



# State Government Ethics and Lobbying Laws: What Does and Does Not Apply to Local Governments: Revised through 2013

Norma R. Houston

In 2006, the North Carolina General Assembly enacted sweeping reform legislation (S.L. 2006-201) aimed at addressing public concern that grew out of the campaign and legislative activities of some of the state's top public officials. These new provisions established ethical standards for state officials and imposed broad new regulations and restrictions on those officials and on individuals and entities seeking to influence their actions.<sup>1</sup> The Act created a new chapter of the North Carolina General Statutes (hereinafter G.S.) entitled the State Government Ethics Act (Chapter 138A, hereinafter "the Act"), which established affirmative standards for ethical conduct and conflicts of interest as well as restrictions on the conduct of a wide array of state officials and employees in the legislative, executive, and judicial branches. The Act also created a new law (Chapter 120C) regulating the conduct of those who lobby executive and legislative branch officials and employees.<sup>2</sup> Since their enactment in 2006, these laws have been amended every legislative session; this bulletin reflects the current state of the law through the 2013 session.

The ethics and lobbying laws are primarily intended to set ethical standards for the actions of state government officials and those who seek to influence them. A quick glance at these laws could lead the reader to the erroneous conclusion that they are not relevant to local government officials and their employees. A more careful review, however, makes it clear that certain

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Norma R. Houston is a faculty member of the School of Government and a fellow of the Parr Center for Ethics at UNC Chapel Hill.

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1. The Act also made changes to the Legislative Ethics Act. Because those laws apply solely to members of the General Assembly, they will not be addressed in this bulletin.

2. Chapter 120C of the North Carolina General Statutes (hereinafter G.S.) is a complete rewrite of Article 9A of G.S. Chapter 120, which formerly governed lobbying of members of the General Assembly.

provisions do—and other provisions may—apply to local governments. Using a question-and-answer format, this bulletin distinguishes among provisions that clearly do apply to county and municipal officials and employees, those that clearly do not apply to local governments, and those whose applicability is currently uncertain. The application of the state’s ethics and lobbying laws to local government legislative liaisons and local officials and employees who serve on Rural Transportation Planning Organizations (RPOs) and Metropolitan Planning Organizations (MPOs) is also discussed.

## Ethics Law—G.S. Chapter 138A

G.S. Chapter 138A puts in place statutorily mandated standards of conduct for certain categories of public officials (covered persons) in the performance of their duties. The standards apply to all official activities regardless of whether the specific activity involved constitutes lobbying. The chapter also includes certain restrictions that affect the activities of lobbyists and their principals.

### Persons Covered under the Ethics Law

The first task in examining the potential application of G.S. Chapter 138A to local governments is determining who is subject to the laws’ requirements and prohibitions.

#### 1. *Who is covered under the ethics law?*

A wide array of public officials are subject to the provisions of G.S. Chapter 138A. These include

- *Legislators.* Current members of the North Carolina General Assembly, persons elected or appointed to the Senate or House of Representatives who have not yet assumed office, and the lieutenant governor when presiding over the Senate. (When not presiding, the lieutenant governor is a “public servant,” as defined below.)
- *Legislative employees.* Employees of the General Assembly, consultants and counsel to legislative chambers, and committee and commission members who are paid by state funds.
- *Judicial officers.* Justices of the North Carolina Supreme Court, judges of the North Carolina Court of Appeals, superior and district court judges, district attorneys, clerks of court, and persons elected or appointed to these offices who have not yet assumed office.
- *Public servants.* A number of public officials in the executive branch (as well as those elected or appointed to office who have not yet assumed that office), including
  - constitutional officers (governor, lieutenant governor, attorney general, state auditor, state treasurer, superintendent of public instruction, secretary of state, commissioner of agriculture, commissioner of labor, and commissioner of insurance);
  - employees of the Office of the Governor;
  - heads of all principal state agencies (“cabinet secretaries”) appointed by the governor (Departments of Cultural Resources, Health and Human Services, Revenue, Crime Control and Public Safety, Correction, Environment and Natural Resources, Transportation, Administration, Commerce, and Juvenile Justice and Delinquency Prevention);
  - chief deputies and chief administrative assistants to constitutional officers and cabinet secretaries;

- confidential assistants and secretaries to constitutional officers, cabinet secretaries, and their chief deputies and chief administrative assistants;
- certain exempt policy-making employees (as designated by the governor) and their confidential secretaries;<sup>3</sup>
- judicial employees (the director and assistant director of the Administrative Office of the Courts and any other judicial employee designated by the chief justice of the state supreme court whose annual salary is greater than \$60,000);
- all voting members (including *ex officio*<sup>4</sup> members and permanent designees) of nonadvisory state boards, councils, commissions, committees, task forces, or similar bodies created by either statute or executive order (including the State Ethics Commission);
- certain University of North Carolina officials, including voting members of the Board of Governors and boards of trustees of constituent institutions, the presidents, vice presidents, chancellors, and vice chancellors;
- certain North Carolina Community College System officials, including voting members of the State Board of Community Colleges and the boards of trustees of community colleges, presidents, chief financial officers, and chief administrative officers of the Community College System and all community colleges;
- individuals in the executive branch designated by law, including members of the Governor's Crime Commission, the director of the Office of State Human Resources, the state controller, the commissioner of motor vehicles, the commissioner of banks, and personnel within the Office of Technology Services and the N.C. Turnpike Authority;
- individuals working under contract with the state in any of the above positions.

