**Advocacy for Nonprofits**

**Why Is advocacy important for nonprofits?**

**Is there a difference between advocacy and lobbying?**

**Can nonprofits lobby? Is there a limit?**

**Why Is Advocacy Important for Nonprofits?**

Effective advocacy builds the capacity, effectiveness and impact of an organization. It enables organizations to achieve the greatest good for the greatest number of the people and communities that they serve.1

It is a powerful strategy for making people’s lives better and for building stronger communities. The act of lobbying and other forms of advocacy is about making positive change to laws that affect us and the causes we serve.

Engaging in public policy advocacy through voter and candidate education can also be great for your organization because it can:

* Raise awareness of your mission
* Mobilize members, volunteers, donors and board
* Attract favorable media attention
* Establish and expand government investment in important social programs
* Reform laws and regulations that govern the operation and evaluation of your programs
* Confer benefits far beyond that of any one direct service program7

**Advocacy** is educating and informing the public, legislators, your board, funders, members, etc. about a social or economic problem without mentioning a specific bill. Use data helps convince others to understand the stated position or to make a point. Personal stories show the value of the issue and frequently help others relate to the problem or need. Share important points that support the position, as well as what is being said by those who oppose it, to help gain support for the cause. A recent example in Indiana was educating the public and legislators about the dangers of second hand smoke. Eventually a bill was proposed by a legislator which after much advocacy and lobbying, by many organizations and individuals, resulted in a strong law for smokefree air in Indiana.

Non profits might chose to form a coalition with other non profits to create a greater voice to gain attention of legislators and the public. Coalitions can share the cost of their advocacy efforts. Again, the smokefree law was an example of coalition building.

To be effective, it is imperative to learn the legislative process and best strategies for communicating with your legislators. Refer to pages 6-9.

**Lobbying always involves advocacy, but advocacy is not always lobbying.**

**Lobbying** is defined by the federal tax law as any attempt to influence specific legislation by:

1. Direct lobbying involves asking a policy maker to support or oppose specific legislation, i.e. a bill
2. Grassroots lobbying urges the general public to call or write their representative to ask them to support or oppose a bill; it encourages the recipient to take the lobbying action.

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Federal tax laws allow nonprofits to engage in *some* lobbying activities; however, there are spending limits. The language in the Internal Revenue Code, says that, “no substantial part of the activities” may be for “carrying on propaganda, or otherwise attempting, to influence legislation.”  *Source*: [26 US Code, Section 501 (c)(3).](http://codes.lp.findlaw.com/uscode/26/A/1/F/I/501)  Thus, nonprofits may freely engage in lobbying *as long as* that activity amounts to only an *“insubstantial”* amount of the nonprofit's activities.

Costs include using organizational resources, e.g. staff, materials or paying someone to attempt to influence the outcome of legislation or policy.

 “Where there is no expenditure by the organization for lobbying, there is no lobbying by the organization. Therefore, lobbying by a volunteer for a nonprofit is not counted as a lobbying expenditure to the organization and is not lobbying. If, however, the volunteer is reimbursed by the nonprofit for out-of-pocket expenditures, then the reimbursed funds do count as a lobbying expenditure. But it’s important to keep in mind the point that lobbying occurs only when there is an expenditure of funds for an activity that meets the other criteria for lobbying.”2

When expenses are incurred, there remains the issue that the definition of “insubstantial” is not clearly defined by the IRS. If the nonprofit anticipates that significant costs will be required while recognizing that the measurement tends to be subjective, charitable nonprofits can consider the value of filing IRS Form 5768 (Election/Revocation of Election by an Eligible Section 501(c)(3) Organization to Make Expenditures to Influence Legislation). Filing the form, also known as "filing the 501(h) election," allows nonprofits to elect to be measured by the objective “expenditure test” instead.

