
Coates' Canons Blog: Local Transportation Planning Groups Now Covered under the State Ethics Act – What Does This Mean For Them?

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UPDATE: NEW LEGISLATION (SB411) WENT INTO EFFECT ON JUNE 19, 2013, SIGNIFICANTLY CHANGING THE ETHICS REQUIREMENTS FOR MPOs AND RPOs. CLICK HERE FOR A NEW BLOG POST OUTLINES THESE NEW REQUIREMENTS.

During the recent legislative session, the General Assembly designated RPOs and MPOs as “boards” for purposes of **GS Chapter 138A (S.L. 2012-142, Sec. 24.16)**. If you are a local elected official or employee and don’t know what this means (or don’t think it’s relevant to you), keep reading. The coverage of RPOs and MPOs under the State Ethics Act (**Chapter 138A**) is significant not only for those who serve on these organizations and thus are impacted directly, but also for local governments in general because it is the first time the General Assembly has categorically included a group of local entities under the ethics requirements and prohibitions that apply to state officials.

Let’s back up a minute.

What are RPOs and MPOs?

Rural Transportation Planning Organizations (RPOs), which are state-mandated and authorized under **Article 17 of Chapter 136**, are voluntary organizations of local officials that work cooperatively with the NC Department of Transportation (NCDOT) to plan rural transportation systems and advise NCDOT on rural transportation policy (**GS 136-210**). Their urban counterparts, Metropolitan Planning Organizations (MPOs), are federally-mandated and authorized under **Article 16 of Chapter 136** to develop transportation plans for urbanized areas of the state. Both RPOs and MPOs are formed through memorandums of understanding between NCDOT and cities and counties in specified rural and urban areas. Each RPO and MPO is made up of two groups: a Transportation Advisory Committee (TAC), and a Technical Coordinating Committee, also referred to as a Transportation Coordinating Committee (TCC). The TAC is typically comprised of local elected officials (or their designees) representing the partner local governments, and is charged with the responsibility for establishing goals, priorities, and objectives for transportation plans within their collective jurisdictions. The TCC is typically comprised of technical representatives (or their designees) from state and local governments, such as city and county managers, planners, and engineers, and provides general review, guidance, and coordination of the transportation planning process. Typically, recommended transportation plans are developed by the TCC, submitted to the TAC for approval, and then forwarded to NCDOT for consideration.

There are currently 20 RPOs and 17 MPOs in the state, each consisting of a TAC and a TCC which have voting members as well as alternates. Altogether, hundreds if not thousands of regional and local government officials and personnel serve on TACs and TCCs across the state. *When **S.L. 2012-142, Sec. 24.16** goes into effect on January 1, 2013, all of these local officials and local government personnel will be covered under the State Ethics Act.*

What is the State Ethics Act?

The State Government Ethics Act (**GS Chapter 138A**) establishes ethical standards of conduct for a variety of officials and employees in the legislative, executive, and judicial branches of state government. The act basically requires individuals covered under its provisions to avoid conflicts of interest, publicly disclose their economic interests, and participate in ethics education training. Individuals covered under the act are also generally prohibited from using their public position for private gain and accepting gifts from registered lobbyists and their clients (called “principals”).

Among the state officials covered under the act are individuals who serve on a state boards and commissions. They,

along with others in the Executive Branch covered under the act, are referred to as “public servants.” A state board or commission becomes subject to the act by either being designated as such by the **State Ethics Commission** or by act of the General Assembly. It is by the later method that RPOs and MPOs became covered under Chapter 138A.

S.L. 2012-142, Sec. 24.16 amends **GS 136-211** requiring that a “Rural Transportation Planning Organization shall be treated as a board for purposes of Chapter 138A of the General Statutes.” This same legislation similarly amends **GS 136-202** requiring MPOs to be treated as a board under the State Ethics Act. Because the legislation refers to RPOs and MPOs in their entirety, the coverage of the state ethics act applies to both TACs and TCCs since each RPO and MPO is made up of both committees. *Consequently, all voting members – including their alternates and designees – of TACs and TCCs are considered public servants under the State Ethics Act as of January 1, 2013.*

What does this mean for TAC and TCC members?