Except for legislative employees, all of the above officials and personnel are described as “covered persons” in G.S. Chapter 138A. Although not included in the definition of a covered person, legislative employees are subject to a number of the provisions of the chapter.<sup>5</sup>

### **2. Are local elected officials subject to the ethics law?**

Generally no. Local elected officials (county commissioners, city council members, mayors, sheriffs, registers of deeds, school board members, soil and water conservation district supervisors, and so on) are not covered persons as that term is defined in G.S. Chapter 138A and are not subject to the chapter's requirements (clerks of court, while elected at the county level, *are* covered under the chapter as “judicial officers”).

### **3. What if a local official also serves in another position that is covered under the ethics law?**

It is not uncommon for local elected officials also to serve in other capacities. If the particular position meets the statutory definition of either a covered person or a legislative employee, it will subject the local official to the requirements of the ethics law.

As discussed in Question 1, above, the category of covered persons includes legislators, judicial officers, and public servants. Local government officials holding more than one position are

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3. This category of employees consists of those designated under G.S. 126-5(d)(1), (2), or (2a).

4. A person is said to hold a position *ex officio* if he or she holds it by virtue of or as part of holding another position. *Ex officio* board members each have a vote, as well as all of the other rights and privileges of “regular” members, unless the provision providing for their service specifically states that they are *ex officio nonvoting* members.

5. G.S. 138A-3.

most likely to also hold a public servant position. As outlined in Question 1, a public servant includes (but is not limited to) the following:

- a voting or *ex officio* member (or permanent designee of either) of a nonadvisory state board or commission,
- a member of the UNC Board of Governors or a trustee of a UNC constituent institution,
- a member of the State Board of Community Colleges or a trustee of a community college,
- an employee of the state in a position identified in Question 1 as a public servant.

A local elected official who also serves in a covered person position or is a legislative employee will be required to comply with all provisions of the ethics law applicable to that position. Those provisions apply to the person *at all times and in all situations*, including in private life—not just in those activities that directly involve the covered position.

*Example:* County Commissioner Smith also serves as a voting member of a non-advisory state board—the Coastal Resources Commission (CRC). Membership on the CRC makes him a public servant under the State Government Ethics Act. He is therefore subject at all times to the provisions of the ethics law governing public servants—even when he is acting as a county commissioner or in his private capacity and not as a CRC member. One of the restrictions the Act imposes on public servants (and on legislators and legislative employees) is a general prohibition against accepting gifts from lobbyists and their principals.<sup>6</sup> Because he is a public servant, Commissioner Smith cannot accept a gift from a lobbyist or lobbyist’s principal, even if the gift is given to him in his capacity as a county commissioner and not in his capacity as a CRC member.<sup>7</sup>

The General Assembly enacted legislation in 2012 that designated Rural Transportation Planning Organizations (RPOs) and Metropolitan Planning Organizations (MPOs) as state boards.<sup>8</sup> As a result, all voting members of the Transportation Advisory Committees (TACs) and Technical Coordinating Committees, also referred to as Transportation Coordinating Committees (TCCs), which together comprise RPOs and MPOs, were considered public servants, including local elected officials and local government employees who serve on TACs and TCCs. Legislation enacted in 2013 repealed the 2012 legislation and instead created new ethics requirements for MPO and RPO policy-making boards (TACs). As of the effective date of the 2013 legislation, local government personnel serving in MPOs or RPOs are no longer subject to G.S. Chapter 138A; those serving on TACs are covered by the new provisions. See Question 50, below, for a more detailed discussion on the application of the state ethics act to RPOs and MPOs.

#### **4. Are local appointed officials subject to the ethics law?**

Generally no. Like local elected officials, local appointed officials, such as county managers, finance officers, and tax assessors, are not covered persons as that term is defined in G.S. Chapter 138A and thus are not subject to the chapter’s requirements. However, a local appointed official who also serves in another capacity as a covered person will be required to comply with all

6. See Question 33, below, for definitions of “lobbyist” and “lobbyist’s principal.”

7. G.S. 138A-32(e) sets out a number of exceptions to the prohibition of gifts from lobbyists and lobbyists’ principals.

8. S.L. 2012-142, sec. 24.16.

applicable provisions of the ethics law at all times and in all situations, regardless of whether that official is acting in his or her capacity as a covered person (see Question 3, above).

**5. Are local government employees subject to the ethics law?**

Generally no. Like local elected and appointed officials, local government employees and employees of local school systems are not covered persons as defined in G.S. Chapter 138A and thus are not subject to the chapter's requirements. However, if a local government employee or an employee of a local school system also serves in another covered person position, he or she will be required to comply with all applicable provisions of the ethics law at all times and in all situations, even when not acting in a covered person capacity (see Question 3, above). In addition, if a local government employee's principal job duty is to lobby legislators and legislative employees, that local government employee will be subject to some requirements and restrictions under the state's lobbying laws (see Question 49, below, for further discussion of local government liaisons).

**6. What local judicial officials are covered under the ethics law?**

Clerks of court and district attorneys are covered persons, as are all other elected judicial officials. Magistrates are not considered judicial officials for purposes of G.S. Chapter 138A, so they are not covered.<sup>9</sup>

**7. What are statements of economic interest, and do local government officials have to file them?**

Most covered persons are required to file statements disclosing their personal and business financial interests. The purpose of this requirement is to help identify and avoid potential conflicts of interest between the covered person's private interests and public duties.