Importantly, a 501(c)(3) charitable nonprofit taking the 501(h) election remains a 501(c)(3) charitable nonprofit. The (h) election simply allows that nonprofit to opt out of the vague "substantial" activity test and use the friendlier expenditure test. The expenditure test has advantages over the more uncertain "substantial part" test. The Council of Nonprofits' opinion is that filing the 501(h) election is, for the vast majority of nonprofits, the easiest, most effective "insurance" a nonprofit can secure to protect itself from overstepping IRS limitations on lobbying activities.3

**Political and Lobbying Activities**

[Political activities](http://www.irs.gov/Charities-%26-Non-Profits/Charitable-Organizations/The-Restriction-of-Political-Campaign-Intervention-by-Section-501%28c%29%283%29-Tax-Exempt-Organizations) and [legislative activities](http://www.irs.gov/Charities-%26-Non-Profits/Lobbying) (commonly referred to as *lobbying*) are two different things and are subject to two different sets of rules and have different consequences for exceeding the limitations. The rules applied in a given situation depend on several issues:

* The type of tax-exempt organization (different rules apply to private foundations than to other section 501(c)(3) organizations)
* The type of activity (political or lobbying) at issue
* The scope or amount of the activity conducted

**Political Activities: Restriction of Political Campaign Intervention by 501(c)(3) Organizations**

Under the Internal Revenue Code, all section 501(c)(3) organizations are absolutely prohibited from: directly or indirectly participating in, or intervening in, any **political campaign** on behalf of (or in opposition to) any candidate for elective public office. Contributions to political campaign funds or public statements of position (verbal or written) made on behalf of the organization in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity. Violating this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.

Certain activities or expenditures may NOT be prohibited depending on the facts and circumstances. For example, certain voter education activities (including presenting public forums and publishing voter education guides) conducted in a non-partisan manner do NOT constitute prohibited political campaign activity. In addition, other activities intended to encourage people to participate in the electoral process, such as voter registration and get-out-the-vote drives, would NOT be prohibited political campaign activity if conducted in a non-partisan manner.

On the other hand, voter education or registration activities with evidence of bias that (a) would favor one candidate over another; (b) oppose a candidate in some manner; or (c) have the effect of favoring a candidate or group of candidates, will constitute prohibited participation or intervention.4

**Lobbying - Legislative Activities by 501(c)(3) Organizations**

In general, no organization may qualify for section 501(c)(3) status if a “substantial” part of its activities is attempting to **influence legislation** (commonly known as *lobbying*).  A 501(c)(3) organization may engage in some lobbying, but too much lobbying activity risks loss of tax-exempt status.

*Legislation* includes action by Congress, any state legislature, any local council, or similar governing body, with respect to acts, bills, resolutions, or similar items (such as legislative confirmation of appointive office), or by the public in referendum, ballot initiative, constitutional amendment, or similar procedure.  It does not include actions by executive, judicial, or administrative bodies.

An organization will be regarded as attempting to influence legislation if it contacts, or urges the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of legislation.

To avoid being considered lobbying, organizations may conduct educational meetings, prepare and distribute educational materials, or otherwise consider public policy issues in an educational manner.4

**Measuring Lobbying using the Substantial Part Test**

Whether an organization’s attempts to influence legislation, i.e. lobbying, constitute a substantial part of its overall activities is determined on the basis of all the pertinent facts and circumstances in each case. The IRS considers a variety of factors, including the time devoted (by both compensated and volunteer workers) and the expenditures devoted by the organization to the activity, when determining whether the lobbying activity is substantial.

Under the substantial part test, an organization that conducts excessive lobbying in any taxable year may lose its tax-exempt status, resulting in all of its income being subject to tax. In addition, section 501(c)(3) organizations that lose their tax-exempt status due to excessive lobbying, other than churches and private foundations, are subject to an excise tax equal to five percent of their lobbying expenditures for the year in which they cease to qualify for exemption.

Further, a tax equal to five percent of the lobbying expenditures for the year may be imposed against organization managers, jointly and severally, who agree to the making of such expenditures knowing that the expenditures would likely result in the loss of tax-exempt status.5

**Measuring Lobbying Activity using the Alternative, Expenditure Test – 501 (h)**

Organizations other than [churches](http://www.irs.gov/Charities-%26-Non-Profits/Churches-%26-Religious-Organizations/Churches--Defined) and [private foundations](http://www.irs.gov/Charities-%26-Non-Profits/Charitable-Organizations/Private-Foundations) may elect the expenditure test under section 501(h) as an alternative method for measuring lobbying activity. Under the expenditure test, the extent of an organization’s lobbying activity will not jeopardize its tax-exempt status, provided its expenditures, related to such activity, do not normally exceed an amount specified in section 4911.  This limit is generally based upon the size of the organization and may not exceed $1,000,000, as indicated in the table below.

