

2013 Legislative Summary: Local Government Ethics

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The 2013 General Assembly convened on January 9, 2013, for the purpose of electing officers, adopting rules, and organizing the session. It then adjourned and reconvened on January 30th to begin its work. While ethics remains a topic of great interest, only one bill of significance relating to local governments was enacted.

New Ethics Requirements for Local Transportation Planning Organizations

During the 2012 short session, the General Assembly enacted legislation that covered members of local transportation planning groups, known as MPOs and RPOs¹, under the State Government Ethics Act ([G.S. Chapter 138A](#)), the same ethics laws that apply to many state officials. Responding to concerns about the breadth and scope of these ethics requirements, especially as they applied to local government employees serving on MPO and RPO technical committees, the General Assembly enacted [Senate Bill 411 \(SL 2013-156\)](#).

This legislation makes two important changes to current law:

1. Repeals the statutes that included MPOs and RPOs under the State Government Ethics Act, meaning that members of MPOs and RPOs are *no longer* subject to the requirements and prohibitions of Chapter 138A; and
2. Puts in place a more narrowly focused set of ethics requirements that *only* apply to members of MPOs and RPOs with voting authority, meaning the members of the organizations' policy boards (usually referred to as TACs).

The new requirements are now codified as G.S. 136-200.2(g)–(k) (for MPOs), and G.S. 136-211(f)–(k) (for RPOs). What are these new requirements and what do they mean for local government officials and employees?

¹ Metropolitan Planning Organizations and Rural Transportation Planning Organizations. For more about MPO's and RPO's and last year's legislation, see [this previous blog post](#).

TCC Members No Longer Covered Under State Ethics Act

Under SB411, state and local government employees and others who serve on MPO and RPO Technical Coordinating Committees (TCCs) are no longer covered under the State Government Ethics Act. In addition, they are not subject to the new ethics requirements that now apply to MPO and RPO Transportation Advisory Committees (TACs). Under the old law, members of both TCCs and TACs were covered under the State Government Ethics Act. Now, neither TCCs nor TACs are covered under Chapter 138A, and only TACs are covered under the new ethics requirements.

SB411 went into effect at 4:27 p.m. on June 19, 2013. As of that moment, *local government employees serving on TCCs were no longer subject to the State Government Ethics Act. Nor are they subject to the new ethics requirements that are now applicable to MPO and RPO TAC members.* Of course, local government employees must continue to comply with other conflicts of interest laws, including the prohibitions against self-benefiting under public contracts ([G.S. 14-234](#)), misusing confidential information ([G.S. 14-234.1](#)), and accepting gifts or favors from vendors and contractors ([G.S. 133-32](#)).

During the 6-month timeframe in which local employees serving on TCC's were covered under the State Government Ethics Act (January through June, 2013), they were required to file a Statement of Economic Interest (SEI) disclosing certain personal financial information. Now that TCCs are no longer subject to Chapter 138A, TCC members are not required to file SEIs, which are a matter of public record. So, what will happen to those SEIs filed earlier this year by TCC members? To ensure that local employees' personal financial information is not subject to public inspection now that there is no legal basis for the disclosure, the State Ethics Commission (SEC) is authorized to destroy the SEI's filed by TCC members as well as the SEC's written evaluations of those SEIs.

There is one way in which state or local government employees could become subject to the new ethics requirements that apply to TAC members. If an employee serves as the alternate or designee of a TAC member, that employee becomes subject to the new ethics requirements. Coverage of alternates and designees is discussed below in more detail.

TAC Members Have New Ethics Requirements

Under the old law, local government officials and others serving on TACs were subject to the entire scope of ethics requirements and prohibitions under Chapter 138A. Under the new law, TACs are no longer covered under the State Ethics Act. Instead, all voting members of TACs, as well as their alternates or designees, are subject to a new set of ethics requirements.²

² Members of the State Board of Transportation serving on TACs continue to be covered by the State Government Ethics Act, and are not subject to the new ethics requirements for other TAC members.

The new ethics requirements are:

1. *Avoid Conflicts of Interest*: Members must refrain from participating in and voting on any action as a MPO or RPO TAC member if the action would result in a reasonably foreseeable financial benefit to the member, the member's extended family, or any business with which the member is associated.
2. *Disclose Conflicts of Interest*: Members must promptly disclose in writing any actual or potential conflicts of interest. The written disclosure, which is a public record, must be attached to the minutes of the MPO/RPO meeting in which any discussion or vote was taken related to the disclosed conflict.
3. *Disclose Economic Interests*: Members must file a Statement of Economic Interest (SEI) as required under [Article 3 of Chapter 138A](#); the SEI must be filed and evaluated by the State Ethics Commission before the member can take his or her position on the MPO or RPO TAC to which he or she is appointed (this requirement is the only aspect of the previous law that is carried forward under the new law). Just as under the old law, the penalty for failure to timely file a SEI can result in a \$250 fine.
4. *Disclose Real Estate Interests*: Members must include with the SEI a separate list of all real estate owned wholly or in part by the member, the member's extended family, or a business with which the member is associated. This requirement applies to real estate located within the jurisdiction of the MPO or RPO on which the member serves.
5. *Not Use Confidential Information*: Members cannot use or disclose nonpublic information the member learns as a result of serving on a MPO or RPO in a way that would affect the personal financial interests of the member, the member's extended family, or a business with which the member is associated.