Because local government officials (both elected and appointed) are generally not covered under the ethics law, they are not required to file statements of economic interest. However, a local elected or appointed official who also serves in certain covered positions will be required to file a statement of economic interest (SEI). Positions in which local government officials are likely to serve—and that require them to file statements of economic interest—include but are not limited to (1) voting membership on a nonadvisory state board, community college board of trustees, university board of trustees, or an RPO or MPO policy-making board (TAC) or (2) an appointment as the chief deputy or chief administrative assistant to a state constitutional officer or cabinet secretary.<sup>10</sup>

**8. How can I determine exactly who is covered under the ethics law?**

Some of the public officials covered under G.S. Chapter 138A, such as the governor, legislators, and judges, are easy to identify by virtue of their office. Others, such as confidential assistants and secretaries to state officials, are not so easily identified. To ensure that the public (and covered persons themselves) are fully aware of which public officials are covered, the ethics law

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9. G.S. 138A-3(19).

10. G.S. 138A-22. Individuals required to file statements of economic interest should consult their employing or appointing entity or the State Ethics Commission about the specific requirements of these provisions. See Article 3 of G.S. Chapter 138A.



requires the State Ethics Commission (SEC) to publish, at least quarterly, a list of all covered persons and legislative employees. The list is published on the commission's website.<sup>11</sup>

### **Entities Covered under the Ethics Law**

As previously noted, some individuals are covered under G.S. Chapter 138A by virtue of their service on various boards or other bodies. The next group of questions examines those entities.

#### **9. Are units of local government covered?**

No. Units of local government, in and of themselves, are not covered under G.S. Chapter 138A. As discussed above, certain local officials and employees may be covered in certain circumstances, such as when serving as voting members of nonadvisory state boards or commissions. RPOs and MPOs are not subject to Chapter 138A provisions but are covered by a separate set of ethics regulations (see Question 50, below).

#### **10. What boards and commissions are covered?**

G.S. Chapter 138A applies to any state board, commission, council, committee, task force, authority, or other similar public body created by statute or executive order (with the exception of MPOs and RPOs, as discussed in Question 50). Boards that serve only in advisory capacities are not covered. The voting members of all covered boards are subject to the requirements of the chapter, including those who serve *ex officio*,<sup>12</sup> those who serve as the permanent designee of a voting member, and those who serve by executive, legislative, or judicial appointment.<sup>13</sup>

A number of state boards with jurisdiction over matters affecting local governments are covered under the ethics law. Examples include (but are not limited to) the Local Government Commission, Property Tax Commission, State Board of Transportation, Coastal Resources Commission, Environmental Management Commission, Marine Fisheries Commission, State Board of Elections, Governor's Crime Commission, Fire and Rescue Commission, Local Government Employees' Retirement System board, Parks and Recreation Authority, Sheriffs' Education and Training Standards Commission, Social Services Commission, Soil and Water Conservation Commission, and the Clean Water Management Trust Fund board of directors.

#### **11. Are committees within state agencies covered?**

No. Internal committees of state agencies that are composed entirely of agency staff are not covered under the ethics law unless the committee is legally vested with authority that is more than merely advisory, is established by statute or executive order, or is formally appointed by legislative, executive, or judicial authority.

#### **12. Are local government boards covered?**

Generally no. Local government boards, such as boards of county commissioners, city councils, boards of education, and their members, are not covered by the ethics law. There are, however, some local and regional boards for which the answer is less clear.

11. G.S. 138A-11. The State Ethics Commission can be contacted at 919.715.2071; its website is [www.ethicscommission.nc.gov](http://www.ethicscommission.nc.gov).

12. Please see note 4, above, for more information about *ex officio* office-holding.

13. G.S. 138A-3(1c) and 138A-3(30)(i).

G.S. Chapter 138A applies to nonadvisory state boards but does not specifically define the term “state board.” It appears that legislators intended the law to cover nonadvisory boards that have statewide jurisdictions or that perform functions that are statewide in nature but not boards that essentially operate at the local level. This interpretation would appear to eliminate most local government bodies, especially those that operate solely at the local level. Examples of such boards include zoning boards of adjustment, boards of equalization and review, local housing authorities, and entities established by the General Assembly through local acts specific to individual cities and counties (for example, airport authorities, tourism boards, convention bureaus, beautification districts, and historic districts).<sup>14</sup> Also not covered are other boards, commissions, or task forces established directly by county or municipal governments.

Some boards commonly thought of as local boards also have a direct connection to the state. They may have been established by statute, or their members may be appointed or approved by a state official, or they may function as the local branch of a statewide system. Local boards of health, social services, alcoholic beverage control, and elections, as well as the governing bodies of public hospitals, are some of the boards that have such state connections. For example, the State Board of Elections, which oversees election matters statewide and exercises statewide jurisdiction, is covered under the ethics law, whereas county boards of elections are not covered because their jurisdictions are limited to the county level even though their board members are appointed by a state official and they carry out specific functions directly connected with statewide activities (elections). The SEC, which is authorized to adopt rules implementing G.S. Chapter 138A and to issue advisory opinions on questions concerning its application, has so far determined that these types of local boards are not covered.<sup>15</sup>

It is somewhat unclear whether, and how, G.S. Chapter 138A applies to certain boards and commissions that operate at a regional level, such as councils of government, mental health local management entities, or other regional entities created by statute or executive order. The SEC is authorized to provide clarification on this question. It already has done so with respect to one type of regional body—regional economic development commissions. The SEC has determined that these regional commissions are covered under the ethics law.

### **13. What about community college boards of trustees?**

While the boards of trustees of community colleges are sometimes thought of as local boards because of the direct relationship between counties and community colleges, these boards are specifically covered under G.S. Chapter 138A, and all voting members of these boards are public servants subject to the ethics law.<sup>16</sup>

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14. Any authority established under G.S. 160A-480.3 (Facility Authorities) is specifically considered a board for purposes of G.S. Chapter 138A. G.S. 160A-480.3(h).

