

PRACTICAL GUIDANCE

What Nonprofits Need to
Know About Lobbying in

MASSACHUSETTS

Inside This Guide:

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

DIRECT OR GRASSROOTS LOBBYING OF:	CAN THIS TRIGGER?	TRIGGER
State Legislators	Yes	<p>Individuals: Any individual who, for compensation, makes at least one direct lobbying communication, and spends 25 hours or more on, or earns \$2,500 or more from, legislative lobbying during a six-month reporting period. (Note that the 25 hours threshold includes prep time and grassroots lobbying time.)</p> <p>Organizations:</p> <ul style="list-style-type: none"> • If your organization has an employee who must register, then it must also register, as a client. • If your organization has no employee who needs to register, but spends \$250 or more on lobbying during a calendar year (including grassroots lobbying, but not including staff time), you must register and report using a special process called a "Section 44 registration."
State Executive Branch Officials	Yes	The same triggers as legislative lobbying also apply to executive lobbying. Unlike in many states, the hour and expenditure thresholds for executive and legislative lobbying are not cumulative. The \$250 threshold for an organization to file a Section 44 registration is cumulative, however.
Local Legislators or Local Executive Branch Officials	Maybe	Time or money spent lobbying local officials counts toward the above thresholds when the lobbying has a "common purpose" with other state-level lobbying activity.

Grassroots lobbying: Individual staff persons who do **only** grassroots lobbying and have no direct communications with public officials will not need to register as an individual lobbyist. Grassroots lobbying expenditures do count towards the organizational expenditure threshold, however, so organizations with grassroots programming may need to register as a Section 44 organization.

KEY LOBBYING TAKEAWAYS FOR NONPROFIT ADVOCACY ORGANIZATIONS IN MASSACHUSETTS:

- **Broad and detailed expense reporting:** Massachusetts requires registered lobbyists and their clients to report essentially all of their lobbying-related expenditures, including prorated overhead. Compensation must be prorated by each specific lobbying activity, when feasible, and operating expenses are itemized and include details about the recipient of each expenditure.
- **Some local lobbying is reportable to the state:** Massachusetts law provides that any local lobbying that has a "common purpose" with state-level lobbying is reportable. There is limited guidance on what this qualification means. If you think that your local lobbying arguably has a common purpose with your state efforts, consult the Lobbyist Division for guidance.

This resource is current as of May 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 is defined in Massachusetts as efforts to promote, oppose, influence, or attempt to influence certain government actions. There are two types of lobbying in Massachusetts, **legislative lobbying** and **executive lobbying**.

- **Legislative lobbying** means lobbying directed at state legislation, including the introduction or sponsorship of a bill, or the Governor’s approval or veto of a bill.
- **Executive lobbying** means lobbying directed at any decision of an officer or employee of the executive branch or of a statewide authority concerning legislation, the adoption or defeat of a rule or standard, or a procurement decision.

Note that lobbying of both types also includes “strategizing, planning, and research” (referred to as “Back Room Lobbying”) performed in connection with an actual communication with a government employee.

Lobbying also includes attempts to influence local officials when those efforts have a “common purpose” with lobbying of the state level officials.

Procurement (contract) lobbying: Outside of a format RFP process, Massachusetts generally treats attempts to influence the public officials involved in procurement like ordinary lobbying, but with some nuances that are not discussed in this Guide. If you plan to do procurement lobbying, please seek additional guidance.

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

There are separate registration triggers for individual lobbyists and for organizations.

Individual lobbyist trigger

An individual in Massachusetts must register as a lobbyist if they meet the definition of an “Executive Agent” **or** a “Legislative Agent” under Massachusetts law, which means that they do **both** of the following:

- They make at least one direct lobbying communication with a government official, for compensation, **and**

- During any six-month reporting period, they engage in more than 25 hours of lobbying activity **or** receive \$2,500 or more in compensation for lobbying

Note that the above trigger thresholds apply to legislative and executive lobbying activity separately, so the hourly and financial thresholds are not cumulative. A lobbyist who spends 24 hours and earns \$2,499 for each type of lobbying in a single reporting period is not required to register.

