

PRACTICAL GUIDANCE

What Nonprofits Need to
Know About Lobbying in

NORTH DAKOTA

Inside This Guide:

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

DIRECT LOBBYING OF:	CAN THIS TRIGGER?	TRIGGER
State Legislators	Yes	Any person, paid or unpaid, who attempts to influence legislative action on your behalf, including the approval or veto of legislation by the Governor, will trigger individual registration unless an exception applies.
State Executive Branch Officials	No	Lobbying executive branch officials with respect to legislative action can trigger registration, but lobbying executive branch officials about executive branch action is not regulated as lobbying in North Dakota. Note that while executive branch lobbying does not trigger registration, it can potentially trigger “true source” donor disclosure.
Local Legislators or Local Executive Branch Officials	Probably not	State law does not regulate the lobbying of local officials. It is a good practice, however, to check whether any local jurisdiction you plan to lobby has a separate local lobbying ordinance.

Grassroots lobbying: The Secretary of State’s Office has given unofficial guidance that they interpret North Dakota’s lobbyist registration laws to apply only to individuals communicating directly with government officials to influence legislation, which means that grassroots lobbying is not covered.

KEY LOBBYING TAKEAWAYS FOR NONPROFIT ORGANIZATIONS IN NORTH DAKOTA:

- **There is no minimum lobbying threshold for registration:** All individuals who do even a very small amount of direct legislative lobbying on your behalf will need to register, unless a lobbying exception applies. There is no de minimis lobbying exception in North Dakota.
- **Lobbyist reporting in North Dakota is very easy:** Lobbyists must report only once a year, and you only need to report **unreimbursed** expenditures of \$60 or more made for the benefit of public officials or their families. Most nonprofits will have nothing to disclose on this report.
- **North Dakota has a “true source” donor disclosure provision, but you can manage these reporting obligations:** North Dakota’s “true source” donor disclosure provision applies both to legislative lobbying, and executive branch lobbying activities that do not trigger registration. However, the law only requires you to disclose donors that specifically and knowingly contributed over \$200 in a calendar year **solely** to lobby or to influence executive branch action. You can avoid this donor disclosure requirement if you do not accept any such specifically earmarked and restricted funds. See below for additional practical reporting nuances for lobbyists and non-lobbyist “true source” reports.

This resource is current as of November 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@afi.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?

North Dakota law defines **lobbying** broadly as any attempts to influence the legislative actions of the legislative assembly, the legislative management (the assembly's leadership committee), any interim committee of the legislative management, or the Governor's approval or veto of legislation.

Note that it is still lobbying if you communicate with an official from the executive branch in an effort to get them to influence legislation. For example, if you e-mailed a state agency official to suggest that they try to influence the content of legislation related to their agency, North Dakota considers that communication to be lobbying.

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

Individual staff, consultants, or volunteers that are authorized to lobby on behalf of your organization must register before they engage in any lobbying activity that does not fall into a registration exception. Unlike many other states, North Dakota does not have an exception for de minimis lobbying.

Note that while lobbying executive branch officials to influence executive branch action does not trigger lobbyist registration, these activities can possibly trigger state donor disclosure reporting if you accept funds that were specifically and knowingly earmarked and restricted solely for such executive branch lobbying activities.

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 and reporting triggers 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 such thresholds.

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 require state-level lobbyist registration or reporting. The exceptions most relevant to nonprofit organizations are:

Testimony given by request: Individuals providing legislative testimony will not trigger registration if they are invited by the chair of the legislative management, an interim committee of the legislative management, or a standing committee of the legislative assembly.

Testimony not given by request, but accompanied by a registered lobbyist: A member of your staff can testify before a legislative committee, even if not requested by such committee, as long as you have a registered lobbyist present.

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 from 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

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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 North Dakota, both citizens and the legislature can place measures on the ballot.

If your organization is attempting to influence the legislature's decision to place an measure on the ballot, those activities are treated as lobbying under state law.

If your organization is attempting to help get a citizen initiative on the ballot, or you are working to support or oppose a citizen initiative once it is on the ballot, then North Dakota regulates such activities under state campaign finance law. (Note, however, that the IRS considers these activities to be lobbying for IRS purposes).

Nonprofit organizations considering working on ballot measures in North 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?

Registration in North Dakota is simple, but must be done before engaging in any direct lobbying communications.