15. See Pamela B. Cashwell, *Criteria for Identifying Covered Boards under the State Government Ethics Act*, Report to the State Ethics Commission, [http://test.ethicscommission.nc.gov/documents/rpt\\_covered\\_boards\\_0619.pdf](http://test.ethicscommission.nc.gov/documents/rpt_covered_boards_0619.pdf) (April 24, 2009).

16. G.S. 138A-3(30)(k).

**14. How can I find out which boards are covered?**

The SEC is required to designate the specific state boards covered under G.S. Chapter 138A and to publish, at least annually, a list of covered boards. The list is published on the commission's website.<sup>17</sup>

**General Requirements and Prohibitions**

After identifying the persons and positions subject to G.S. Chapter 138A, local officials evaluating its application to their particular governments will need to examine what requirements and restrictions the ethics law mandates.

**15. What are covered persons required to do?**

Covered persons (legislators, judicial officers, and public servants) and legislative employees are required, in most instances, to do some or all of the following:

- publicly disclose personal economic interests;
- participate in ethics and lobbying education programs and training;
- take an active role in furthering ethics in public service and ensuring compliance with the ethics law;
- determine whether a conflict of interest exists before taking official action;
- remove any disqualifying conflict of interest found or, if the conflict is so substantial that the individual cannot perform the duties of the office, resign his or her position.

Not every requirement listed above will apply in every instance to all covered persons and legislative employees. Individuals who are covered persons or legislative employees should consult G.S. Chapter 138A or the SEC to obtain more specific information about their particular obligations under the law.

**16. What are covered persons prohibited from doing?**

Covered persons (legislators, judicial officers, and public servants) and legislative employees are prohibited, in most instances, from doing some or all of the following:

- using or allowing others to use their public position for private gain or in private advertising;<sup>18</sup>
- accepting certain gifts from certain individuals and entities;<sup>19</sup>
- receiving outside compensation for performing their official duties;
- using nonpublic information for personal financial gain;
- participating in official actions in which they have a personal financial interest;
- participating in official actions in which their extended family, their employer or client, or a business or nonprofit organization with which they are associated may receive a financial benefit;
- employing and/or supervising family members.

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17. G.S. 138A-11. The State Ethics Commission can be contacted at 919.715.2071; its website is [www.ethicscommission.nc.gov](http://www.ethicscommission.nc.gov).

18. See Question 25, below, for further discussion of this prohibition.

19. See Questions 17–25, below, for further discussion of gifts and event participation.



Not every prohibition listed above will apply in every instance to all covered persons and legislative employees, but all of the above prohibitions do apply to public servants. Individuals who are covered persons or legislative employees should consult G.S. Chapter 138A or the SEC to obtain more specific information about the prohibitions that apply to them.

One conflict of interest provision worth noting is the prohibition against a public servant or legislator taking official action when he or she knows the action may reasonably be foreseen to result in a financial benefit to not only the public servant or legislator himself or herself but also to a number of other individuals and entities that are collectively referred to as “persons with which associated.”<sup>20</sup> The definition of persons with which the public servant or legislator is associated includes

- extended family members;
- employers or clients;
- business or nonprofit organizations with which the public servant or legislator, or members of his or her immediate family, are associated; and
- the state, a political subdivision of the state, a board, or any other entity or organization created by the state or a political subdivision of the state that employs the public servant or legislator or a member of the public servant’s or legislator’s immediate family.<sup>21</sup>

The type of financial benefit that will trigger this conflict of interest prohibition is one that amounts to “a direct pecuniary gain or loss to the legislator, the public servant, or a person with which the legislator or public servant is associated, or a direct pecuniary loss to a business competitor of the legislator, the public servant, or a person with which the legislator or public servant is associated.”<sup>22</sup> In instances where this kind of reasonably foreseeable conflict of interest arises, the legislator or public servant is prohibited from taking official action on the matter.

Under this same provision of the ethics law, if a local government official or employee is also a public servant (for example, a member of a covered state board such as the Coastal Resources Commission), that individual is prohibited from taking official action on a matter that would result in a reasonably foreseeable financial benefit to a unit of local government that employs the individual or a member of his or her immediate family. The individual in this situation also would be prohibited from taking an official action that would result in a direct pecuniary loss to a business competitor of the local government that employs the individual or a member of his or her immediate family.

However, precisely what constitutes a “direct pecuniary gain or loss” to a unit of local government and just who a “business competitor” of a unit of local government might be within the context of G.S. Chapter 138A is not clear. Also unclear is whether a local elected official would be considered an “employee” of the unit of local government he or she serves if that official receives compensation for his or her elective office. Local government officials and employees who are public servants serving in positions that place them in situations in which this type of

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20. G.S. 138A-36, 138A-37.

21. G.S. 138A-3(27c)e. and 138A-3(27d)e. “Immediate family” includes a covered person’s children, spouse, and any extended family members living in the household of the covered person. G.S. 138A-3(17). “Extended family” includes a spouse, lineal descendant, lineal ascendant, sibling, spouse’s lineal descendant, spouse’s lineal ascendant, spouse’s sibling, and the spouse of any of these individuals. G.S. 138A-3(13).

22. G.S. 138A-3(14c).

conflict of interest may arise, such as members of the Coastal Resources Commission, should seek advice from the SEC.