Incidental lobbying

Massachusetts law considers activity that would qualify as lobbying, but falls below both the hourly threshold and the compensation threshold, to be **incidental lobbying**. (In other words, if your employee crosses either threshold, they are not an incidental lobbyist.) Incidental lobbying, which is called that because it is presumed to be “incidental” to an individual’s other duties, does not obligate the individual to register. (Note, however, that if your organization has another employee who registers as a lobbyist, the expenditures associated with the incidental lobbyist (such as prorated compensation) will be reportable by the organization.)

If your employee would be considered an incidental lobbyist during the first reporting period, but then they cross the registration threshold in the second reporting period and therefore must register, the state considers them to have registered late and they will be assessed a late fee. Accordingly, some individuals who are eligible to claim incidental lobbyist status will nonetheless decide to register anyway because they predict they will trigger registration at a later point during the year.

Lobbyist client

If your organization employs an individual lobbyist who is required to register, then you will also be required to register your organization, as the employee lobbyist’s **client**.

Disregard “lobbyist entity” forms and guidance

Massachusetts law defines professional lobbyist firms and similar organizations as **lobbyist entities**. This category applies only to third-party firms, and does not apply to a nonprofit organization that has employees or volunteers lobby on its behalf. Be sure not to follow instructions for, or use forms designed for, “lobbyist entities.”

Section 44 registration and reporting trigger for organizations

Even if your organization does not need to register as a client, because you do not have any employee (or contractor) who needs to register as a lobbyist, there is one additional trigger you must assess: **Section 44 registration**, which is separate from, and parallel to, the legislative agent and executive agent analysis discussed previously. This form of registration, which is named after the section of the lobbying statute that prescribes it, applies to organizations that do not employ a lobbyist, but make **more than \$250** in lobbying expenditures in **a full calendar year**, and requires them to file a simplified registration and report by a different process than regular lobbyist registration.

Somewhat surprisingly, as of the publication date of this Guide, Section 44 registration cannot be done electronically – it can only be made on a paper form, which is not available online. The form must be requested by e-mail from the Lobbying Division.

Finally, there is a narrow exemption from the Section 44 registration requirement for **all-volunteer** nonprofit organizations that employ **no** paid staff for any purpose (in other words, no paid staff at all, not just no paid staff who lobby), make no political contributions, and spend less than \$2,000 per year on lobbying during a calendar year.

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! There are exceptions to the definition of lobbying under Massachusetts law, and certain types of activities that would otherwise meet the test for lobbying do not trigger an obligation to register.

The Massachusetts exceptions most relevant to nonprofit organizations are:

- Any person who appears before a committee or commission of the legislative branch at the request of a majority of the committee or commission is not lobbying, **provided that** their name and appearance is recorded in the records of the committee or commission, **and** they take no other actions to influence legislation. (I.e., if the witness engages in other lobbying activity, their committee testimony and associated prep time will count towards the individual trigger threshold (if they are not yet registered), or will need to be reported (if they are already registered).)
- Unpaid volunteers – individuals who receive no compensation or reward to influence public officials – are not lobbying
- Responding to an RFP, participation in a bid conference, or requesting review of a procurement decision
- Providing a written response to a public's official's written request for technical advice or factual information regarding pending government action (e.g., legislation or an administrative rule or standard).
- Asking a public official for a meeting, asking the status of an action, or any similar administrative request – **provided that** the request does not also include an attempt to influence a covered executive official
- Participation in an advisory committee or task force
- A petition for action by the executive branch or an authority, made in writing and required by law or regulations to be a matter of public record
- An act made on behalf of an individual with regard to that individual's benefits, employment or other personal matters

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 Massachusetts, citizens may use the initiative process to propose legislation to the legislature, which then adopts or rejects the proposed legislation. If it rejects the legislation, proponents can mount a second initiative campaign to place it on the ballot for approval by the voters. Similarly, citizens use the petition process to propose state constitutional amendments to the legislature, and the legislature must vote on whether to place the proposed amendments on the ballot.

