

PRACTICAL GUIDANCE

What Nonprofits Need to
Know About Lobbying in

SOUTH DAKOTA

Inside This Guide:

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

DIRECT OR GRASSROOTS LOBBYING OF:	CAN THIS TRIGGER?	TRIGGER
State Legislators	Yes	An individual must register as a lobbyist if they are “employed” by your organization to attempt to influence legislation on your behalf. Volunteers can sometimes be sufficiently involved in your organization that the State considers them employed by you for the purpose of registration. Registration is required prior to lobbying. Your organization does not register, but must file an authorization for each lobbyist it employs and must also file annual expenditure reports.
State Executive Branch Officials	No	South Dakota does not regulate attempts to influence executive branch officials.
Local Legislators or Local Executive Branch Officials	Probably not	South Dakota state law does not regulate local lobbying and none of the largest cities currently regulate municipal lobbying. Nevertheless, it is always good practice to check with local officials before lobbying at the local level.

Grassroots lobbying: Grassroots legislative lobbying (calling on members of the public, or other organizations, to take action on legislation) is regulated and can trigger registration and reporting. Neither direct nor grassroots lobbying of executive branch officials is regulated as lobbying.

KEY LOBBYING TAKEAWAYS FOR NONPROFIT ORGANIZATIONS IN SOUTH DAKOTA:

- **South Dakota only regulates legislative lobbying:** Unlike many states, South Dakota does not regulate lobbying directed at executive branch decisions. Your employee is only lobbying if they are attempting to influence actions taken by members of the state legislature.
- **Almost any lobbying will trigger registration, but reporting is straightforward:** Almost any attempt by an employee (or seriously involved volunteer) to influence legislation on your organization’s behalf will trigger an obligation to register – there is no minimum threshold for the amount of lobbying, or the compensation received for lobbying, that triggers registration. The registration process is simple, however, and the required annual report calls only for expenditures made specifically for legislative lobbying – you will not need to report prorated compensation or overhead.
- **Volunteers lobbying on behalf of an organization can trigger registration:** South Dakota lobbying law requires registration whenever an individual or group “employs” another person for lobbying – the Secretary of State has provided informal guidance that it interprets the word “employs” broadly enough to include reliance on unpaid volunteers who are sufficiently involved in an organization on a day-to-day basis that they are the equivalent of a staff member (e.g., an unpaid board member or a full-time volunteer). If such volunteers are lobbying on your behalf, the state would expect them to register.

This resource is current as of December 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 us at advocacy@afj.org 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.

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?

Lobbying in South Dakota is regulated by the Secretary of State’s Lobbying Registration Services, and is defined as seeking the introduction of legislation or promoting, opposing, or influencing in any manner the passage by the Legislature of any legislation “affecting the special interests of any agency, individual, association, or business, as distinct from those of the whole people of the state.”

Note that the language in the statute about legislation “affecting the special interests of any agency, individual, association, or business, as distinct from those of the whole people of the state” should be interpreted broadly as encompassing any lobbying done **on behalf** of an individual or entity, including the kind of well-intentioned public advocacy that many small nonprofit organizations engage in – it is not limited to corporate or profit-seeking interests. We are not aware of any guidance from the Secretary of State’s office that would limit a lobbyist’s obligation to register simply because the lobbyist believed their advocacy to be in the broader public interest.

South Dakota lobbyist rules do not apply to attempts to influence executive branch officials about agency actions. The only lobbying regulated in South Dakota is lobbying directed at the state legislature.

Grassroots lobbying, if it involves an attempt to influence **legislation**, counts as lobbying and can trigger an obligation to register and report.

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

If your organization **employs** an individual to lobby on its behalf, the individual acting as a lobbyist must register with the Secretary of State. Your organization, as the employer, does not need to register, but you must file a written authorization acknowledging that the lobbyist represents you. You will also file annual expenditure reports.

Unlike many states, South Dakota does not have a minimum threshold for the amount of lobbying, or the compensation received for lobbying, that triggers registration.

FAQS

Some lobbying activity can trigger registration, even if the individual does not receive any compensation. For example, the Secretary of State's office has provided informal guidance that it would consider a volunteer involved in your organization on a day-to-day basis, and who lobbies on your behalf, to be "employed" and therefore required to register. For many nonprofit organizations, an unpaid board member might fall into that category. By contrast, the Secretary of State's office has also indicated that a volunteer who is not involved in your organization on a regular basis – for example, someone who attends a Lobby Day but is not otherwise very involved – would not trigger registration, even if they engage with lawmakers in a way that associates them with your organization.

If you are engaging in lobbying that involves volunteers, and you are unsure whether their ties to your organization are sufficient to trigger registration, you should contact the Secretary of State's office for guidance.

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.

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!

