legislature and signed by the Governor. The Legislature can also vote to place proposed state constitutional amendments, proposed statutes, non-binding advisory questions, or certain bond offering before voters.

Communicating directly with a covered official (or soliciting others to communicate) with the goal of influencing the legislature’s decision about whether to place a proposed statute, constitutional amendment, advisory question, or bond issuance on the ballot would be lobbying, and the rules described in this guide would apply.

Supporting or opposing a ballot measure once it is on the ballot is not regulated as lobbying activity under Colorado law (even though the IRS considers this activity to be lobbying). Instead, Colorado regulates such activity under the state’s campaign finance laws.

Nonprofit organizations considering working on ballot measures in Colorado (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?

Each of your staff that are paid to lobby for you (called “professional lobbyists” by the state, even if they may lobby for you as only a small portion of their job description) must register with the Secretary of State **prior** to beginning any lobbying activity. Your organization itself does not need to register but is responsible for ensuring that your staff properly register and report.

Registration is completed online at:

https://www.sos.state.co.us/pubs/lobby/lobby_home.html?menuheaders=6

The process for registration includes the following:

- First your employee should request a User ID at: <https://www.coloradosos.gov/lobby/RequestUserId.do>
- Note that your employee should click the “Individual lobbyist that is not employed by a lobbying firm” option. Staff should **not** fill out the “Firm/Organization Name” text box on the User ID request form – this box is for lobbying firms only. There will be a place later in the process to enter the name of your organization.
- After your employee has submitted their User ID request form, they will receive an e-mail informing them that their request has been accepted, and asking to select the initial reporting month, which is the month of registration.
- Each individual registering will also be required to pay the lobbyist registration fee, which is currently \$40 for the year. Note that if your organization is a nonprofit with gross annual revenue of \$50,000 or less, the Secretary of State will waive that fee upon request.
- The system will require the lobbyist to enter their “clients” – this is where your staff member should list your nonprofit organization.

For more details see the Lobbying Guidance Manual put out by the Secretary of State at: <https://www.sos.state.co.us/pubs/lobby/files/guidanceManual.pdf>

FAQS

Any **volunteer lobbyists** that your organization is directing to lobby on your behalf should fill out the very simple one-page Volunteer Lobbyist Registration Form found at <https://leg.colorado.gov/agencies/house-representatives/volunteer-lobbyist>

The form includes an acknowledgment that the volunteer lobbyist has a copy of the “Guidelines for Lobbyists” which can be found at <http://www.leg.colorado.gov/agencies/house-representatives/guidelines-lobbyists>

Your volunteers should include your nonprofit’s name in response to the “Lobbyist Group” question.

Volunteers should also note that the information on the form is made publicly available via the GA’s Volunteer Lobbying List at <http://www.leg.state.co.us/house/Lobbyist.nsf> Accordingly, to keep your volunteers from having their personal information publicly listed, you can advise them to instead list the contact information of your nonprofit.

Q: When are periodic lobbying reports due?

Lobbyists that work for a single nonprofit organization will need to submit three different kinds of lobbyist reports: monthly, annual cumulative, and “72-hour” reports whenever the lobbyist lobbies on a new bill or changes a position on a bill.

- Monthly lobbyist reports are due on the 15th day of each month and cover the previous month’s activities. Monthly reports must be filed even for months where the lobbyist did no lobbying.
- Annual cumulative reports are due on July 15th of each year.
- 72-hour reports are due within 72 hours of starting to lobby on a new bill or other issue, or the change in position on that issue.

Late fines are \$20 a day for each business day a report is delinquent up to the first ten business days. After that, penalties increase to \$50 a day for each business day a report remains late. There is a process for requesting a reduction or waiver of fines, but the fines continue to accrue until the report is filed. For more details see the Lobbying Guidance Manual section on penalties and waivers.

Q: What information do the periodic lobbying reports include?

For staff members who qualify as “professional lobbyists” (i.e., anyone who is paid by your nonprofit to engage in lobbying, even if only part of their duties), the monthly reports will generally require the lobbyist to report:

- The source of their lobbyist compensation (your organization, their employer)
- The dollar amount of their total monthly compensation attributable to the portion of their work spent lobbying (i.e., if they are paid a salary, and spend 10% of their time lobbying, then 10% of their salary would be reportable)
- Their lobbying expenditures (i.e., travel expenses, or printing costs, or other costs directly associated with lobbying, explained in more detail below)
- Details about the bills or other issues they communicated with covered officials on, and your nonprofit’s position on those issues

Remember, since the definition of “legislative activities” is quite broad, there are many activities that take place outside of the legislative session that might qualify. For instance, if your organization is communicating with a legislator on the drafting of an initial bill that has yet to be introduced in session, this is still considered lobbying regarding a legislative activity and should be reported.

Annual disclosure statements are generated automatically from previous monthly filings and should be auto-populated (unless amendments are necessary).

For more details see the Lobbying Guidance Manual.

Q: What is considered a reportable “expenditure”?

Any expenditures which are directly related to your lobbying activities, including expenditures involved in any grassroots lobbying, are generally reportable. Practically, that would include things like:

- Payments to consultants or other professional service providers (i.e., someone your organization retains to develop lobbying strategy, or to draft a report on a prospective bill)
- Costs directly related to your lobbying efforts – for example, printing costs for producing 100 copies of a report to distribute to legislators
- Equipment or materials that are specifically used for lobbying efforts, such as an academic subscription purchased to research issues regarding specific bills your organization is supporting or opposing
- The Colorado statute also specifically requires reporting of:
 - Expenditures for advertising and content in publicly-distributed mass media
 - Expenditures made for, or to, covered officials. Note, however, that due to Colorado’s gift ban, your expenditures to covered officials should generally be \$0!