| **If the amount of exempt purpose expenditures is:** | **Lobbying nontaxable amount is:** |
| --- | --- |
|  ≤ $500,000 |  20% of the exempt purpose expenditures |
|  >$500,00 but ≤ $1,000,000 |  $100,000 plus 15% of the excess of exempt purpose expenditures over $500,000 |
|  > $1,000,000 but ≤ $1,500,000 |  $175,000 plus 10% of the excess of exempt purpose expenditures over $1,000,000 |
|  >$1,500,000 |  $225,000 plus 5% of the exempt purpose expenditures over $1,500,000 |
|   |   |

Organizations electing to use the expenditure test must file [Form 5768](http://www.irs.gov/file_source/pub/irs-pdf/f5768.pdf), *Election/Revocation of Election by an Eligible IRC Section 501(c)(3) Organization to Make Expenditures to Influence Legislation*, at any time during the tax year for which it is to be effective.  The election remains in effect for succeeding years unless it is revoked by the organization.  Revocation of the election is effective beginning with the year following the year in which the revocation is filed.

Under the expenditure test, an organization that engages in excessive lobbying activity over a four-year period may lose its tax-exempt status, making all of its income for that period subject to tax.  Should the organization exceed its lobbying expenditure dollar limit in a particular year, it must pay an excise tax equal to 25 percent of the excess.6

**Lobbying Strategies**

**Writing a Letter**

Nonprofit organizations rely greatly on mail campaigns to persuade legislators to support the organizations' positions. Whether you are organizing a mail campaign or writing just one letter from your organization, it is important to keep in mind that the competition is stiff. More than 200,000,000 pieces of mail are sent to Congress each year, and state legislatures are bombarded as well, so give careful thought to your letter.

**Personal Visits**

Legislators want to hear from you. The first time you meet your legislator face to face, you may be nervous. Keep in mind, however, that Legislators and their staff people repeatedly say that the information nonprofits provide is important to their decisions, so don't feel that you are entering the legislator's office as a supplicant.

**Presenting Testimony**

Testimony can be helpful in communicating your position to legislators, so it is important to know how to give it. Legislative bodies call for public hearings for a number of reasons. They may be held to inform the public about issues or for a legislative body to get the information it needs to draft laws or to find out whether legislation is needed.8

**Conclusion:**

IRHA is a 501(c)(3) not for profit organization; however its focus is not charity work or fundraising organization. Consequently, it would be highly unlikely to direct “substantial" time or activities or invest “substantial” funds for the purpose of lobbying.

IRHA should continue to provide educational programs and distribute information to its constituency in a non-partisan manner in behalf of its members Indiana’s rural communities. Based upon this research, IRHA should be more aware of which activities should be classified as educational, advocacy or lobbying. This paper included some additional legislative and political activities that IRHA should consider to gain greater recognition as a rural voice.

Staff and board members should be able to describe which activities are permissible and which are prohibited for their 501(c)(3) organization when they are representing IRHA.

The goal of this research is to clarify some of the parameters of advocacy and lobbying, provide staff, its board and membership assurance to call attention to the needs for delivering essential, high quality health care services in rural communities.

References

1. “Speak for Yourself: Nonprofit Advocacy Toolkit,” Colorado Nonprofit Association.
2. <http://www.independentsector.org/uploads/Policy_PDFs/Nonprofit_Lobbying_guide/chapter9.pdf>
3. <http://www.councilofnonprofits.org/nonprofit-advocacy/501h-election>
4. <http://www.irs.gov/Charities-%26-Non-Profits/Lobbying>
5. [http://www.irs.gov/Charities-&-Non-Profits/Measuring-Lobbying:-Substantial-Part-Test](http://www.irs.gov/Charities-%26-Non-Profits/Measuring-Lobbying%3A-Substantial-Part-Test).
6. [http://www.irs.gov/Charities-&-Non-Profits/Measuring-Lobbying-Activity:-Expenditure-Test](http://www.irs.gov/Charities-%26-Non-Profits/Measuring-Lobbying-Activity%3A-Expenditure-Test)
7. http://www.clpi.org/why-advocacy
8. <http://www.clpi.org/nuts-a-bolts/lobbying-tactics>

**How a Bill Becomes a Law in Indiana**

A bill’s journey to passage in the Indiana General Assembly is usually not as simple and straightforward as many of us learned in high school or college political science courses. There are many roadblocks and pitfalls that a bill will encounter after its introduction. In addition, most bills will encounter some level of opposition from some group or individual at some point in the process, no matter how innocuous the subject matter may seem.