Basically, they are subject to the same requirements and prohibitions as all other public servants. For example, they must:

- monitor and avoid conflicts of interest in performing their official duties
- participate in state ethics education training
- not solicit or accept gifts from registered lobbyists, lobbyists' principals, and entities that have certain relationships with the RPO or MPO on which the individual serves
- not use their public position for private gain, including not using their public position in nongovernmental advertising that advances their private interests or those of others, or in any advertising or public service announcement that is paid for with state funds
- disclose their economic interests on an annual basis by filing a “Statement of Economic Interest” (SEI) – *the first SEI filing is due April 15, 2013.*

This list is not exhaustive; there are additional requirements and prohibitions under the State Ethics Act that TAC and TCC members must also comply with.

Will elected city and county officials who also serve on a RPO or MPO have to participate in two ethics education programs?

The short answer is “yes.” One of the requirements of the state ethics act noted above is that TAC and TCC members must participate in state ethics education training. This training covers the requirements and prohibitions of the state ethics act (**G.S. 138A-14**). Elected and appointed members of city councils and county boards of commissioners are *also* required to participate in ethics education on the “laws and principles that govern conflicts of interest and ethical standards of conduct at the local government level.” (**GS 160A-87**) Because the statutes require the state ethics training to cover different laws than those mandated for the local government ethics training, the local ethics training does not satisfy the state ethics training requirement and vice versa. *In other words, city and county governing board members who also serve on a RPO or MPO (most likely as a TAC member) must participate in both the state ethics training and the local government ethics education program.*

In addition to covering different laws, the two ethics education requirements also have different timeframes within which the training for each must be completed:

- **State ethics training** – Public servants must complete at least two hours of state ethics training within six months of appointment to a state board or other state position covered under the state ethics act, and then must attend refresher training at least every two years thereafter (**GS 138A-14(b)**). Since the legislation covering RPOs and MPOs under the state ethics act goes into effect on January 1, 2013, *all TAC and TCC members and alternates must complete their state ethics training by June 30, 2013.*
- **Local ethics training** – Elected and appointed members of governing boards of cities, counties, local boards of education, unified governments, sanitary districts, and consolidated city?counties must complete at least two hours of local ethics training within twelve months of election or reelection (or appointment or reappointment) to local office (**GS 160A-87**). The local training requirement is only triggered upon election (or appointment) or reelection (or reappointment) to office, so local officials must complete the local training only once during their term of office, regardless of the length of that term.

Hopefully, the chart below helps sort out these different requirements:

	Initial Training	Refresher Training
State Ethics Training	Within 6 months of appointment to state board	At least every 2 years
Local Ethics Training	Within 12 months of election or appointment to local office	Within 12 months of reelection or reappointment to local office, regardless of length of term

Does the board clerk have any responsibilities related to their local board members' state ethics training?

The short answer is "no." Local elected officials who serve on RPOs and MPOs will receive their state ethics training from the **State Ethics Commission** (SEC), and the SEC will advise those officials when, where, and how the state ethics training is delivered. The SEC also provides and maintains documentation to verify compliance with the training requirement, so board clerks are not responsible for keeping any records verifying their members' state ethics training (board clerks are, however, responsible for maintaining records verifying that their members' have completed their local ethics training. **GS 160A-87**). Boards covered under the state ethics act have ethics liaisons that coordinate ethics-related matters, including training, with the SEC. If clerks receive questions from their board members about state ethics act training requirements, clerks should refer their board members to the SEC or the ethics liaison for their RPO or MPO once those liaisons have been designated.

Where can you get more information?

The **State Ethics Commission** is responsible for providing information about compliance with the state ethics act's requirements and prohibitions as well as investigating alleged violations. The SEC also has the authority to render advisory opinions on questions involving interpretations of the act. The SEC has created a **dedicated webpage** for RPOs and MPOs to assist TAC and TCC members in understanding their new obligations and complying with the various requirements imposed on them when the legislation goes into effect on January 1, 2013. The SEC webpage provides helpful information such as important deadlines, FAQ's, and an overview of the state ethics act. *RPO and MPO members should consult the SEC's website and contact the SEC if they have questions.*

Links

- www.ncleg.net/Sessions/2013/Bills/Senate/PDF/S411v5.pdf
- canons.sog.unc.edu/?p=7186
- www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_138A.html
- www.ncleg.net/gascripts/BillLookup/BillLookup.pl?Session=2011&BillID=H950
- www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_136/Article_17.html
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=136-210
- www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_136/Article_16.html
- www.ethicscommission.nc.gov/
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=136-211
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=136-202
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_138A/GS_138A-14.html
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-87
- www.ethicscommission.nc.gov/coverage/planningorgs.aspx
- www.ethicscommission.nc.gov/default.aspx