For both proposed legislation and state constitutional amendments, while the proposals are before the legislature, efforts to influence lawmakers about the proposals would be regulated as lobbying.

Once a measure is on the ballot, however, asking voters to support or oppose a measure is not regulated as a lobbying activity under Massachusetts law (even though the IRS does count it as a lobbying activity). Such advocacy would instead be regulated under the state’s campaign finance laws.

Nonprofit organizations considering working on ballot measures in Massachusetts (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?

If you organization has employees (or contractors) who trigger registration:

If your organization has employees (or contractors) who need to register as lobbyists, you will need to follow the procedures below. Organizations that have spent more than

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\$250 in a calendar year on lobbying expenditures but have no employees that need to register will need to do a Section 44 registration, as outlined at the end of this FAQ.

Your employee lobbyist and your organization (the employee lobbyist's client) must register online with the Lobbying Division on or before December 15 of each calendar year. For lobbying that begins mid-year, your individual employee lobbyist must register within 10 days of commencing the lobbying effort, and your organization must register as a client within 10 days of your employee lobbyist starting to lobby. Note that Section 44 registration is on a different timeline, as outlined below.

Note that, as of 2022, the Lobbyist Division has occasionally rejected registrations if the organization is not registered with the Secretary of the Commonwealth of Massachusetts, Corporations Division. If your organization is incorporated in Massachusetts, you would already be registered with the Corporation Division. For out-of-state organizations with no Massachusetts offices or employees, your organization would most likely not already be registered as a "foreign corporation" doing business in Massachusetts. If the Lobbyist Division is rejecting your registration for this reason, you may want to seek additional legal advice about the ramifications of registering your organization as a foreign corporation in Massachusetts solely for the purpose of lobbying there.

Late filings are subject to a fine of \$50 per day up to the twentieth day they are late, with an additional \$100 per day in fines added for every day after the twentieth day, until the statement is filed. The Secretary of the Commonwealth can waive late fees for good cause, but cannot waive fees for any report more than 30 days late (or 60 days late for first time filers.)

The Lobbyist Registration & Reporting System is accessible at:

<https://www.sec.state.ma.us/lobbyistweb/common/signin.aspx>

A detailed set of PDF user guides is available by clicking the button for "Online help" on the sign-in page linked above, or by navigating directly to the help page at

<https://www.sec.state.ma.us/lobbyistweb/ReadMe/OnlineHelp.aspx>

Note that users who registered prior to 2020, but have not re-registered since, **may** need to create a new user account. However, you should always search the database to confirm whether your organization was previously registered. If a previously registered user requests a new account, the Lobbyist Division may reject the new registration. If you have been previously registered, you should contact the Lobbyist Division to assist with account access.

When your organization, or your employee lobbyist, registers for the first time, they must choose an account type.

- Individual lobbyists should create an individual account.
- If you are registering your organization because your employee is engaging in lobbying, be sure to register as a **client**, and **not** as a lobbyist entity (a category intended for professional lobbying firms).

Your employee lobbyist and your organization (as the client) must each pay a filing fee of \$100. In the event that you employ multiple individuals who need to register, you will need to pay an additional \$100 for each individual lobbyist you employ, but remember that only individuals who actually communicate with a government official need to register – support staff do not need to register (although prorated compensation for support staff time is reportable by the organization).

Once you have an account, the registration processes for the individual lobbyist and the client are similar. Note that the individual lobbyist must register first, or the Registration & Reporting System will not permit the client to register. The system may take several days to complete processing for an individual lobbyist's registration.