Individual lobbyist registration is completed through the Secretary of State's Office's "FirstStop" online web portal, available here: <https://firststop.sos.nd.gov/>

Your organization does not need to register, only your individual lobbyists do, but your organization will need to complete the very simple online Lobbyist Authorization form, available here: <https://firststop.sos.nd.gov/forms/new/426>

Individual lobbyists use the simple online form, accessible here: <https://firststop.sos.nd.gov/auth?from=/forms/new/516>

There is a \$50 annual fee. Registration for all lobbyists terminates automatically on June 30. If your lobbyist expects to trigger registration requirements again in the next term, they should re-register.

Q: When are periodic lobbying reports due?

Annual lobbyist expenditure report

Lobbyists must file a single annual lobbyist expenditure report due by August 1 each year. Once you have registered, you will be able to access the form via the lobbyist portion of this FirstStop page: <https://firststop.sos.nd.gov/>

Legislative lobbying true source donor disclosure

If your lobbyist or your organization made more than \$200 in reportable expenditures for the benefit of public officials for the purpose of lobbying legislative officials, the applicable statute requires your lobbyist to file a special donor disclosure report by August **if** your organization has accepted a contribution over \$200 that was knowingly and specifically earmarked and restricted **solely** for state legislative lobbying.

The Secretary of State's Office has informally confirmed that it has no separate form for lobbyist to use for this disclosure. Registered lobbyists would still just file an annual expenditure report only, which does not have a place to report any donor disclosure.

As a practical matter, the lack of an appropriate form means that while the applicable statute requires a separate report with donor disclosure, the current system does not provide lobbyists with any way to accomplish this disclosure.

Executive branch “lobbying” true source donor disclosure

According to the statute, a donor disclosure report can also be triggered if your organization made more than \$200 in reportable expenditures for the purpose of influencing executive branch officials regarding **executive branch decisions**. (Note that influencing executive branch decisions means promoting or opposing the adoption of a rule by an administrative agency or the Ethics Commission, and that such influence technically does not count as “lobbying” in North Dakota.) This **“Non-Lobbyist Expenditure Report,”** is due by August 1, if triggered. It is available here:

<https://firststop.sos.nd.gov/forms/new/640>

It is important to remember that you will only need to disclose any donors on this report if your organization has accepted a contribution over \$200 that was knowingly and specifically earmarked and restricted for being used **solely** to influence state executive branch action.

As a practical matter, if your organization triggers an obligation to disclose true source donors, the only way to submit this disclosure is by using the Non-Lobbyist Expenditure Report. This report is accessible without having a registered lobbyist account on the FirstStop system, and is available here: <https://firststop.sos.nd.gov/>

It is unlikely that you will ever need to make such a filing, because the FirstStop electronic form only requires disclosure of expenditures for the benefit of legislators, the Governor, their spouses, or their families, that were made for the purpose of influencing **executive branch decisions**. The form does not require listing expenditures made for the benefit of any **executive branch public officials** in furtherance of your activities attempting to influence an executive branch decision, other than the Governor.

In the unlikely event that you do ever need to submit a true source report, the public official will be identified as the “Expenditure Recipient” and the donor will be disclosed as a “subcontributor” on the online Non-Lobbyist Expenditure report form.

Q: What information do the periodic lobbying reports include?

The annual lobbyist expenditure report only requires lobbyists to report **unreimbursed** expenditures of \$60 or more at any one time made for the benefit of public officials or their families. Lobbyist compensation or any other organizational lobbying expenses are not reported.

The Non-Lobbyist Expenditure Report, which is only required to be filed in the unlikely scenario outlined above, requires a description of expenditures made on legislators, the Governor, their spouses, or their family members, and any donors that knowingly contributed over \$200 earmarked and restricted solely to influence executive branch action. Any such donors are disclosed as “subcontributors.”

Q: What is considered a reportable “expenditure”?

Expenditures on public officials of \$60 or more at one time are the only expenditures that your lobbyist must report.

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.

In North Dakota, these gift ban and disclosure rules apply to both lobbyists who influence state legislative **and to individuals who influence executive branch action**.

North Dakota also has complex rules about organizations and lobbyists inviting a public official to events with food and beverages.

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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!