Gift Ban: As noted above, professional lobbyists (which includes your paid staff who engage in lobbying, even if lobbying is a small part of their job description) are expressly prohibited by the Colorado Constitution from giving anything of value – including meals and drinks – to most public officials, including **local** government officials, which is a broader group of public officials than that covered by the state level lobbying regulations. There are limited exceptions to this prohibition, and non-lobbyists are permitted to gift items of a very small value to government officials. Nevertheless, from a practical perspective, if your organization anticipates offering anything of value to a covered official in connection with lobbying efforts, you should first consult with local counsel, or the Colorado Independent Ethics Commission, which enforces the gift ban, at 720-625-5697, or iecinfo@state.co.us.

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?

Wearing a lobbyist badge is voluntary but encouraged. Badges should be sized 1” x 3” and should be blue with white lettering. Badges are available from office supply stores.

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

Limits on campaign contributions: When the General Assembly is in session or legislation is before the Governor, lobbyists are prohibited from making or soliciting contributions for members of the General Assembly, certain key state executive branch officers or any candidates for such office, even in the lobbyist’s personal capacity.





No contingency fees: In addition, a lobbyist’s compensation may not be contingent upon the outcome of the legislation or executive agency decision they are advocating for or against.

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 Colorado 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 Colorado House of Representatives regarding the student perspective on Bill 101.
- Having an employee engage with the Mayor of Denver 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 that are regulated in Colorado. Prior to launching the campaign, Students Vote Now should ensure that at least one paid staff member directing the student engagement campaign is registered as a lobbyist and include these activities in their lobbyist report. It is not necessary that all employees involved in the campaign be registered. The expenditures related to the additional staff time and any direct mailing or other costs for the programming will be included in the monthly reports of the registered lobbyist.</p>
 <p>Lobby Day</p>	<p>Because the Lobby Day involves direct communications with legislators on a legislative decision, this activity will also trigger registration if done or coordinated by any paid staff. Unpaid volunteers who lobby members of the General Assembly in this activity will be considered volunteer lobbyists who do not need to register or report with the Secretary of State but will need to register as volunteer lobbyists with the General Assembly. Finally, given Colorado's strict gift ban, your organization should generally refrain from giving away "swag" to legislators, and can give them information about your organization instead.</p>
 <p>Committee Testimony</p>	<p>There is a lobbying exception for testimony given before a General Assembly committee and this activity on its own does not require any lobbyist registration or reporting.</p>
 <p>Mayor</p>	<p>Lobbying the Mayor of Denver is not regulated under state law, but Denver has its own municipal lobbying code, which this proposed activity appears to trigger.¹ Local public officials are also included in the state gift ban. Aurora also has its own lobbyist registration ordinance.² 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.</p>
<p>Bottom Line</p>	<p>Students Vote Now's activities will trigger lobbyist registration and reporting with the Secretary of State if paid staff are participating. Volunteers acting at the direction of Students Vote Now in direct interactions with the General Assembly should also complete the limited volunteer lobbyist registration with the General Assembly. For the proposed interaction with the Mayor of Denver, if paid staff meet with the Mayor, lobbyist registration with the City of Denver will likely be required. Because of Colorado's strict gift ban, Students Vote Now should generally refrain from giving any swag to the legislators or the Mayor and give out information about the organization instead.</p>

¹ <https://www.denvergov.org/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directory/Office-of-the-Clerk-and-Recorder/find-records/lobbyist-and-financial-disclosures>

² <https://www.auroragov.org/cms/One.aspx?portalId=16242704&pageId=17862041>

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 Bolder Advocacy's team of experts by e-mailing advocacy@afj.org or calling 866-NP-LOBBY (866-675-6229) during standard business hours.

COLORADO STATE RESOURCES:

- **Secretary of State's Office**
Colorado's lobbyist registration and reporting system is administered by the Secretary of State. Their website can be found at: https://www.sos.state.co.us/pubs/lobby/lobby_home.html
- **Full Text of Colorado Lobbying Statutes**
The full text of the Colorado state lobbying statute can be found at: <https://www.sos.state.co.us/pubs/lobby/lawsRules.html>
- **Colorado Lobbying Handbook**
The Secretary of State's office puts out the Colorado Lobbying Handbook to help lobbyists comply with the registration and reporting requirements of the law: <https://www.sos.state.co.us/pubs/lobby/files/guidanceManual.pdf>
- **Colorado Lobby Talks**
The Colorado Lobby Support Team puts on a series of helpful zoom sessions providing Colorado lobbyists the opportunity to review lobbying policy and process. You can download the training materials, and recorded webinars are available for viewing on the website. <https://www.sos.state.co.us/pubs/lobby/lobbyTalks.html>
- **Additional Questions**
Questions about lobbyist registration and reporting can be directed to a representative at the Lobbying Division of the Secretary of State's office: 303-894-2200 or lobbyists@sos.state.co.us.

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 Bolder Advocacy's federal law resources to ensure all IRS compliance obligations are being met. See <https://bolderadvocacy.org/resource/being-a-player-a-guide-to-the-irs-lobbying-regulations-for-advocacy-charities/>



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