**16a. What if a member of our legislative delegation is also employed by our unit of government?  
Is that a prohibited conflict of interest under the ethics law?**

Generally no. Although the ethics law prohibits legislators from engaging in legislative actions that may reasonably be foreseen to result in financial benefit for the legislator or a person with whom the legislator is associated (such as a local governmental unit that is employing or retaining the legislator as its county attorney), a legislator is not prohibited from engaging in legislative action on behalf of a governmental unit that is employing or retaining the legislator when the legislator is the only member of the chamber (either the House of Representatives or the Senate) elected from the district where the governmental unit is located. In these instances, the legislator must disclose, in writing to the principal clerk prior to or at the time of taking the legislative action, the nature of the legislator's relationship with the governmental unit.<sup>23</sup>

**Gifts and Events**

Although gift-giving is only one of the activities governed by G.S. Chapter 138A, the provisions regulating gifts raise some of the more complex questions about the law and thus warrant a detailed review. Note that the rules on gifts under G.S. Chapter 138A are different from, and in addition to, the rules under G.S. 133-32, the statute governing gifts and favors in public contracting that apply to all public officials and employees at the state and local government levels.

**17. What are gifts?**

For purposes of G.S. Chapter 138A, a "gift" is "anything of monetary value given or received without valuable consideration" by or from any of the following people:<sup>24</sup>

- a lobbyist;
- a lobbyist principal;
- liaison personnel (a state employee who lobbies on behalf of state agencies, public universities, and community colleges or a local government employee who lobbies legislators and legislative employees on behalf of his or her unit of local government (see Question 49, below, for further discussion of local government liaison personnel));
- a person whom a public servant knows or has reason to know
  - is doing or seeking to do business of any kind with the public servant's employing entity;
  - is engaged in activities that are regulated or controlled by the public servant's employing entity; *or*
  - has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties.

The final category of persons listed above is referred to by the SEC as "interested persons."

23. G.S. 138A-38(c).

24. G.S. 138A-3(15).

**18. What limitations apply to giving and receiving gifts?**

There are numerous restrictions on the giving and receiving of gifts under the ethics law. Some of these restrictions vary according to who is giving and who is receiving the gift. Below are some examples.

- Public servants, legislators, and legislative employees are prohibited from knowingly accepting gifts directly or indirectly from lobbyists, their principals, or liaison personnel.<sup>25</sup> There is no *de minimis* exception to this prohibition; it is a complete ban.<sup>26</sup> (This restriction does not apply to judicial officers.)
- Public servants are prohibited from knowingly accepting gifts from (1) persons they know, or have reason to know, have a business, regulatory, or material financial interest in the official duties of the public servant or the public servant's employing entity or (2) third parties knowingly giving a gift on behalf of any of these persons. As noted above, the SEC refers to such persons as "interested persons."<sup>27</sup> (This restriction does not apply to legislators, legislative employees, or judicial officers.)
- Covered persons and legislative employees are prohibited from knowingly (either directly or indirectly) soliciting or accepting anything of value in return for being influenced in the discharge of their official duties (that is, receiving a *quid pro quo* gift). This prohibition is broader than the specific gift bans described above and is not limited to gifts from lobbyists, their principals, or interested persons.
- Covered persons are prohibited from soliciting gifts for charitable purposes from state employees they supervise. Generic written solicitations distributed to an entire class of employees (for example, for the State Employees Combined Campaign) are exempt from this prohibition. (This restriction does not apply to legislative employees.)
- A covered person or legislative employee is prohibited from accepting an honorarium (defined as "payment for services for which fees are not legally or traditionally required")<sup>28</sup> from outside entities if the covered person or legislative employee (1) receives reimbursement for expenses associated with the function for which the honorarium would be given, (2) attends the function on work time, or (3) attends the event as part of his or her official duties. Payment of actual expenses incurred in conjunction with a function is allowed.<sup>29</sup>

**19. Are local governments considered "persons" for purposes of the prohibition against a public servant accepting a gift from someone who has a business, regulatory, or material financial interest (an interested person) in the public servant's official duties or the public servant's employing entity?**

No. As discussed immediately above, the "interested person" prohibition applies to a public servant accepting a gift from a person who has any one of the three interests described in Question 17 (business, regulatory, or financial), above. G.S. Chapter 138A defines a "person" as "any individual, firm, partnership, committee, association, corporation, business, or any other

25. See Question 33, below, for definitions of "lobbyist" and "lobbyist principal."

26. Cf. the complete prohibition in G.S. 133-32 (dealing with gifts and favors in contracting).

27. See Question 17, above, and G.S. 138A-32(d) for the definition of persons who fall into this category.

28. G.S. 138A-3(16).

29. G.S. 138A-32(e)(3).

organization or group of persons acting together.”<sup>30</sup> This definition specifically exempts “the State, a political subdivision of the State, a board, or any other entity or organization created by the State or a political subdivision of the State”<sup>31</sup> (emphasis added). Thus, units of local government are not considered “interested persons” and are not subject to the interested person prohibition against giving gifts to public servants. However, certain other restrictions on gift-giving by local governments may apply. See the discussion in Question 21, below, of the restrictions that apply to *quid pro quo* gifts, to honorariums, and in cases where a local government hires a lobbyist and thereby becomes a lobbyist principal.