Individuals (your staff)

Once your employee logs in as an individual, they will find a link on their account homepage to “complete and submit” their registration.

The registration form requires their contact information, information about your organization as their employer, and the type of lobbying they are registering to do: legislative, executive, or both. Because registrations are made public, they should use work contact information whenever possible.

They must also certify that they have completed a Lobbyist Educational Seminar, either by attending an in-person seminar in early December, or by reviewing on-demand materials and certifying that they have done so. Further information about the training requirement is available at

<https://www.sec.state.ma.us/LobbyistWeb/Common/CertificationInformation.aspx>.

They will then review and certify their registration, and pay the \$100 filing fee online.

Your employee lobbyist’s home page may indicate that their client relationship information is incomplete until your organization completes its own registration.

Note that **out-of-state** lobbyists are required to submit three passport-sized photographs upon registration.

Clients (your organization)

The process for registering your organization as a client is largely the same as for registering your employee as an individual. You enter your organization’s name, and the name of an “authorizing officer,” which can be the employee lobbyist (but isn’t required to be).

Next, you select your organization’s business interest from a drop-down list.

You will then add the name of your employee lobbyist from a searchable database of registered individual lobbyists. For each, you must provide the dates that they agreed to provide lobbying services. For a full-time employee who provides lobbying services as part of their employment, you would use the date that you started your lobbying efforts.

Then you enter the details of the employee’s lobbying efforts, including the legislation that is the subject of their lobbying, the names of lawmakers with whom they have communicated, and the area(s) of interest about which your employee is lobbying.

You will then certify your organization’s registration and pay the filing fee online, just as with the individual lobbyist registration.

If your organization needs to do a Section 44 registration

As described above in the “What triggers lobbyist registration and reporting with the state?” FAQ, if your organization does not employ a registered lobbyist but made more than \$250 in lobbying expenditures, you will need to do a “Section 44 registration” on the organization’s behalf.

The Section 44 registration combines registration and reporting in the same form, and is submitted on the standard twice a year schedule. Accordingly, even if your organization makes lobbying expenditures that triggered a Section 44 registration in the middle of a reporting period, you won’t make the actual filing until the semi-annual report deadline (July 15 or January 15).

The Section 44 parallel registration process is designed to capture lobbying expenditures that would otherwise not be reported. Therefore, if your organization has a registered individual employee lobbyist, and both your employee and your organization are reporting lobbying expenditures, your organization does not also need to file a Section 44 registration and report.

For example, if your organization spent \$1,000 on paid social media ads for a grassroots lobbying campaign in February, but at that time did not have a registered employee lobbyist, your organization would be obligated to file a Section 44 registration and

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reporting form by the July 15 reporting deadline. However, if one of your organization's employees triggers an individual registration obligation in May of the same year, then both your individual lobbyist and your organization would need to register within 10 days of the triggering event. **All** your organization's lobbying expenditures, including the \$1,000 spent on grassroots social media ads, would then be reported on your organization's expenditure reports, and your organization would no longer need to make a Section 44 filing.

If, on the other hand, none of your employees trigger register during the same reporting period, then your organization **would** file a Section 44 registration to report the social media ad expenditure, as well as any other lobbying expenditures by the organization that are reportable under Section 44 (remember that employee compensation is **not** reportable is a Section 44 report).

For more information on the differences between the expenditure reporting for regular online expenditure reports, and Section 44 reporting, see the "What information do the periodic lobbying reports include?" FAQ, below.

Note that because of the way the trigger for Section 44 registration is written (\$250 in lobbying spending in a calendar year), some organizations may make all their lobbying expenditures in the first semi-annual reporting period, but still need to file another Section 44 report in the second semi-annual reporting period showing no expenditures.

As noted above, that Section 44 registration and report form must be completed on the paper form, which you must request from the Lobbyist Division.

Q: When are periodic lobbying reports due?

