

PRACTICAL GUIDANCE

What Nonprofits Need to
Know About Lobbying in

MONTANA

Inside This Guide:

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

DIRECT LOBBYING OF:	CAN THIS TRIGGER?	TRIGGER
State Legislators	Yes	<p>Individuals: Being paid at least \$2,650 in prorated compensation in a calendar year (not including travel and accommodation reimbursements) to promote or oppose legislation on behalf of another.</p> <p>Organizations: Organizations must register once they have a staffer who registers individually, or once they have paid \$2,650 or more cumulatively in a calendar year to two or more individuals engaged in lobbying, even if no individual is required to register.</p> <p>The dollar threshold is adjusted for inflation before each odd-numbered year.</p>
State Executive Branch Officials	No	Executive branch lobbying is not currently regulated in Montana.
Local Legislators or Local Executive Branch Officials	Maybe	State law does not regulate local lobbying in Montana, but advocates should check for any local lobbying ordinances.

Grassroots lobbying: Grassroots lobbying (calling on members of the public to take action on their own to contact public officials) does not trigger registration in Montana, but once an individual or organization is registered, they will need to report any grassroots expenditures they make.

KEY LOBBYING TAKEAWAYS FOR NONPROFIT ADVOCACY ORGANIZATIONS IN MONTANA:

- Montana “licenses” lobbyists rather than “registers” them:** Technically, in Montana one applies to the state Commissioner of Political Practices (“COPP”) for a “license” to be a lobbyist, but the process is generally the same as lobbyist registration in other states, and the State sometimes uses the terms interchangeably. We will generally use the terms “register” and “registration” throughout this Guide.
- Executive branch lobbying is not regulated in Montana:** Lobbying state-level executive branch officials about rulemaking and other executive actions is not regulated by the State in Montana, so these activities do not trigger registration.
- Donors may need to be disclosed:** Once your staff or your organization has registered, then you are required to disclose in your periodic reporting the identify of any donor that makes. Contributions of \$250 or more to your organization in a calendar year that are **earmarked specifically** for lobbying. Your organization can avoid this kind of donor disclosure by not soliciting or accepting contributions specifically earmarked for lobbying – you can instead accept contributions for your general operating funds or for programming that also includes other activities besides lobbying.

This resource is current as of March 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?

In Montana, **lobbying** is promoting or opposing the introduction or enactment of legislation before the legislature or legislators and promoting or opposing any **official action** of the legislature. Only lobbying done through direct communications triggers registration, but if your organization is required to register, it must then also report any expenditures on grassroots lobbying.

- **Direct communication** includes face-to-face meetings, telephone conversations, and written or electronic correspondence or communication with public officials.
- **Official action** means a vote, decision, recommendation, approval, disapproval, or other action (including inaction) that involves the use of discretionary authority by the legislature (or a member of the legislature) concerning introducing or enacting legislation.

The lobbying laws clarify that even signing in as an opponent or proponent of official action on a sign-in sheet at a legislative hearing would count as lobbying.

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

Individuals: For individuals, being paid at least \$2,650 of prorated compensation for lobbying activities in a calendar year triggers lobbyist registration. You should only count prorated compensation for the time doing **lobbying activities** for the registration trigger calculation. Reimbursement for lobbying related expenses like travel, meals, and accommodation are not counted in the trigger calculation (but note that if your staffer or organization does register, travel reimbursements will then be reportable!).

Organizations: Paying \$2,650 or more in aggregate prorated compensation to multiple lobbyists for their lobbying activities, even if no individual lobbyist is required to register.

Lobbying activities includes time spent preparing and planning to lobby, but only **after you’ve decided to support or oppose specific official action**, as well as research and other background work that is intended, at the time it is performed, for use in lobbying. Travel and wait time do not count towards the trigger threshold.

FAQS

If you do work to prepare to lobby, but then never actually engage in any direct lobbying communications, you don't need to register.