The new ethics laws specifically define three terms that are directly related to the prohibitions against conflicts of interest and misusing confidential information as well as the real estate disclosure requirement:

1. *Extended family* – The term “extended family” is defined as the member's spouse, lineal descendants (such as children and grandchildren), lineal ascendants (parents, grandparents, etc.), and siblings, as well as his or her spouse's lineal descendants, lineal ascendants, and siblings (i.e., the member's in-laws), and the spouses of any of these individuals. ([G.S. 138A-3\(13\)](#))
2. *Business with which associated* – The term “business with which associated” is defined as a business in which member or his or her immediate family
 - a. is an employee;
 - b. holds a position as a director, officer, partner, proprietor, or member or manager of a limited liability company irrespective of the amount of compensation received or the amount of the interest owned;

- c. owns a legal, equitable, or beneficial interest of ten thousand dollars (\$10,000) or more in the business or five percent (5%) of the business, whichever is less, other than as a trustee on a deed of trust; or
 - d. is a lobbyist registered under Chapter 120C of the General Statutes. ([G.S. 138A-3\(3\)](#)).
3. *Financial benefit* – The term “financial benefit” is defined as a “direct pecuniary gain or loss to a business competitor,” which mirrors the definition of financial benefit under Chapter 138A.

TAC Alternates and Designees Are Covered Under New Ethics Laws

The new ethics requirements apply to “individuals with voting authority” who serve on MPOs and RPOs (i.e., members of TACs). Members often designate individuals to serve as their alternates or designees on the TAC. Because alternates or designees act in the place of the TAC member, they have the same voting privileges as those members, thus making them “individuals with voting authority.” Consequently, TAC alternates and designees are subject to the same ethics requirements under the new law as the TAC members themselves. Although state and local government employees serving on TCCs are not covered under the new ethics requirements, an employee who is appointed as an alternate or designee of a TAC member would be covered.

Sanctions for Violations

The new law imposes sanctions for violations of its provisions. Violating the conflict of interest prohibition is punishable as a Class 1 misdemeanor. Failing to timely file a SEI may result in a \$250 fine. Knowingly concealing or failing to disclose required financial or real estate information is punishable as a Class 1 misdemeanor; filing false financial or real estate information is punishable as a Class H felony. While no specific penalty is provided for misusing nonpublic information, this prohibition is essentially the same as that under [G.S. 14-234.1](#), which is punishable as a Class 1 misdemeanor.

State Ethics Act Requirements No Longer Applicable

While TAC members must now comply with the new ethics requirements, they are no longer required to comply with any of the provisions of the State Ethics Act other than the SEI filing requirement. Notably, members of MPO and RPO TACs are no longer required to participate in state ethics training every two years, and they are no longer subject to the prohibition accepting gifts from lobbyists, lobbyists’ principals, or interested persons. They are, of course, still prohibited from accepting gifts or favors from certain vendors and contractors ([G.S. 133-32](#)), and must still participate in local ethics training within twelve months of each election and reelection ([G.S. 160A-87](#) for city council members and [G.S. 153A-53](#) for county commissioners).

Board Clerks Have No Obligations under New Ethics Laws

Clerks to city councils and county boards of commissioners have no legal obligations under the new ethics laws. In particular, board clerks are not required to maintain a copy of a TAC member's SEI or real estate disclosure list. The SEI and real estate disclosure list *must* be filed with the State Ethics Commission; filing these forms with the board clerk *does not* satisfy the TAC member's legal obligations.

In addition, if a TAC member must disclose in writing an actual or potential conflict of interest related to a MPO or RPO matter, that written disclosure *must* be attached to the minutes of the MPO or RPO meeting in which any discussion or vote was taken related to the disclosed conflict. The conflict disclosure *should not* be filed with the clerk unless the clerk maintains the minutes of TAC meetings.

New MPO/RPO Ethics Requirements Do Not Apply to Other Local Government Officials

The new ethics requirements apply to voting members of MPO and RPO TACs *only*. These requirements *do not apply* to other local government officials or employees. City council members and county commissioners who *do not* serve on a TAC are *not* required to file SEIs or real estate interests lists. The new conflict of interest prohibition and written disclosure requirement *do not* apply to matters coming before a city council or county board of commissioners. Of course, all local officials must still comply with other conflicts of interest laws, including the prohibitions against self-benefiting under public contracts ([GS 14-234](#)), misusing confidential information ([GS 14-234.1](#)), and accepting gifts or favors from vendors and contractors ([GS 133-32](#)), regardless of whether they serve on a TAC.

Where To Go For More Information and Advice

Under the old law, TAC members could seek informal and formal advice from the [State Ethics Commission](#) since that entity has jurisdiction over interpretations of Chapter 138A. Now that TAC members are subject to separate ethics requirements and not covered under Chapter 138A except for the SEI filing requirement, the SEC has no legal jurisdiction over questions of interpretation of the new law. The SEC is still the appropriate entity for TAC members to contact if they have questions about [SEI and real estate disclosure filing requirements](#) (the SEC will be developing a separate form to be used for real estate disclosures). For other questions about the new ethics requirements, a TAC member should consult with the attorney that advises the MPO or RPO on which the member serves or contact [Norma Houston](#) at the UNC School of Government.

Broader Local Ethics Requirements Not Enacted

Additional ethics requirements would have been imposed on local governing boards under [HB659](#), but this legislation was not passed by the House prior to the [crossover deadline](#). It is therefore unlikely that this legislation will be considered when the General Assembly reconvenes the long session in May 2014.