Each semi-annual report is due by the 15th of the month following the reporting period, by 5 pm local Massachusetts time. In other words, reports for the January to June period are due on July 15th, and reports for the July to December period are due January 15th. Note that this deadline is very tight, and may be a challenge if your organization has not yet developed very robust financial and timekeeping systems.

Semi-annual reports are reviewed by the Lobbyist Division and are then accepted or rejected. Reports are routinely rejected for a variety of reasons, both substantive and technical (i.e., non-substantive).

After you have submitted a report, you should look out for two e-mails from the Lobbyist Division. First, you should receive an e-mail confirming the report's submission. The second e-mail will notify you that the report has been either accepted or rejected. If a report is rejected, the e-mail from the Lobbyist Division will indicate why (e.g., a lobbyist's compensation does not match the employer's disclosure of lobbyist compensation, or expenses are disclosed in the wrong category, etc.). You must submit a corrected report within 10 business days to avoid late filing fees.

Organizations that need to register and report under Section 44 file their hard-copy statement of expenditures on the same schedule.

Late filings are subject to a fine of \$50 per day up to the twentieth day they are late, with an additional \$100 per day in fines added for every additional day the report is late, until it is filed. The Secretary of the Commonwealth can waive late fees for good cause, but cannot waive fees for any report more than 30 days late (or 60 days late for first time filers.)

Q: What information do the periodic lobbying reports include?

The primary purpose of the semi-annual report is reporting lobbying expenditures.

Regular individual lobbyist and client reports: The regular online reporting requirements include the following:

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- **Reportable expenditures:** The scope of reportable expenditures is broad, and includes overhead, meals, travel, staff compensation, and money spent for the benefit of elected officials. These categories of expenditures are discussed in more detail in the next FAQ.
- **Legislative or executive actions you are lobbying:** In addition, you must identify the legislative bills or other government activities that are the subject matter of your lobbying. The employee lobbyist must also, to the extent feasible, identify how much of their prorated compensation – in other words, what percentage of their time – was devoted to lobbying for or against each separately listed government action.
- **Campaign contributions made by individuals:** Finally, you must list any campaign contributions made by your individual lobbyists in their own personal capacity.

Section 44 registration and reports: Section 44 reports require slightly different information than the regular online reports. These reports include the following:

- **Reportable expenditures:** Section 44 reports require broad reporting on meals, travel, and money spent for the benefit of elected officials, as well as advertising, public relations, printing, mailing and telephone. Note, however, that lobbyist compensation and office overhead (rent, utilities, etc.) related to lobbying are **not** included in the Section 44 report.
- **Name and address of the “principals” of your organization.** Since the regular registration form requires only an authorizing officer, you can simply list your Executive Director or other officer in this section. You should use your business address instead of any individual's home address for this section.
- **Legislation or executive decisions you are lobbying:** A small section on the form asks about your organization's purpose and which governmental actions you are seeking to influence.
- **List of any donors that earmarked contributions for lobbying:** The form contains a section where you are asked to list the names and addresses of any donor that contributed \$15 or more for your lobbying. You should leave this section blank unless any of your donors explicitly earmarked their donation for your lobbying activity only.
- **Campaign contributions made by your organization:** Unlike the regular online reports, the Section 44 report requires listing any campaign contributions made by your organization (as opposed to individuals in their own name). Remember that you should never be making any organizational campaign contributions if you are a 501(c)(3) organization.

Q: What is considered a reportable “expenditure”?

Massachusetts requires reporting of a very broad scope of expenditures made in connection with lobbying. Each expenditure must also be reported with a considerable level of detail. This FAQ addresses the regular online reporting requirements for individual employee lobbyists and your organization, the lobbyists' client. Section 44 reporting is simpler, and only requires the information outlined in the previous FAQ above.

Your employee lobbyist will first complete their report in the system, and then your organization will complete its report. Both your employee and your organization are asked to submit any updates or corrections to the registration (e.g., a new address or phone number) via the lobbyist registration system **before** finalizing or submitting the report.