What follows is a very thumbnail outline of the path most bills take to passage, or defeat, in a typical Indiana Legislative Session. Again, there are many other pitfalls that a bill can meet on its way through the process. Political disagreements, even between legislators in the same political parties, lead to the death of many bills each session.  Many bills also inevitably die during the rush to get bills through the process at the time of the deadline for moving bills from each house. Nevertheless, the following provides a good overview of the legislative process.

**How Bills Pass**

**First Reading –** Each bill presented by a legislator is first read by title in the house of its origin. At this point, either the speaker of the House or the president *pro tempore* of the Senate refers the bill to a committee.

**Committee Action —** The committee’s responsibility is to consider the merits of a bill and determine whether it can be improved by amending the language or by making additions or deletions. It is required that committee schedules be posted on House and Senate bulletin boards. Whenever possible, committee hearings are open to the public so that interested parties may speak on the measures being heard. The committee’s final action is to report the bill back to the legislative body with the committee report. If the committee report is adopted, the bill is printed and ready for further action.

**Second Reading —** When the bill is brought up for second reading on the House or Senate floor, legislators have an opportunity to propose amendments. In order to be accepted, any amendment must win the approval of a majority of the legislators present and voting. After the second reading, the bill is “ordered to engrossment.” This means that with its amendments the printed bill is authenticated as being accurate and genuine.

**Third Reading —** The engrossed bill is again called up to be read after which legislators have an opportunity for debate on its merits before the final vote is taken. It must receive a constitutional majority, meaning 51 “aye” votes in the House or 26 “aye” votes in the Senate before it can be adopted. Those bills approved are sent to the other chamber where the entire process will be repeated.

**Conference Committee —** If the bill passed by one chamber is then amended by the other, the first chamber must agree upon the amendment(s) before the legislative process can be completed. Should the first chamber dissent (refuse to agree to the changes) a conference committee of two members from each house is appointed to work out a version of the bill that will be satisfactory to both houses. All four must sign the conference committee report and it must be favorably voted on in both houses. Once this has been accomplished, the bill goes to the governor for signature.

**Governor’s Action —** The governor sends every bill received to the attorney general for examination to see if its content is legally acceptable. The last step in the enactment process is for the governor to sign the bill, or to let it become law without signature. Bills become effective on July 1 of the year they are enacted unless a different effective date is specified on the bill.

**How Bills Fail**

**First Reading —** Either house has the authority to vote not to receive a bill on its introduction (first reading). Also, a motion for indefinite postponement or to table the bill may be made from the floor at any time throughout these steps. If approved, either of these motions has the effect of preventing any further progress.

**Committee Action —** The committee to which a bill is referred can kill it simply by refraining from acting on it. This is a common defense tactic if the committee chairman agrees not to schedule the bill for a hearing.

**Second Reading —** A motion for indefinite postponement or to table sometimes is made from the floor at this point in the process. Attempts also may be made to amend the bill in such a way that it will stand less of a chance of passage. A motion may also be made at this point to strike out the enacting clause, which effectively kills the effect of the bill.

**Third Reading —** A bill can win approval of more than half of the legislators voting on it and still falter at this point through failure to gain a constitutional majority (51 “aye” votes in the House and 26 “aye” votes in the Senate). A bill that has simply failed to win a constitutional majority can be called up again for another vote. If it has been defeated by a constitutional majority, however, it cannot be considered again except by suspension of the rules.

A bill that reaches the second House is subject to all of the opportunities to succeed or fail that exist in the House of introduction.

**Conference Committee —** A bill that survives the hazards of both houses but is amended in the second chamber in a manner that is unacceptable to the House of origin must go to a conference committee consisting of two members appointed from each House. The committee members attempt to reach an agreement that will be acceptable to legislators in both chambers. All four members of the committee must sign the conference committee report and it must be approved in both houses. Bills sometimes die because no such agreement can be reached.