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, your 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! Certain types of lobbying activities do not trigger state-level lobbyist registration. The exceptions most relevant to nonprofit organizations are:

- **Volunteers:** Activity by unpaid persons does not trigger individual or organizational lobbyist registration.
- **Supporting personnel:** An individual working for the same employer as a registered lobbyist **does not need to register**, if the individual does not have direct communication with public officials to support or oppose official action on behalf of the employer.
- **Giving information or testimony:** Responding to an explicit request from a public official is not lobbying **as long as the testimony does not support or oppose legislation**. Testifying at a committee hearing to voice support or opposition to legislation **is** lobbying.
- **Editorials and commentary in media:** Activities involving a bona fide news story, commentary, or editorial distributed through the facilities of any radio, television, broadcasting station, newspaper, magazine, or other periodical publication of general circulation is not lobbying. These activities would not trigger lobbyist registration because they are grassroots activities, but also do not need to be reported as grassroots lobbying expenditures in your reporting because the state exempts this activity from the definition of lobbying.
- **Membership communications:** Activities involving communications by a membership organization to its members. These activities would not trigger lobbyist registration because they are grassroots activities, but also do not need to be reported as grassroots lobbying expenditures in your reporting because the state exempts this activity from the definition of lobbying.

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?

In Montana issues can be placed on the ballot either through citizen initiatives or through legislative referrals. Any work done to influence the legislature to place a measure on the ballot may constitute lobbying, requiring registration and reporting as discussed in this Guide.

Once a measure referred from the legislature is on the ballot, or for citizen-initiated measures at any stage, supporting or opposing a Montana ballot measure is not regulated as a lobbying activity under Montana law (even though the IRS does count it as a lobbying activity). Instead, Montana regulates these activities to support or oppose a ballot measure under the state's campaign finance laws.

Nonprofit organizations considering working on ballot measures in Montana (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 in addition to any applicable lobbying related requirements.

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

Montana strongly prefers that you use the online registration system to register and report. You can access the system here: <https://lobbyist-ext.mt.gov/LobbyistRegistration/>

General instructions about using the online system to register both your lobbyists and your organization are available here: <https://politicalpractices.mt.gov/Home/Legislative-Session-and-Lobbying/>

Lobbyist registration forms: There are three different types of lobbyist registration forms. You will need to use only one or two of the forms, depending on your situation.

- **L-1: Lobbyist License Application:** This form must be filed by any individual staffer for your organization who was paid \$2,650 or more to lobby.
- **L-2: Principal Authorization Statement:** This form must be filed by your organization if you paid any staffer \$2,650 or more to lobby (which would mean that they also must file Form L-1).
- **L-3: Principal Registration Application:** This form must be filed by your organization if there's no single employee who you pay \$2,650 or more to lobby (and therefore have no staffer who is registered on Form L-1), but you nonetheless have paid multiple lobbyists a cumulative total of at \$2,650 or more.

You can preview the information you will need to provide on each of the forms here: <https://politicalpractices.mt.gov/Home/Forms>

The lobbyist registration fee is \$150 per cycle and is valid for up to two years (until the end of the next even-numbered year).

If the fee presents a hardship for your organization, you can apply for a waiver using this form: <https://politicalpractices.mt.gov/Home/Forms>

Q: When are periodic lobbying reports due?

Your organization should use Form L-5 to file periodic reports covering any employees who are registered lobbyists, as well as any expenses relating to staff who engage in lobbying activities for you but have not (yet) triggered registration.

The COPP “strongly encourages” principals and lobbyists to use the electronic filing system available here: <https://lobbyist-ext.mt.gov/LobbyistRegistration/>

Instructions on filing Form L-5 reports are available here: <https://politicalpractices.mt.gov/Home/Legislative-Session-and-Lobbying/>

All reports must be received by the due date to avoid penalties. There is a \$50 per day late fee assessed for each day a form L-5 is late, up to a \$2,500 maximum.

Form L-5 due dates:

Due Date	Period Covered	When Required
February 15 (in even numbered years)	From the adjournment of a session through 12/31 of odd numbered years	Always required
February 15 (in odd numbered years)	Two L-5 reports required: One covering 1/1 to 1/31 One covering preceding calendar year	Always required
March 15 (in odd numbered years)	2/1 – 2/28	If lobbying payments are \$5,000 or more in period
April 15 (in odd numbered years)	3/1 – 3/31	If lobbying payments are \$5,000 or more in period
30 days after adjournment (in odd numbered years)	4/1 – adjournment	Always required

FAQS

Your organization must also file additional L-5 reports in any month in which the legislature is not in sessions, but your organization spent \$5,000 or more in the month to lobby. (These extra reports are due on 15th of the following month.)