The information in both reports should be consistent, but generally you should **not** double report. In other words, if your lobbyist pays out of pocket for a travel expense, and then is reimbursed by your organization, your **organization** should report the expenditure on its report, since it bears the cost of that expense. Or, if an employee lobbyist pays for a meal while lobbying but is **not** reimbursed, then the employee would report the expenditure. Most nonprofit organizations will reimburse their employees'

expenses, so the organization will do most of the expenditure reporting. (As noted below, compensation is an exception to this rule and is reported by **both** employee and organization.)

You can find detailed instructions on how to complete both the employee lobbyist form and organization (client) forms by going to the page below and selecting “Lobbyist forms” or “Client forms” under the “How to file a disclosure report” column.

<https://www.sec.state.ma.us/lobbyistweb/readme/onlinehelp.aspx>

Reportable expenditures fall into five main categories:

- Lobbyist compensation
- Operating expenses
- Meals, travel, and entertainment (both for public officials and for your own lobbyists)
- Campaign contributions
- Additional expenses

Lobbyist compensation

Compensation is the one expense category that is reported by both your employee lobbyist and your organization. When your organization and your employee lobbyist calculate what compensation to report, you should prorate the employee’s compensation based on the percentage of the employee’s time spent on lobbying (including prep, travel, and wait time). The required reporting is very detailed, and you will need to take steps to ensure that you have systems for recordkeeping and time-tracking that will enable both your employee and your organization to finalize reports in the very short period between the end of the reporting period and the report’s due date.

- **Lobbyist compensation on the employee reporting form:** Once your employee starts completing the reporting form, they will find the place to enter compensation on the second screen, which is titled “**Activities and Bills.**” The form asks them to enter the amount of compensation they earned for each lobbying activity, and to specifically tie the activity to a bill number and name (or other specific government action), and to indicate whether they supported or opposed passage of the bill. For example, assume your employee lobbyist participated in two different meetings with two different public officials, each to discuss a different bill. If the employee attributes \$5,000 of their compensation to lobbying (remember that this calculation also includes prep, travel, and wait time), then they will allocate some of the \$5,000 to one bill, and the rest to the other, based on the percentage of their time they spent on each. If, however, they attend two meetings with two public officials to discuss the same bill, they would attribute all of their prorated compensation to that bill.
- **Lobbyist compensation on the organizational (client) reporting form:** When your organization fills out the client report form, it will find the place to enter compensation information on the first screen, which is called “**Operating Expenses and Lobbyist Salaries.**” Unlike the employee lobbyist form, the client form just asks your organization to report the prorated amount of compensation it pays to the employee lobbyist for lobbying. The aggregate compensation earned by the employee and the amount reported by the organization should match. If you have more than one registered employee lobbyist, they will each report their prorated compensation on their own form, as described in the previous paragraph, and the organization will report the aggregate prorated compensation for each lobbyist separately on its form.

Operating expenses

Operating expenses is a broad category that encompasses many expenditures your organization is likely to make in the ordinary course. As noted above, for most nonprofit organizations, most (or all) expenditures made by the employee lobbyist will be reimbursed by their employer, the organization (client) – if that’s the case for your

organization, then most or all of your “**Operating Expenses**” will be reported on the client report, filed on behalf of your organization.

For expenditures that are made for both lobbying and non-lobbying purposes (which will probably be most of your expenditures), you should calculate the percentage of the expenditure attributable to lobbying (as you do when reporting compensation).

Examples of expenditure types available in the Registration & Reporting System include:

- Advertising expenses
- Computer equipment and supplies
- Internet fees
- Office supplies and equipment
- Printing expenses
- Professional dues
- Professional subscriptions (for example, bill tracking software)
- Public relations (for example, the cost of retaining a PR firm)
- Rent and utilities
- Support staff salaries (for employees who don't trigger registration but do some lobbying or support lobbying activity)
- Telephone bills
- Utilities

These expenditures are listed individually by category. You will need to provide the date of the expenditure, and the name of the vendor that received the payment.

