

**Practical Pointers Series**

**Yes Your Land Trust Can Lobby if You Follow Some Basic Rules**

Community support for increasing the pace and permanence of conservation depends on the quality, depth and extent of your relationships with elected officials as much as with your landowners and community members. Even if you never take a government grant, your land trust relies on tax exemptions and charitable deductions that are very much at risk, so treat your public officials like any other donor -- show them how your work benefits their constituents and the economy. The IRS [is very clear that it supports nonprofit lobbying](#), but you need to follow some simple rules, and check for state rules as well. This is a general informational outline to get you started:

**1. First, there are many activities that the IRS does NOT consider lobbying:**

- A. Communicating to a legislative body in self-defense or upon demand.
- B. Telling land trust members about important legislation, but not asking them to lobby.
- C. Disseminating nonpartisan research, studies and policy analysis (education).
- D. Providing assistance or information to a governmental body or legislative committee after receiving a written request (technical assistance). An e-mail request is considered written.
- E. Conducting non-partisan general education, voter education or get-out-the-vote efforts without specifying a specific candidate or legislation.
- F. Filing papers and communicating regarding proposed regulations.
- G. Taking actions before executive, judicial or administrative bodies.

**2. But some lobbying is OK – You can choose between two sets of rules:**

**A. Choice one (by default): The “insubstantial part” test**

- i. Unless you elect otherwise “no substantial part” of a nonprofit’s activities can be lobbying, but there is no definition of what that means and no definite rules.
- ii. You must be prepared to carefully document lobbying activities on your Form 990 to satisfy the vague “Insubstantial Part Test,” an activity based measure of all the pertinent facts and circumstances of a land trust’s lobbying activities, including:
  - a. The time that land trust workers devote to lobbying, and
  - b. The expenditures the organization devotes to lobbying, including salaries, support of volunteers, publications, media contacts, grants to others, rallies, meetings, etc.
- iii. Penalties: The sole sanction available is loss of tax-exempt status and an excise tax equal to 5 percent of lobbying expenditures for the year that the organization lost its exemption.

**B. Choice two: File Form 5768 to come under clearer and more permissive rules**

- i. We recommend land trusts take the 501(h) election to come under the clear rules of the 1976 lobbying law, by filing [the simple one-page Form 5768](#) with the IRS.
  - a. Election only needs to be made once but has to be made affirmatively.
  - b. It can be revoked at any time by filing a second Form 5768, noting the revocation.
  - c. Taking the 501(h) election will not increase your chances of an audit or disqualify you from grants.
- ii. The 1976 law defines two basic types of lobbying:
  - a. Direct lobbying: Communications about “legislation” from your organization:
    - i. To legislators or government officials who participate in the formulation of legislation (or to voters in the case of referendums)
    - ii. To your own members, when you include a “call to action.”
  - b. Grass Roots lobbying: Communications urging the general public to contact legislators regarding legislation.

- iii. Taking the 501(h) election provides specific, narrow definitions of lobbying and clear dollar-based safe harbors that may permit significantly more lobbying.
    - a. Permitted expenditures are based on a sliding scale that starts with 20% of the first \$500,000 of an organization's budget, up to an overall cap of \$1 million.
    - b. Grass Roots lobbying is limited to no more than 25% of the overall lobbying limit
    - c. Be sure to document lobbying expenditures to report on your 990, but detailed descriptions are no longer necessary and activities that don't cost money are ignored.
  - iv. Penalties: Sanctions are flexible and come into play only when a 4-year average of your expenditures exceeds the limit
- 3. Be very careful around election season:**
- A. 501(c)3 charities are *strictly prohibited* from endorsing or otherwise supporting candidates for public office
  - B. But land trusts can engage in referendums – voters effectively become the legislature, thus those expenditures are subject to the limits for “direct lobbying.”
  - C. Lobbying activities that would normally be permissible, such as award presentations and invitations to speak, may create the problematic appearance of an endorsement if conducted during election season. You may, for example, need to invite the challenger to speak as well.
- 4. Some grants can fund lobbying, some cannot:**
- A. Land trusts can receive federal grant funds and contracts and still lobby. But be careful not to use federal grant funds for lobbying except where authorized to do so.
  - B. Private foundations may make grants to public charities that lobby so long as the grants are not earmarked for lobbying and are general purpose grants, or specific project grants that meet the requirements of section 53.4945-2(d)(6) of the Foundation Excise Tax Regulations.
- 5. You do need to complete Form 990 correctly to reflect your activities.**
- A. Lobbying expenditures must be reported each year to the IRS on Form 990, Schedule C.
  - B. For land trusts that filed Form 5768, Part II-A is the pertinent section of Schedule C. Among other info, it requires lobbying expenditures for the prior 4 years to determine whether there have been excess lobbying expenditures
  - C. Use Form 990, Schedule C, Part II-B if you have not made the 501(h) election. Note the requirement for a detailed description of lobbying activities for the IRS contextual “Insubstantial Part” facts and circumstances analysis.
- 6. You probably don't need to “register” as a lobbyist, but check state rules**
- A. You do *NOT* need to register under the federal Lobbying Disclosure Act unless you spend over \$10k quarterly on *federal* legislation and *employ* a lobbyist who spends at least 20% of his/her time on federal legislation.
  - B. State laws may differ.

### **ADDITIONAL RESOURCES**

For additional information on relationships, advocacy and lobbying rules, you can call IRS personnel: Tax Exempt and Government Entities Customer Account Services (877) 829-5500. You can also find many more resources at <https://www.landtrustalliance.org/issues-action>.

The Land Trust Alliance furnishes general information and materials as tools to help land trusts. The Alliance provides tools with the understanding that it is not engaged in rendering legal, accounting or other professional counsel. If you require legal advice or other expert assistance, seek the services of a competent attorney or other professional with expertise in your area of concern.

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