Your organization is also required to file an additional L-5 report after the adjournment of any special legislative session.

Your organization generally must file L-5 reports even if it made no lobbying payments and did no lobbying work. The exceptions are the March 15 and April 15 reports, which are only required if you meet certain expenditure thresholds.

If you know your organization is going to cease lobbying activities for the rest of a two year cycle, you can terminate your registration by filing a final L-5 and informing the COPP of your termination at cppcompliance@mt.gov.

Q: What information do the periodic lobbying reports include?

The periodic reporting on Form L-5 requires the following information:

- **Internal organizational expenditures:** Include prorated staff time, prorated internal office expenses, and grassroots lobbying expenses, as outlined in more detail in the next FAQ.
- **Details of legislative actions:** Your organization must report the specific official actions you were lobbying on, and your position on such actions.
- **Donor disclosure:** You must report any donor contributions of \$250 or more, if they were **earmarked specifically for lobbying activities**. You can avoid donor disclosure in this category by not soliciting or accepting any earmarked funds, and instead asking for general operating funds or funds earmarked for a broader program that includes activities other than lobbying.
- **Expenditures made for the benefit of public officials:** must be individually itemized if \$25 or more.

Q: What is considered a reportable “expenditure”?

The Form L-5 lists the following categories of reportable expenditures:

- **Total reportable payments to lobbyists:** This category includes prorated compensation paid to any of your lobbyists that were required to file a Form L-1 because you paid them more than \$2,650 in the calendar year to lobby.
- **Total payments to individuals other than registered lobbyists:** This includes payments to staff employed or retained by you either to lobby (but who have not yet registered) or to support your lobbying activities.
- **Travel expenses:** While reimbursed travel expenses to your lobbyists are not included in the lobbyist registration trigger calculation, they do then need to be reported here on Form L-5 once you are registered
- **Advertising (include production costs):** Grassroots lobbying does not trigger registration, but if your organization registers, you will need to report any expenditures you made on grassroots efforts. Remember that you will not need to include any expenditures relating to communicating with your members, editorials, or other media commentary because those activities are exceptions to the lobbying definition in the statute.
- **Entertainment (includes food and refreshments):** This category is generally for expenditures **for the benefit of public officials**. Reimbursements to your lobbyist employees for living expenses, including food, are not reportable. Note that any expenditures of \$25 or more on public officials must be itemized separately on another section of Form L-5. They are also subject to overlapping gift ban and other ethics rules.

- **Communication (include phone, fax, e-mail):** In this category you should report any lobbying specific communication expenditures. For example, if your organization incurred added phone costs due to grassroots lobbying phone banking activity, you would need to report that here. Note, however that such grassroots costs would not count towards the original lobbying registration trigger.
- **Postage:** In this category you should report any lobbying related expenditures on postage, including for grassroots efforts (although recall that grassroots expenditures do not count towards the registration trigger).
- **Printing:** In this category you should report any lobbying related expenditures on printing, including for grassroots efforts (although recall that grassroots expenditures do not count towards the registration trigger).
- **Other office expenses:** In this category you should report your prorated office expenses that are attributable to lobbying activities.

You must retain financial records relative to lobbying activity reporting for **at least three years** from the date of filing an expenditure disclosure report.

Gift ban: Montana bans gifts to public officials that are valued at \$50 or more. Note, however that the ban does not cover expenditures on food and beverages consumed at a civic, community, or charitable event. However, reporting expenditures made for the benefit of public officials is somewhat complicated, and it is important to note that regulations relating to lobbying expenditures almost always intersect in complicated ways with state and local ethics and “gift ban” laws. Those state and local rules often apply even if your organization has not triggered lobbyist registration, and may apply to a broader range of officials. You should be certain that you understand the intricacies of both sets of rules before giving any gifts to, or paying expenses for, any public officials at the state or local level.

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

Maybe!

Contributions totaling \$250 or more in a calendar year and **earmarked specifically for lobbying** must be disclosed on the L-5 Report.

You can avoid this kind of donor disclosure by not soliciting or accepting contributions that are earmarked for lobbying. Contributions for general operating expenses, or for a program that includes lobbying as well as other activities, do not need to be disclosed.

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

Although there are no Montana statutes that require a lobbyist to wear a badge while lobbying, it is best practice to introduce yourself and your organization at the beginning of a lobbying conversation.

