

Forefront

February 10, 2022

Forefront hosted a session on *What Nonprofits need to Know about Lobbying in Illinois: Changes in 2022*. Holly Ambuehl, Forefront, introduced the session, which featured presentations by Adie Olson, Sue Zachman, and Abby Levine from Bolder Advocacy.

The session covered definitions of lobbying, changes to Illinois lobbying, and how organizations can think about their lobbying activities. If nonprofit organizations have any specific questions about how the law applies to their efforts, they should consult with legal counsel.

Some of the points covered in the session included:

- Bolder Advocacy works with nonprofit organizations and foundations across the country to help demystify what kind of policy-related activities those organizations can do. Much of their work is based on federal tax law and campaign finance law. They cannot be an organization's attorney, but they can build understanding of what the laws are.
- State and federal laws treat lobbying differently. Federal tax law governs what your liability will be, so it covers how much lobbying an organization can do while retaining its tax-exempt status.
- The amount of lobbying allowed differs based on whether an organization is a 501(c)3, 501(c)4, or other type of organization. 501(c)4 organizations can do as much lobbying as they want; 501(c)3 organizations have limits.
- Federal tax laws do not come with disclosure requirements as to who an organization lobbied and what the subject was. Federal disclosure is for tax purposes is about money and time spent on lobbying, though some lobbyists have to register and describe who is acting on behalf of the organization and who their target audience is.
- Federal tax law designates how much time can be spent lobbying. It defines lobbying as efforts to influence legislation at the federal, state, or local levels. This includes (but is not necessarily limited to) bills, resolutions, non-binding resolutions, ballot measures, and nominations to be confirmed by the Senate. Since budgets need to be approved by the legislature, they are usually considered legislation.
- Public charities can lobby as long as lobbying is not a substantial part of their activities. They can look at an expenditure test to determine if the amount of lobbying they are doing would be considered substantial. Lobbying efforts should be reported on an organization's form 990 for 501(c)3s, while 501(c)4s generally do not have to report lobbying (though it's still good for them to track their lobbying activities).
- Private foundations are subject to more stringent limitations. Board members and trustees are subject to prohibitive taxes if they lobby, which means the exact definition of "lobbying" becomes important. They should consult an attorney about how it is defined in their area.
- A significant amount of policy work is not counted as lobbying—lobbying is communicating with a legislator, executive, or their staff to express a view on legislation, or communications with the public that express a view on legislation and include a call to action. Many efforts to influence how agencies carry out laws is not considered lobbying (this is often different in state and local law).
- State laws and definitions play a strong role in determining who needs to register as a lobbyist. The definitions and practices differ from state to state. States do not regulate how much lobbying organizations can do, but rather who needs to register and what gets reported. Note that laws apply in the state you want to influence, not the state where you are.
- Defining what does and does not count as lobbying means looking at things such as the type of activities an organization is doing, how the activities are directed, what methods are being used

(e.g., direct or indirect), how the organization is paying for it, who is doing the work, and whether there is an exception that might apply to their efforts.

- If an organization determines it is engaged in lobbying, it should keep records on what it is doing and how. This may mean the organization needs operational upgrades to manage this activity.
- In Illinois, there is not a lot of leeway to do an advocacy program that does not count as lobbying.
- There are several thresholds involved in contacting an official that can make an activity be considered lobbying, including whether there are payments of \$500 or more to the people doing the lobbying. There are some exceptions for grassroots lobbying (“grassroots lobbying” means encouraging individual citizens or members to make their own contact with state or local officials), allowing volunteers to take some actions without having to register, but it’s important to consider what swag or other compensation is provided to volunteers. Costs directly related to the lobbying effort could be considered relevant expenditures, including travel expenses. Note that printed material is not counted as swag.
- Any expenditure meant to trigger goodwill can trigger lobbying registration.
- If paid staff engage in lobbying, their salary counts as payments for lobbying, so each individual would have to register.
- Note that if you are lobbying someone in the executive branch to do something outside of their power, but you want them to talk to someone who in fact can make the change you are asking, it still counts as lobbying.
- Chicago’s lobbying law has an exception that unpaid volunteers can lobby on behalf of a nonprofit organization without registering. The law might change, so changes should be monitored. There had been a provision that nonprofits would have to register, but that is not currently being enforced.
- Registering a lobbyist costs money (\$300 for the organization, \$300 for each individual), so the incentive is to concentrate lobbying activities in as few people as possible. There is no nonprofit exception to the fee. Registering also requires ethics and harassment training before the individual’s registration is considered active.
- If any thresholds are crossed, then organizations must conform with State reporting requirements. The information to be reported is simple, but it needs to be reported twice monthly.
- The new state lobbying law overrides local regulations unless they are more strict than the law.
- Illinois law treats activities in Chicago as different from other cities, so organizations lobbying Chicago officials should pay special attention to the differences.
- The Chicago Board of Ethics website (<https://www.chicago.gov/city/en/depts/ethics.html>) has a section on advice for nonprofit organizations. They have some of the heaviest enforcement actions of any local agency. They also are responsive to calls and emails—they want to work with people.
- The intent of an action can matter as to whether it counts as lobbying or not, so organizations should look at the law and see how they can be creative with what they are allowed to do.
- The State usually makes resources available to help people understand who does and does not need to register. Most resources have not been updated, so people should check back regularly.

Resources

Bolder Advocacy’s guidance on lobbying in Illinois: <https://bolderadvocacy.org/resource/practical-guidance-what-nonprofits-need-to-know-about-lobbying-in-illinois/>

Forefront’s summary of changes to lobbying rules: <https://myforefront.org/articles/changes-to-lobbying-rules-in-illinois/>

Key definitions: <https://nff.org/2022-national-state-nonprofit-sector-survey>