If your organization receives a donation or a grant of more than \$200 that is specifically earmarked and restricted to be used solely for influencing state legislation or executive branch action, your organization may need to disclose that donor as an “ultimate and true source” of such fund.

Most nonprofits can avoid having to make such disclosures by not accepting any such specifically restricted grants.

Also see our guidance above regarding the practical reporting nuances for lobbyist and non-lobbyist true source disclosure that, as of the date of the publication of this Guide, make it unlikely that you will need to report any such donors.

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

Registered lobbyists must wear a badge issued by the Secretary of State's office (or one that meets the same requirements) while lobbying.

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

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





State law does not prohibit lobbyists from making campaign contributions on their own behalf (in accordance with all other campaign rules governing campaign contributions). However, lobbyists may not deliver campaign contributions made by another individual or entity.

Case Study STUDENTS VOTE NOW

Students Vote Now is a hypothetical small 501(c)(3) advocacy organization considering being vocal about HB 1001 currently pending in the North 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 HB 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 HB 1001.
- Having an employee engage with the Mayor of Fargo about a similar, but separate, local ordinance being considered.

ACTIVITY	LOBBYIST REGISTRATION/REPORTING REQUIREMENTS
 <p>Student Engagement</p>	<p>Student engagement activities are grassroots lobbying, which is not regulated in North Dakota and will not trigger lobbyist registration.</p>
 <p>Lobby Day</p>	<p>Any Students Vote Now staff meeting with legislators about HB 1001 should register as lobbyists before Lobby Day.</p> <p>Student volunteers participating in the Lobby Day and expressing their own opinions about the proposed law do not need to register, even if the organization facilitates volunteers' access to the public officials. Students Vote Now should not give the students talking points, however, to avoid having the students lobby "on behalf of" the organization instead of expressing personal opinions.</p> <p>To avoid needing to sort through the details of gift ban rules, most nonprofits find it easier to simply bring literature about the organization instead of swag.</p>
 <p>Committee Testimony</p>	<p>If Students Vote Now is invited to testify by an appropriate legislative authority, the testimony will not count as lobbying.</p> <p>If, however, Students Vote Now has not been formally invited to give testimony and has a registered lobbyist that will be present, then either the registered lobbyist can testify, or other chosen Students Vote Now representatives can testify without having to themselves register.</p>
 <p>Mayor</p>	<p>North Dakota's state statute does not regulate local lobbying, and Fargo does not presently have a lobbying registration or reporting ordinance, so these meetings would not trigger any registration or reporting requirements.</p>
<p>Bottom Line</p>	<p>Any Students Vote Now staff members representing the organization and communicating directly with the legislators as part of Lobby Day activities will need to register.</p> <p>If Students Vote Now has at least one registered lobbyist, staff can provide committee testimony without registering any additional individuals.</p> <p>The student engagement and Mayoral activities do not trigger any registration or reporting.</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.

NORTH DAKOTA STATE RESOURCES:

- **North Dakota Secretary of State**

Lobbyist registration and reporting is managed by the North Dakota Secretary of State's Licensing Unit. They use the State's FirstStop portal for lobbyist registration and reporting:

<https://firststop.sos.nd.gov/>

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

The full text of the North Dakota state lobbying statute can be found in the North Dakota Century Code, Chapter 54-05.1: <https://www.ndlegis.gov/cencode/T54C05-1.pdf?20141006070144>

The full text of the North Dakota state ethics statute covering the "ultimate and true source of funds" reporting, and the ban against state officials receiving gifts from lobbyists can be found in the North Dakota Century Code, Chapter 54-66: <https://www.ndlegis.gov/cencode/t54c66.pdf>

The relevant text of the North Dakota Constitution that establishes the "ultimate and true source of funds" reporting and the ban against state officials receiving gifts from lobbyists can be found in Article XIV: <https://www.ndlegis.gov/constit/a14.pdf>

- **Full Text of North Dakota Lobbying Regulations**

There are no current North Dakota state lobbying regulations. The text of the North Dakota ethics regulations concerning gift bans can be found in NDAC, Title 115:

<https://www.ndlegis.gov/information/acdata/pdf/115-03-01.pdf>

- **Additional Questions**

Any questions about lobbyist registration and reporting can also be directed to the North Dakota Secretary of State's Licensing Unit: 701-328-3665, 800-352-0867 (ext. 328-3665), or sosadlic@nd.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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