

2014 Legislative Summary: Local Government Ethics

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The North Carolina General Assembly adjourned the 2013-14 legislative session *sine die* (from the Latin "without day") on August 20, 2014. Unless recalled to Raleigh for a special session, the General Assembly will not meet again until January 14, 2015, when a new session convenes following the November 2014 general elections. Enacted legislation affecting ethics and conflicts of interest for local government officials is summarized below.

I. Enacted Legislation

MPO / RPO SEI Penalties

During 2012, the General Assembly imposed a number of ethics requirements on the voting members (or their designees) of the policy-making boards of Metropolitan Planning Organizations (MPO) and Rural Transportation Planning Organizations (RPO) ([S.L. 2013-156](#)). These policy-making boards are referred to as Transportation Advisory Committees (TAC). Among their ethics requirements is the obligation for TAC members to disclose certain economic interests and real estate holdings. These disclosures are made by filing a Statement of Economic Interest (SEI) and a Real Estate Disclosure form (RED) with the NC State Ethics Commission (SEC)

To strengthen the economic and real estate disclosure requirements for TAC members, the General Assembly enacted penalties for late filing and nondisclosure.

[Section 12 of S.L. 2014-58 \(H1025\)](#) amends G.S. 138A-25 by establishing civil fines and criminal penalties both for failing to file an SEI and RED on a timely basis and for filing an incomplete SEI or RED. The amendments are effect October 1, 2014; the following rules will apply to SEI and RED filings made after that date:

1. Within 30 days after the deadline for submitting the SEI and RED (April 15, 2015, and April 15th in subsequent years), the SEC must notify any TAC member whose SEI or RED is late or incomplete (meaning the forms were not fully filled out).
2. If a TAC member who receives a late/incomplete filing notice does not file or complete his or her SEI or RED within 30 days of receiving the notice, the SEC *must* issue a fine of \$250 (except in extenuating circumstances as determined by the SEC).
3. If the TAC member fails to file or complete his or her SEI or RED within 60 days of receiving the SEC notice, the member is guilty of a Class 1 misdemeanor. The SEC is required to report the violating TAC member to the Director of the State Bureau of Investigation (SBI) for investigation and referral to the District Attorney for possible prosecution (except in extenuating circumstances determined by the SEC).

It is important to note that the \$250 fine and criminal penalty apply separately to the filing requirement for *each* form. If a TAC member fails to timely file a complete SEI *and* a complete RED, that member will be subject to *two* \$250 fines, or a total of \$500, as well as possible criminal prosecution for *two* Class 1 misdemeanors. If, however, the TAC member timely files a complete SEI but fails to timely file a complete RED, he or she would be subject to just one \$250 fine and possible criminal prosecution for only Class 1 misdemeanor.

The following chart outlines the sequence of deadlines and possible consequences for failing to file a complete SEI and RED in a timely manner:

April 15 th (beginning in 2015)	TAC members must file complete SEIs and REDs with the SEC
Within 30 days of April 15 th	SEC must notify TAC members who did not file complete SEIs or REDs (either the member did not file at all or filed an incomplete form or forms)
Within 30 days of receiving SEC notice	TAC member must file complete SEI or RED or be fined \$250 for each form not filed complete (\$500 fine if <i>both</i> forms are not filed complete)
Within 60 days of receiving SEC notice	TAC member must file complete SEI or RED; if the member is still in violation, he or she is guilty of a Class 1 misdemeanor, and the SEC must refer the matter to the SBI for investigation and referral to the District Attorney for possible prosecution for each form not filed complete

It is important to note that the penalties enacted in this legislation are effective October 1, 2014. TAC members initially appointed to a MPO or RPO are required to file a SEI and RED and receive a written evaluation from the SEC *prior* to assuming their position. TAC members appointed on or after October 1, 2014, are subject to the deadlines and penalties outlined above for their *initial* SEI and RED filings as well as for their *annual* filings in subsequent years.

In addition to imposing new fines and penalties for late or incomplete SEIs and REDs, the SEC is required to report certain allegations to the SBI. Specifically, if the SEC receives a written allegation that a TAC member has violated any of the ethics requirements or prohibitions imposed by G.S. 136-200.2 (for MPOs) or G.S. 136-211 (for RPOs), the SEC must report the allegations to the SBI for investigation and referral to the District Attorney for possible prosecution. All written allegations and documents related to the allegations are *not* public records.

II. Legislation Not Enacted

Study Economic Interest Disclosure by City and County Officials

At one point during the legislative process, the [Regulatory Reform Act of 2014 \(S734\)](#) included a requirement that the State Ethics Commission and the UNC School of Government study the implications and impact of requiring municipal and county elected officials to file a statement of economic interest.

This provision was deleted from the final version of the legislation, so the study is no longer required.

Economic Interest Disclosure by Large City Officials

[Section 2.14 of the Health and Safety Regulatory Reform Act \(S493, 4th ed.\)](#) would have required council members and mayors of municipalities with populations over 75,000 to file statements of economic interest disclosing certain personal financial information on an annual basis. The legislation also would have prohibited council members and mayors in these cities from using or allowing the use of their public position in nongovernmental advertising or any advertising paid for with public funds. Finally, these officials would have been prohibited from using for financial benefit confidential information gained in the course of performing their official duties (a prohibition that mirrors the existing G.S. 14-234.1).

This provision was deleted from the 5th edition of the bill. The bill itself was not enacted prior to session adjournment.