**20. Are there any exceptions to the restrictions on gifts?**

Yes. There are two general categories of exemptions. First, G.S. Chapter 138A specifically exempts certain items from the definition of a gift. Second, some types of gifts that would otherwise be restricted are exempted in certain clearly defined situations. The following items are exempt from the definition of a gift:

- anything for which fair market value or face value is paid by the covered person or legislative employee,
- commercially available loans made on the same terms as those available to the general public (and not made for the purpose of lobbying),
- contracts and commercial relationships made in the normal course of business (and not made for the purpose of lobbying),
- academic and athletic scholarships awarded on the same criteria as those applied to all applicants,
- anything of value lawfully made and received as a contribution to a political campaign,
- certain expressions of condolence at the death of an individual.<sup>32</sup>

G.S. Chapter 138A also exempts from restriction certain gifts that would otherwise be prohibited, so long as those gifts are given in very specific situations. These exemptions apply to some gifts given by lobbyists and their principals to legislators, public servants, and legislative employees and to some gifts given by interested persons to public servants.<sup>33</sup> Examples of these exceptions include

- food and beverages served for immediate consumption at certain events specifically defined in G.S. 138A-32(e)(1) and (e)(12);
- informational materials relevant to the duties of a covered person or legislative employee;
- reasonable actual expenses connected with attendance at an educational meeting;
- a plaque or similar nonmonetary memento recognizing service;
- certain gifts and expenses associated with industrial recruitment, promotion of travel and tourism, or international trade.

Because these exemptions are very specific and unique to lobbyists, lobbyist principals, and interested persons, individuals and entities falling into one of these categories, *including local*

30. G.S. 138A-3(27).

31. *Id.*

32. G.S. 138A-3(15).

33. See Question 17, above, and G.S. 138A-32(d) for the definition of persons who fall into this category.

*governments that have contracted with or retained a lobbyist*, should consult G.S. Chapter 138A or the SEC to ensure full compliance with these provisions.<sup>34</sup>

**21. Is it legal for local governments to give legislators, legislative employees, or other covered persons gifts?**

Generally speaking, local governments may give gifts to covered persons and legislative employees<sup>35</sup> except when

- the local government has employed a contract lobbyist (and, as a result, has become a principal),
- the gift is offered as a *quid pro quo*,
- the gift is a prohibited honorarium.

In 2010 the General Assembly created the new category “local government liaison equivalents” (or “local government liaisons”) comprising local government employees whose principal job duties include lobbying legislators and legislative employees on behalf of the governmental unit that employs them. Gifts from local government liaisons to legislators and legislative employees are prohibited under the state’s lobbying laws (gifts to public servants are not prohibited). This prohibition applies only to gifts given by the local government liaison; gifts given by the local government for which the liaison lobbies are not prohibited. See Question 49, below, for further discussion of local government liaisons.

To ensure full compliance with the law, it is important to further examine these prohibitions as they apply to local governments. This is done, briefly, immediately below. (See also the summary of gift restrictions in Table 1, below.)

- *Lobbyist gift prohibition.* The complete prohibition on gifts from lobbyists and their principals will not usually apply to local governments because local government officials and employees are not considered lobbyists under the lobbying act.<sup>36</sup> However, if a local government contracts with a lobbyist who is not an employee of the local government, the local government becomes that lobbyist’s principal and the prohibition will apply to gifts given by the local government to legislators, legislative employees, and public servants.<sup>37</sup> In this case, the local government cannot expend public funds on gifts to anyone covered under the law except in very specific circumstances that are clearly defined in G.S. Chapter 138A.<sup>38</sup> A local government that employs a local government liaison is not prohibited from expending public funds on gifts to legislators and legislative employees (it is the *liaison himself or herself* who is prohibited from giving gifts to legislators and legislative employees).
- *Quid pro quo prohibition.* This prohibition applies to covered persons and legislative employees irrespective of who is giving the gift. Thus, a local government official or employee cannot offer anything of value to covered persons and legislative employees in return for their influence in the performance of their official duties.

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34. G.S. 138A-32(e).

35. See Question 1, above, for definitions of “covered persons” and “legislative employees.”

36. See Questions 36–38, below.

37. See Question 39, below, for further discussion of local governments as principals.

38. G.S. 138A-32(e).



**Table 1. Restrictions on Gifts to Covered Persons and Legislative Employees**

Recipients	<i>Quid pro quo</i>	Gifts from Lobbyist/ Lobbyist Principal	Gifts from Interested Persons	Honorarium
Legislators	Prohibited	Prohibited <sup>a</sup>	Not applicable	Prohibited
Judicial officers	Prohibited	Not applicable	Not applicable	Prohibited
Public servants	Prohibited	Prohibited	Prohibited	Prohibited
Legislative employees	Prohibited	Prohibited <sup>a</sup>	Not applicable	Prohibited

Source: G.S. 138A-32.

<sup>a</sup>Legislators and legislative employees are also prohibited from accepting gifts from liaison personnel and local government liaisons.

- *Honorarium prohibition.* This prohibition applies to covered persons and legislative employees regardless of who offers the honorarium. Local governments may not offer an honorarium to a covered person or legislative employee but may reimburse these individuals for actual expenses incurred as a result of participating in a function.

Significantly, as discussed in Question 19, above, the “interested person prohibition” does not apply to units of local government. Therefore, local governments are allowed to give gifts to covered persons and legislative employees except in the three instances described above.

**22. *What about functions such as receptions hosted by multiple units of local government within our region? May we still invite our legislative delegation, other covered persons, and legislative employees to these functions?***

Generally yes. However, if one of the units of government co-hosting the function has retained a contract lobbyist (and as a result has become that lobbyist’s principal),<sup>39</sup> that unit of government cannot contribute public funds to the costs of the function unless it meets one of the specific exemptions to the gift ban relating to food and beverages served for immediate consumption at certain events.<sup>40</sup> To ensure compliance with these provisions, units of government in this situation are advised to consult Chapter 138A and the SEC before expending funds on such an event.

**23. *Is it legal for our local government to take our legislator or members of our delegation (or other covered persons and legislative employees) out to lunch or dinner?***

Generally yes. Under the ethics law, paying for a meal such as lunch or dinner is no different from giving a gift, which local governments are generally not prohibited from doing. However, if the local government has retained a contract lobbyist, and is thus a principal, it is generally prohibited (with certain narrow exceptions described in Question 20, above) from spending public funds on meals for covered persons or legislative employees—just as it would be generally prohibited from giving other types of gifts to those individuals.