Compared with most states, South Dakota has very few exceptions to lobbyist registration requirements. However, note the following:

- Any person representing a bona fide church solely for the purpose of protecting the public right to practice the religious doctrines of the church is exempt from registration.
- Any elected member of the governing board of a federally recognized Indian tribe is also exempt from registration.

Unlike most states, South Dakota does not have an exception for individuals testifying before the legislature or other government body – testimony will trigger an obligation to register.

Note, however, that an individual who appears as a witness before any legislative committee, or any board, commission, or committee of state government to speak in their own name, and in their own or in the public interest, will not be required to register. For most nonprofit organizations, this rule could become relevant if a volunteer or other constituent testified on their own behalf to provide their experience or perspective.

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 substantial 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?

South Dakota ballot measures may be initiated by citizens (via petition) or placed on the ballot by the legislature.

While legislation proposing a new state constitutional amendment, or placing a statutory referendum on the ballot, is pending before the legislature, advocacy regarding the amendment or referendum would count as lobbying and be subject to the rules described in this Guide.

Gathering signatures to support a citizen petition, or supporting or opposing a measure once it is already on the ballot, is regulated activity under South Dakota’s campaign finance laws. (Note, however, that the IRS considers this activity to be lobbying.)

Nonprofit organizations considering working on ballot measures in South Dakota (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?

Lobbyist registration

Your employee lobbyist can register online, or by downloading, completing, and submitting a paper form. The PDF form can also be filled out on screen, saved, and submitted by e-mail to lobbyist@state.sd.us. All of the necessary forms, access to the online portal, and a link to a helpful Registration Guide, can be found at <https://sosenterprise.sd.gov/BusinessServices/Lobbyist/Default.aspx>

Your employee lobbyist will be required to provide the contact information for both themselves and your organization (their employer). The required information includes certain information about the employee lobbyist's **residential** address (this address will not be made public), the lobbyist's occupation, the name and contact information of the employer's authorizing agent, and the subject of the anticipated lobbying.

Your employee lobbyist's entry about the subject matter of their anticipated lobbying does not need be detailed – the example given by the Secretary of State's published guidance just says "Accounting." They do not need to list specific bills or resolutions.

When your employee lobbyist completes their registration online, they should be able to select your organization from a drop-down menu – or, if it does not appear, to add it. The same is true of your organization's authorized agent.

At the time of registration, your lobbyist will pay a \$40 registration fee – if they are registering online, they can pay the fee by credit card.

Employer authorization

In South Dakota, only your employee lobbyist (not your organization) must register. At the time your employee registers, they will identify an **authorized agent** for your organization. This is the person the Secretary of State's office will contact to fill out and return an employer authorization form in order to confirm that the lobbyist is actually approved to lobby on your behalf. The form should be returned to the Secretary of State by physical mail or e-mail within 10 days of the associated lobbyist registration, at which point their registration is effective.

Q: When are periodic lobbying reports due?

Lobbying expenditure reports must be filed by both your individual lobbyists and your organization (even though you didn't need to register) by July 1st of each year, to report information about the previous legislative session. The regular legislative session begins in mid-January of each year and runs for several weeks.

At times, the South Dakota legislature holds a special legislative session outside of the regular legislative calendar. If your organization lobbies during a special session, the Secretary of State's office has provided informal guidance that there is no specific deadline for filing a supplemental report, but that you should file it as soon as possible.

If you are not sure whether you need to file an additional report relating to a special session, you should contact the Secretary of State's office for guidance.

Q: What information do the periodic lobbying reports include?

Although the text of South Dakota's lobbying law instructs you to report all costs that are "incurred for the purpose of influencing legislation" during the relevant legislative session, including the costs of grassroots legislative lobbying, this broad requirement has numerous exceptions that are discussed in the next FAQ.

In general, only expenditures made specifically for the purpose of lobbying will need to be reported, and you won't need to report prorated expenditures made for multiple purposes (like office overhead).

Q: What is considered a reportable “expenditure”?

Lobbying expenditures generally include all costs that are “incurred for the purpose of influencing legislation” during the relevant legislative session, including the costs of grassroots legislative lobbying. They do not include expenditures that fall in the below exceptions:

- Neither your organization nor your lobbyist need to report prorated lobbyist compensation.
- Neither your organization nor your lobbyist need to report prorated overhead or office expenses.
- You do not need to report lobbyist personal expenditures (such as meals, travel, and lodging) made while attending a legislative session. However, the Secretary of State’s office has provided informal guidance that you should report expenditures on meals and travel unrelated to attendance at the Capitol (for example, working meals at the office, or travel to a grassroots lobbying event).

For expenditures that you do need to report, you will need to provide a description of the expenditure, the amount, the ending date of expenditure (for example the end date of a contract), and whether the expenditure was a gift.