**Governor’s Action —** The final obstacle to a bill passed by both houses is a veto by the governor. The veto can be overridden, but it requires a constitutional majority of both houses to do so. The governor has seven days in which to act on a bill that has been passed by both houses. If the governor neither signs nor vetoes the bill within that period, it becomes law without signature on the eighth day. A bill vetoed at the end of a session is brought before the legislators in the next succeeding session, usually in the beginning days, for their decision on whether to override the governor’s veto.

Reference: <http://www.in.gov/ipas/2425.htm>

**Nonprofit Lobbying in Indiana**

***What is lobbying?***1 Simplified, lobbying is using organizational resources (staff, materials or paying someone else) to influence the outcome of legislation, policy or contract decision. It does not include:

• Application or negotiation of an award or contract

• Testimony or communication in hearing or meeting, when requested as expert witness

• Communication solicited by state agency

• Participation on a committee or commission

• Acts as an individual

***What are the types of lobbying?***

• *Direct* – communicates position (vote yes, support this, oppose that)

• *Grassroots* – urging others to take action

***Are nonprofits2 allowed to lobby?*** YES, nonprofits may lobby, and arguably have a moral imperative to help advocate for their mission and the clients they serve.

Nonprofits simply need to understand the rules, track activities and register and report lobbying

expenditures if applicable. Most nonprofits may engage in advocacy and very limited lobbying *without* registering as a lobbyist. How? Volunteers who lobby for an organization do not have to register or report. Nonprofits

***What are the rules?*** Simplified, staff/organizations that spend a substantial amount of time/resources to affect specific law, policy, contract, etc should register and track expenditures/activities:

• IN Legislative – if spend more than $500/yr, register before lobbying (deadline 1/15 for session) with the IN Lobbying Registration Commission at www.in.gov/ilrc

• IN Executive – if spend more than $1000/yr, register up to 15 days after event with the Executive Branch Div/IN Dept of Administration, www.in.gov/idoa/2471.htm

• Federal – not applicable for Indiana UWs and most small nonprofits

• Nonprofit organizations that do more than “insubstantial” amount of lobbying should file IRS

Form 5768 with 990 (taking the “H” election) to be subject to the lobbying‐expenditure test.3

• Note: organizations that hold certain government contracts may be subject to additional rules.

**Key points about nonprofit engagement in Public Policy, Advocacy, and Lobbying4**

 You may (and should) educate policy makers and advocate your mission.

 You may (and should) lobby.

 Do not use ANY organizational resources to support or oppose candidates or political parties in any way.

 Know the rules and follow them. Track if you do more than “insubstantial” amount of lobbying.

 Have volunteers make the pitch.

1 Indiana Code defines lobbying as communicating by any means, or paying others to communicate by any means, with any legislative

official for the purpose of influencing any legislative action. Through an executive order, Governor Daniels created rules for "executive

branch lobbying”, which includes any action or communication made to delay, oppose, promote, or otherwise influence the outcome of an

executive branch action.

2 The rules vary by the type of nonprofit. For our purposes, we are referring to organizations under Section 501‐(c) 3 by IRS.

3 Before 1976, IRS rules required that 501 (c) 3 organizations could lose their tax‐exempt status if they did more than “insubstantial”

amount of lobbying—without defining the term. Sections 501 (h) and 4911 of the Tax Reform Act of 1976 established clear guidelines called

the “lobbying‐expenditure test.” NPs have to elect to be subject to this. Exempt expenditures up to $500,000 may spend 20% on total

lobbying and 5% on grassroots. Between $500K‐$1M, may spend $100K + 15% of amount over $500K, and so forth.

4 A few UWs, and many UW agencies, may need to track their contacts to see if they need to report with IRS, ILRC or IDOA. Most will not.

The key is that most UWs—even when they meet directly with legislators—are educating legislators about community needs and impacts

and NOT asking them for a specific vote, funding, policy decision, etc. Specific asks (vote yes/no for bill #) are considered lobbying.

Reference: <http://www.iauw.org/pubpol/NonprofitLobbyingIndiana.pdf>

**Additional Resources:**

1. The Legislative Process, The Indiana Governor’s Planning Council for People with Disabilities, Harrison Building, Suite 404, 143 Wet Market Street, Indianapolis, IN, e-mail: GPDPD@in.net
2. E-learning module - Walking through the Legislative Process from the Indiana House of Representatives <http://congress.indiana.edu/e-learning-module-the-dynamic-legislative-process>

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