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





Unlike most other states, it is legal to pay lobbyists contingency fees based on securing passage or defeat of legislation. Such contingent payments must be reported on your Form L-5 reports.

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 Montana 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 House of Representatives regarding the student perspective on Bill 101.
- Having an employee engage with the Mayor of Billings about a similar, but separate, local ordinance being considered.

ACTIVITY	LOBBYIST REGISTRATION/REPORTING REQUIREMENTS
 <p>Student Engagement</p>	<p>These Student Engagement activities are grassroots lobbying activities, that do not count towards the lobbyist registration trigger.</p> <p>If Students Vote Now needs to register based on its other activities, it will then also need to report these expenditures.</p>
 <p>Lobby Day</p>	<p>Students Vote Now will need to carefully monitor the prorated staff time of its paid staff to determine if it has reached a registration trigger for these activities.</p> <p>Preparation time from the point where Students Vote Now took a position on Bill 101 and started to prepare materials counts towards the registration threshold, as does time spent with the legislators during the Lobby Day.</p> <p>Travel time and wait time do not count towards the trigger calculation.</p> <p>Volunteer time also does not count towards the registration threshold, nor will any volunteers need to register. However, if Students Vote Now does register, the cost of the bus rental, and the volunteer T-shirts will be reportable (in addition to prorated staff compensation time).</p>
 <p>Committee Testimony</p>	<p>If paid staff testifies, time spent preparing and testifying will count towards the lobbyist registration threshold.</p> <p>Students Vote Now can potentially have unpaid volunteers or Board members testify, if it is hoping to avoid registration and this activity would put them over the registration threshold.</p>
 <p>Mayor</p>	<p>Montana state law does not regulate local lobbying and the city of Billings has no separate lobbying ordinance. Students Vote Now will not need to register or report for this activity.</p>
<p>Bottom Line</p>	<p>Because lobbying preparation time counts towards the \$2,650 prorated paid staff time registration trigger it may be hard to do the Lobby Day without triggering registration.</p> <p>If Students Vote Now was determined to not register, it could do the grassroots student engagement (which does not trigger and is not reportable unless the organization otherwise registers), carefully track time spent on the committee testimony and/or use volunteers to reduce paid staff time and engage with the Mayor of Billings.</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.

MONTANA STATE RESOURCES:

- **Commissioner of Political Practices**

The Montana Commissioner of Political Practices (COPP) oversees the lobbying licensing, registration, and reporting systems. You can find COPP's main lobbying page here: <https://politicalpractices.mt.gov/Home/Legislative-Session-and-Lobbying/>

- **Full Text of Montana Lobbying Statutes and Regulations**

- The full text of the Montana state lobbying statute can be found here:

- <https://politicalpractices.mt.gov/Home/Montana-Code-Annotated>

- The full text of Montana regulations can be found here:

- <https://politicalpractices.mt.gov/Home/Administrative-Rules-of-the-State-of-Montana>

- **Lobbying Registration and Reporting Forms**

You can preview the information you will need to report on the lobbyist registration and reporting forms here: <https://politicalpractices.mt.gov/Home/Forms>

- **Lobbying 101**

A brief helpful summation of the rules for lobbying can be found here:

https://politicalpractices.mt.gov/_docs/4lobbying/2021-23-Lobbying/2021-Lobbying-101.pdf

- **Guide to Lobbying and Montana's 2023 Legislative Session**

This slide deck also helpfully summarizes important points:

<https://politicalpractices.mt.gov/Home/Legislative-Session-and-Lobbying/Lobbying-and-Montanas-2023-Legislative-Session2.pdf>

- **Guides to the COPP Online System**

The COPP has produced guides that walk you through the registration and reporting processes using the online system here: <https://politicalpractices.mt.gov/Home/Legislative-Session-and-Lobbying/>

- **Additional Questions**

Any questions about lobbyist registration (licensing) and reporting can also be directed to COPP at (406) 444-2942 or cpphelp@mt.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 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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This resource was created by the Democracy Capacity Project, a special project of NEO Philanthropy, Inc., with the support of Alliance for Justice, the assistance of Nielsen Merksamer Parrinello Gross & Leoni, LLP, and with thanks to the many, many advocates and activists who do this critical work every day.