Local government liaisons are prohibited from paying for meals of legislators or legislative employees; the local governments for which they lobby, however, are not. While a local government liaison cannot pay for the meal of a legislator or legislative employee with his or her own

39. See Questions 21, immediately above, and 39, below.

40. See G.S. 138A-32(e)(1).

funds (even if reimbursed by the local government), other officials and employees of the local government are not prohibited from doing so with either their own personal funds or public funds.

**24. *If our local government invites our legislator or any other covered person to speak at a function in our community, may we give that official a thank-you gift? If food is served, can we serve it to our legislator and other covered persons who are attending?***

Generally yes. Like buying a legislator or other covered person or legislative employee lunch or supper (see Question 23, immediately above), providing food at a function that any of these individuals attends is generally not prohibited. Similarly, the local government may give the guest a gift to thank him or her for participating in the function.

However, as discussed in Questions 22 and 23, above, if the local government has retained a lobbyist, and thus becomes a lobbyist's principal, the local government is generally prohibited from spending its public funds on gifts (such as thank-you gifts) to covered persons and legislative employees, and food and beverages may be served to covered persons and legislative employees only if the function falls within one of the exemptions to the gift ban.<sup>41</sup>

While thank-you gifts for speakers are allowed (except as noted above), honorariums—defined as “payment[s] for services for which fees are not legally or traditionally required”<sup>42</sup>—are prohibited if, as noted in Question 18, above, a covered person or legislative employee (1) receives reimbursement for the expenses associated with attending a certain function, (2) attends the function on work time, or (3) attends the event as part of his or her official duties.<sup>43</sup> Payment of actual expenses incurred in conjunction with the function is allowed.

**25. *Is it legal for our legislator or another covered person to officially support or endorse community activities and events? What if those events are fund-raisers for local projects or charities?***

Yes, with some limitations. G.S. Chapter 138A prohibits a covered person from using (or allowing to be used) his or her “public position in nongovernmental advertising that advances the private interest of the covered person or others.”<sup>44</sup> Inasmuch as a local government–sponsored event, such as a town festival, would not constitute “nongovernmental advertising for private gain,” use of the covered person’s name in his or her public position promoting the event would not be prohibited.

Charitable solicitation on behalf of a nonprofit entity is specifically exempted from the ethics law’s advertising prohibition, so use of a covered person’s name in his or her official capacity in support of a nonprofit charity, such as a fund drive for a local arts council, is still allowed.

Even though covered persons may promote local and community events and assist in fund-raising efforts for nonprofit entities in their official capacities, one limitation still applies in these situations. A covered person cannot use (or permit to be used) his or her name, voice, or image in most forms of advertising or public service announcements that are paid for with state funds.<sup>45</sup> This prohibition applies to any use of the covered person’s name, voice, or image,

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41. *See id.*

42. G.S. 138A-3(16).

43. G.S. 138A-32(h).

44. G.S. 138A-31(b).

45. The one exception to this prohibition is in a declared state or national emergency when the announcement or advertising is necessary to the covered person’s official duties. G.S. 138A-31(c).

regardless of whether it is in his or her official capacity. A local government or local nonprofit organization that uses a covered person's name, voice, or image in advertising or in a public service announcement promoting a local project, event, or charity should be mindful of this restriction and should avoid using state funds to pay for the advertising.

## **Enforcement and Penalties**

### ***26. Whom do we contact if we have questions about the ethics law?***

The SEC has both the authority and the responsibility to implement G.S. Chapter 138A and may adopt procedures and guidelines for doing so.

The commission may also render advisory opinions on questions involving the meaning and application of G.S. Chapter 138A. Such opinions are applicable only prospectively, not retroactively. Requests for advisory opinions and opinions issued by the commission are confidential and not a matter of public record. At the same time, the commission must publish redacted versions of its advisory opinions at least once a year. In the published opinions, the commission must remove any information that could identify any person requesting an opinion.<sup>46</sup>

### ***27. Who enforces the ethics law's requirements?***

The SEC is empowered to conduct inquiries about alleged violations of the ethics law and may handle inquiries in a number of ways detailed in G.S. 138A-12.

### ***28. What are the penalties for violations?***

Violations of the ethics law by any covered person or legislative employee are grounds for disciplinary action and may constitute misfeasance, malfeasance, or nonfeasance of office. The specific actions taken against the covered person or legislative employee for violating the ethics law would depend on the offender's position. For example, a violation by a public servant serving on a state board may result in removal from that board.

If a covered person or legislative employee has relied on a written advisory opinion issued by the SEC on a specific matter, he or she is immune from investigation by the commission and the Secretary of State's Office as well as from any applicable adverse action under the ethics law relating to that specific matter.<sup>47</sup>

G.S. Chapter 138A imposes criminal penalties for violations of financial interest disclosure requirements and for lying under oath during SEC investigatory proceedings. If the conduct in question also constitutes a violation of some other law (or laws) that carries criminal penalties, the ethics law provisions do not affect the power of the state to prosecute the separate violations.<sup>48</sup>

### ***29. Are other statutes governing ethical matters and conflicts of interest still in effect?***

Yes. G.S. Chapter 138A does not supersede existing statutes that govern and prohibit certain conduct by government officials. For example, the existing prohibitions against bribes (G.S. 14-217, 14-218), contracting for one's own benefit (G.S. 14-234), accepting gifts and favors

46. G.S. 138A-10, 138A-13.

47. G.S. 138A-13.

48. G.S. 138A-45. See also Question 29, immediately below.

from contractors and vendors (G.S. 133-32), and misuse of confidential information (G.S. 14-234.1) are still in effect. Violations of these statutes all carry criminal penalties. Rules relating to conflicts of interest that may restrict voting by members of a local governing board and other bodies (for example, G.S. 153A-44 and 160A-75) also are unaffected by the ethics and lobbying laws.

