
Coates' Canons Blog: File or Get Fined: New Penalties for Violating MPO/RPO Ethics Disclosure Requirements

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If you are a local government official who serves on the TAC of a MPO or RPO, recently enacted legislation makes you subject to civil fines and potential criminal prosecution for failing to file or filing incomplete your SEI and RED.

Huh? If you know what this means, you definitely should keep reading. Even if you don't know what these acronyms mean, you might still be interested.

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)** (the filing forms for TAC members are available on the **SEC's website**). If you are interested in more information about the ethics requirements applicable to TAC members, or want to learn what TACs, MPOs, and RPOs are, see **this post**.

To strengthen the economic and real estate disclosure requirements for TAC members, the General Assembly recently enacted **HB1025** (S.L. 2014-58, s. 12), which 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 will take effect on October 1, 2014, and consequently, 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 Attorney General for investigation and referral to the District Attorney for possible prosecution (except in extenuating circumstances as determined by the SEC).

It is important to note that the \$250 fine and criminal penalty apply to the filing requirement for *each* form separately. 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.

To make the process clear, here is a sequence of the deadlines and possible consequences for failing to file a complete SEI and RED in a timely manner:

April 15th (beginning in 2015)

TAC members must file complete SEIs and REDs with t

Within 30 days of receiving SEC notice

TAC member must file complete SEI or RED or be fined if not filed complete (fine of \$500 if both forms are not filed)

Within 60 days of receiving SEC notice

TAC member must file complete SEI or RED; if the member fails to do so, he or she is guilty of a Class 1 misdemeanor. If the SEC determines that the member has violated the ethics requirements, the SEC must refer the matter to the Attorney General for possible prosecution or referral to the District Attorney for possible prosecution if the member fails to file complete

In addition to imposing new fines and penalties for late or incomplete SEIs and REDs, HB1025 will also require the SEC to report certain allegations to the Attorney General as of October 1, 2014. 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 will have to report the allegations to the Attorney General for investigation and referral to the District Attorney for possible prosecution. All written allegations and documents related to the allegations are *not* public records.

Since these legislative changes focus on new sanctions and penalties that TAC members now face, I would be remiss if I did not briefly mention the sanctions and penalties applicable to violations of TAC members' ethics requirements that already exist under current law. These sanctions were not changed under the new legislation and thus remain in effect. A violation of the conflict of interest prohibition in **G.S. 136-200.2(g)(1)** and **G.S. 136-211(f)(1)** (described in my **previous post**) continues to be a Class 1 misdemeanor, as does intentionally concealing or intentionally failing to disclose information required on the SEI or RED (**G.S. 136-200.2(j)** and **G.S. 136-211(j)**). Providing false information on a SEI or RED is still a Class H felony (*Id.*). And while the prohibition in the TAC ethics statutes against misusing confidential information does not carry a specific consequence under those statutes (**G.S. 136-200.2(h)** and **G.S. 136-211(g)**), the prohibition is virtually identical to the one in **G.S. 14-234.1**, which is punishable as a Class 1 misdemeanor, so it is possible that a TAC member's misuse of such information could result in criminal sanction.

The new SEI/RED filing sanctions and penalties go into effect on October 1, 2014, and apply to disclosure requirements on or after that date. This means that TAC members will be subject to these fines and penalties beginning with the 2015 SEI/RED filing cycle. Thus, if you are a TAC member, you should ensure that your SEI and RED are completely filled out and submitted to the SEC by April 15, 2015. And don't forget that the preexisting sanctions and penalties described in the preceding paragraph are still in effect. And, don't forget that a newly appointed TAC member must file his or her SEI/RED and receive a written evaluation from the SEC prior to assuming his or her position on the TAC.

Links

- www.ncleg.net/Sessions/2013/Bills/Senate/HTML/S411v5.html
- www.ethicscommission.nc.gov/default.aspx
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=136-211
- canons.sog.unc.edu/?p=7186
- www.ncleg.net/Sessions/2013/Bills/House/HTML/H1025v6.html



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- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=138A-25
 - www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=136-200.2
 - www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=14-234.1