Much like with compensation, your organization will need to ensure you have the operational capabilities to make this detailed report within a tight time frame.

Meals, travel, and entertainment

This category asks your employee lobbyist and your organization to report any expenditures on meals, travel, and entertainment that are related to lobbying activity. It has its own page in the online form, and (helpfully) is simply called “meals, travel, and entertainment.” The required reporting includes both meals and other expenditures that involve public officials, as well as those that do **not** (e.g., meal or travel expenditures made in connection with an employee lobbyist's trip to Boston to meet with public officials).

As with operating expenses, if your organization pays for the activity (whether directly or via a reimbursement to your employee lobbyist) then the organization should report it (on the client report), not the employee lobbyist.

The reporting is very detailed – when entering the information, you must itemize the expenditures and provide the date, event type (e.g., meal, travel, etc.), the vendor that received the payment, the name of each attendee, **and** identify any public officials and employees participating in the meal, trip, or entertainment.

Campaign contributions

This category only applies to the employee lobbyist report, and has its own page on the lobbyist form. It asks the employee lobbyist to report any campaign contributions they made in their own personal capacity during the six-month reporting period.

All contributions must be itemized, and report the date, the name of the recipient, the office sought by the recipient, and the amount of the contribution. Note that registered lobbyists are prohibited from giving more than \$200 in a calendar year to any one candidate, party, PAC, campaign, or individual.

Additional expenses

This category, which also has its own page on both the lobbyist and client forms, is where you can itemize expenditures that do not fit into other categories, such as gifts to public officials, or expenditures on (or for the benefit of) public officials that do not involve the participation of the employee lobbyist (such as giving tickets to an event directly to an official, or waiving the registration fee for a public official to attend a conference your organization is sponsoring). For each expense, the person entering it should report the date, the nature and purpose of the expense, the recipient of the payment, and the amount.

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 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.

In Massachusetts, public officials may not accept gifts of any value from registered lobbyists, other than pursuant to extremely narrow exceptions (e.g., if the lobbyist is a member of the official’s family). Public officials may accept gifts with an aggregate value of less than \$50 in any 365 day period from others (including organizations that employ or contract with a lobbyist), so long as there is no conflict of interest in doing so, but these gifts must be reported by the public officials. Most nonprofit organizations find it better not to give any gifts to public officials.

Gift ban laws and other conflict of interest laws applicable to public interactions with government officials generally (and not just to lobbyists) are enforced in Massachusetts by the State Ethics Commission. More information is available at <https://www.mass.gov/learn-more-about-the-conflict-of-interest-law>.

Massachusetts requires filers to maintain records for one year after a report is filed, but since the state keeps its records indefinitely, and can open an investigation at a later date, it would be prudent for your organization to consider setting a longer retention period for itself. The state does not have a random audit program, as some states do, but the Lobbyist Division staff will scrutinize filings and frequently ask follow-up questions.

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

Maybe. Massachusetts does not require donor disclosure from individual registered lobbyists or their clients. However, an organization that registers under **Section 44** must disclose the name and address of any person or organization who contributes \$15 or more specifically earmarked for the purpose of lobbying. Grants or contributions that are for general operating purposes, or are not specifically earmarked for lobbying only will not need to be disclosed on Section 44 registration or reports.

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

There is no requirement to wear a badge while communicating in-person with a government official, but it is a best practice to identify oneself as a lobbyist. In addition, the Lobbyist Division will issue each registered individual lobbyist a license and identification card that expires on December 31st of the registration year.

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

Registered lobbyists are prohibited from giving more than \$200 in a calendar year to any one candidate, party, PAC, campaign, or individual under Massachusetts campaign finance law, even if giving in their own personal capacity.





In addition, paying lobbyists contingency fees based on the outcome of their attempts to influence government action is prohibited.