South Dakota’s lobbyist expenditure report and employer expenditure report form ask for the same information. Expenditure should not be “double reported” – instead, whoever bears the cost for an expenditure (the lobbyist or the employer) should report it. Accordingly, if your employee lobbyist makes expenditures that your organization reimburses, those expenditures should be reported by your organization, not your lobbyist. If, like most nonprofit organizations, you reimburse all (or nearly all) of your employee lobbyist’s expenses, your registered employee lobbyists will generally have little or nothing to report.

Gift ban: South Dakota limits the value of gifts that any lobbyist, or their employer, may give to a public official or their families. The amount of the limit was \$100 when the rule was enacted, and is reset each year with reference to the nationwide consumer price index. For 2023 the limit was set at \$115.47. In upcoming years, the new limit will be announced on the Secretary of State’s lobbying page (linked on the Additional Resources page of this guide).

While there are a number of fairly broad exceptions to the gift limit, including food, drink, or entertainment given for immediate consumption, and materials or activities used to educate and inform lawmakers, it is often best practice for smaller organizations without compliance staff to simply avoid giving gifts to public officials. A complete list of the gift limit exceptions can be found in the lobbying statute, here:

<https://sdlegislature.gov/Statutes/2-12-18>

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. Note specifically that in South Dakota the gift limit applies to executive branch officials as well as legislators. 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?

Lobbyists are required to wear a badge when inside the capitol complex. The Secretary of State’s office will provide the badge each year at the time of registration. In other

FAQS

settings, it is always a good practice to identify oneself as a lobbyist before speaking with lawmakers or their staff about pending legislation.

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

Yes.

In South Dakota, lobbyists may not enter the floor of either chamber unless they are invited.





Paying lobbyists contingency fees based on securing passage or defeat of legislation is also prohibited.

Case Study STUDENTS VOTE NOW

Students Vote Now is a hypothetical small 501(c)(3) advocacy organization considering being vocal about Bill 1001 currently pending in the South Dakota 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 1001 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 House of Representatives regarding the student perspective on Bill 1001.
- Having an employee engage with the Mayor of Sioux Falls about a similar, but separate, local ordinance being considered.

ACTIVITY	LOBBYIST REGISTRATION/REPORTING REQUIREMENTS
 <p>Student Engagement</p>	<p>Any staff involved in this student engagement outreach will trigger registration, since it is regulated legislative grassroots lobbying.</p> <p>Unpaid volunteers may also trigger registration, if they are sufficiently involved with the organization.</p> <p>Students Vote Now will need to report any expenditures it made on these activities on its annual expense report.</p>
 <p>Lobby Day</p>	<p>Lobby Day will trigger registration for staff who participate – and, as with the grassroots campaign, unpaid volunteers that are sufficiently involved with the organization should register as well.</p> <p>Members of the public, and volunteers who are not regularly a part of Students Vote Now activities, but who attend Lobby Day, will not be required to register, but the organization will need to report the costs of their participation (such as the bus, or meals).</p> <p>To minimize the chance of exceeding South Dakota's gift limit, Students Vote Now should consider giving information about the organization instead of swag.</p>
 <p>Committee Testimony</p>	<p>There is no lobbying exception for public testimony in South Dakota. If a staff member of Students Vote Now testifies on behalf of the organization, they will be attempting to influence legislation and will trigger registration.</p>
 <p>Mayor</p>	<p>South Dakota does not regulate lobbying directed at local and county officials, and Sioux Falls does not have its own municipal lobbying ordinance. Therefore, this activity will not trigger registration or need to be reported.</p>
<p>Bottom Line</p>	<p>All of the state level activities that Students Vote is considering will likely trigger registration of at least one staff member.</p> <p>The burden of registration and reporting are both low, however, and Students Vote Now will be able to meet its reporting obligations simply by disclosing the money it spends directly on these lobbying efforts.</p>

ADDITIONAL RESOURCES

BOLDER ADVOCACY'S TECHNICAL HOTLINE:

Bolder Advocacy's free Technical Assistance 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.

SOUTH DAKOTA STATE RESOURCES:

- **Secretary of State General Services Division**

The Secretary of State's Lobbying Registration Services can be accessed at:

<https://sosenterprise.sd.gov/businessservices/lobbyist/default.aspx>

- **Full Text of South Dakota Lobbying Statutes**

A link to the full text of the South Dakota state lobbying statute can be found on the Secretary of State's Lobbying Home page or accessed directly at: <https://sdlegislature.gov/Statutes/2-12>

- **Lobbying Registration Guide**

A step-by-step guide to the online registration process can be found on the Secretary of State's Lobbying Home page, or accessed directly at:

https://sdsos.gov/docs/online_lobbyist_registration_guide.pdf

- **Additional Questions**

Any questions about lobbyist registration and reporting can also be directed to the lobbyist administrator at lobbyist@state.sd.us or (605) 773-3537.

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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