Case Study STUDENTS VOTE NOW

Students Vote Now is a hypothetical small 501(c)(3) advocacy organization considering being vocal about the bill H101 currently pending in the Massachusetts 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 H101 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 H101.
- Having an employee engage with the Mayor of Boston about a similar, but separate, local ordinance being considered.

ACTIVITY	LOBBYIST REGISTRATION/REPORTING REQUIREMENTS
 <p>Student Engagement</p>	<p>If Students Vote Now were only to do these grassroots lobbying activities, no employees would need to register as individual lobbyists (since they would have no direct communication with public officials), but the organization's expenditures would almost certainly trigger Section 44 registration.</p> <p>If Students Vote Now does any of the proposed direct communication activities as well, the staff time preparing for and doing student engagement grassroots communications would count towards the registration threshold of any individual who also makes a direct communication. The grassroots expenses would also need to be reported.</p>
 <p>Lobby Day</p>	<p>Lobby Day will almost certainly trigger either some individual employee registrations (since direct communication time, as well as prep, travel, and wait time all count towards the trigger threshold) or a Section 44 organizational registration, if no individual triggers registration (since all of the expenses of Lobby Day other than staff compensation time and office overhead will count towards the Section 44 threshold). Registered lobbyists (as opposed to client organizations) may not give any gifts, even "swag," and Student Vote now should give information about the organization rather than a gift.</p>
 <p>Committee Testimony</p>	<p>If the witness was invited by a committee majority, and does not otherwise lobby, the testimony alone won't trigger registration. Otherwise, the time spent testifying (and preparing to testify) counts towards the trigger thresholds, and any expenditures on the activity would be reportable.</p>
 <p>Mayor</p>	<p>Local lobbying counts towards registration if it has a common purpose with a state-level lobbying effort, which this activity likely does. Moreover, Boston has its own lobbying registration rules, which may also separately apply.¹</p>
<p>Bottom Line</p>	<p>As proposed, Students Vote Now's activities will likely require one or more employees to register since direct communication time, as well as prep, travel and wait time all count towards the individual registration threshold. If no staff go over the registration trigger, then the organization will need to register under Section 44 if expenses for the activities go over \$250 (excluding staff compensation or office overhead), which is likely.</p> <p>Students Vote Now will need to carefully track staff time and expenditures, and also consider whether it should enhance its operational capacity so that it can meet Massachusetts' demanding reporting requirements.</p>

¹ Information about Boston's local rules is available at <https://www.boston.gov/departments/city-clerk/lobbying-city-boston>

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.

MASSACHUSETTS STATE RESOURCES:

- **Secretary of the Commonwealth Lobbyist Division**
Lobbying in Massachusetts is regulated by the Lobbyist Division of the Office of the Secretary of the Commonwealth: <https://www.sec.state.ma.us/divisions/lobbyist/lobbyist.htm>
- **Full Text of Massachusetts Lobbying Statutes**
The full text of the Massachusetts state lobbying statute can be found in unofficial form at <https://www.sec.state.ma.us/LobbyistWeb/ReadMe/MALobbyingLaw.pdf>
- **Lobbyist Registration & Reporting System Guides**
Detailed User Guides covering various aspects of registration and reporting can be found at <https://www.sec.state.ma.us/LobbyistWeb/ReadMe/OnlineHelp.aspx>
- **Lobbyist Educational Seminar**
Information on the mandatory training (and a link to a PDF of the training) is here: <https://www.sec.state.ma.us/LobbyistWeb/Common/CertificationInformation.aspx>
- **Additional Questions**
Questions about lobbyist registration and reporting can also be directed to the Lobbyist Division by e-mail at lob@sec.state.ma.us or by phone at 617-727-9122 (the Division states in its training materials that it prefers getting questions by e-mail). The most current contact information is available at <https://www.sec.state.ma.us/LobbyistWeb/ReadMe/ContactInfo.aspx>

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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