## Lobbying—G.S. Chapter 120C

The lobbying law imposes restrictions and regulations on various forms of activities and communications with public officials. The law's requirements and prohibitions govern interactions with certain officials and personnel in all three branches of government. Although the lobbying provisions are generally not applicable to local governments, some will affect the manner in which local governments conduct business with certain state officials.

### 30. *What is lobbying?*

G.S. Chapter 120C defines "lobbying" as influencing or attempting to influence the legislative or executive actions of an individual or organization. Examples of legislative action include the preparation and consideration of, as well as any action taken on, legislation by state legislators and their employees. Examples of executive action include the development and adoption of policies, regulations, or rules.

Activities that constitute lobbying fall into two main categories: direct lobbying and indirect or "goodwill" lobbying.

Direct lobbying involves specific communications about legislative or executive actions with certain officials and personnel or their immediate families. Such communications can include face-to-face conversations, letters, emails, telephone calls, and faxes.

*Example:* County Commissioner Jones contacts Senator Smith and asks him to vote for a bill that would authorize the county to levy a land transfer tax. This is *direct* lobbying. *Since Commissioner Jones is lobbying on behalf of his local government, he is covered under the local government exemption and is not required to register as a lobbyist (see Question 36, below, for more details).*

Indirect or "goodwill" lobbying involves activities or communications intended to build relationships with certain officials and personnel for the purpose of influencing current or future legislative or executive actions.

*Example:* Mayor Johnson invites newly elected Senator Allen to lunch in order for the two of them to get better acquainted, since they will be working together on city-related issues. Mayor Johnson anticipates asking Senator Allen to support funding for the city's industrial park once the General Assembly convenes in January. This is *indirect* (or "goodwill") lobbying. *As with Commissioner Jones, since Mayor Johnson is lobbying on behalf of his local government, he is covered under the local government exemption and is not required to register as a lobbyist (see Question 36, below); similarly, Senator Allen is not prohibited from accepting the free lunch.*

Communications or activities that are part of business, civic, religious, fraternal, personal, or commercial relationships not connected with legislative or executive action are not categorized as lobbying.<sup>49</sup>

### 31. *What are legislative or executive actions?*

For an activity or communication to be considered lobbying, it must influence or attempt to influence legislative or executive action. If the activity or communication is directed at something other than legislative or executive action, then it is not lobbying.

“Legislative action” is defined in the law as

the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by a legislator or legislative employee acting or purporting to act in an official capacity.<sup>50</sup>

Whether or not the matter is identified by an official title, general title, or other specific reference is immaterial for purposes of the lobbying law. The definition of legislative action also includes the governor’s consideration of a proposed law enacted by the General Assembly.

“Executive action” is defined in the law as

[t]he preparation, research, drafting, development, consideration, modification, amendment, adoption, approval, tabling, postponement, defeat, or rejection of a policy, guideline, request for proposal, procedure, regulation, or rule by a public servant purporting to act in an official capacity.<sup>51</sup>

Exempted from the definition of executive action are communications with public servants relating to the following situations:

- judicial, quasi-judicial, and contested case hearing proceedings under North Carolina’s Administrative Procedure Act (G.S. Chapter 150B);
- applications for permits, licenses, eligibility determinations, or certifications;
- inquiries about benefits, claims, rights, obligations, duties, entitlements, payments, or penalties;
- inquiries about or responses to requests for proposals;
- ratemaking;
- internal administrative and ministerial functions;
- public comments made at an open meeting or submitted in writing in response to requests for public comment (as long as no reportable expenditure is involved).<sup>52</sup>

49. G.S. 120C-100(9).

50. G.S. 120C-100(a)(5).

51. G.S. 120C-100(a)(3).

52. *Id.* A “reportable expenditure” is “[a]ny advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or thing of value greater than ten dollars (\$10.00) per designated individual per single calendar day” or a “contract, agreement, promise, or other obligation whether or not legally enforceable” that directly or indirectly is made to, at



### 32. *Who can be lobbied?*

Individuals and organizations communicate regularly with public officials about all manner of public business, usually with the goal of attempting to influence the public officials' opinions or actions on particular matters. The restrictions and regulations of the lobbying law are triggered only when these communications are made (either directly or through goodwill activities as discussed above) to certain categories of public officials called designated individuals. If the communication is with someone who is not a designated individual, the communication is not considered lobbying for purposes of G.S. Chapter 120C. "Designated individuals" are defined as

- legislators,
- legislative employees, and
- public servants as defined under the ethics law.<sup>53</sup>

The category of designated individuals includes not only persons currently serving in any of the above positions, but also persons nominated for appointment to these positions, candidates for elective offices, and persons who have won election but not yet assumed office.

Recall that the definition of a public servant does not include judicial officers but does include certain judicial employees.<sup>54</sup>

### 33. *Who is a lobbyist?*

A "lobbyist" is a person who (1) is employed by another person in a position where lobbying makes up a significant part of his or her job duties, (2) represents another person for payment for services<sup>55</sup> but is not directly employed by that person, or (3) works under contract for economic consideration for the purpose of lobbying. Employees of businesses and organizations who spend less than 5 percent of their work time during any thirty-day period engaged in lobbying activities are not considered lobbyists.<sup>56</sup>

The lobbying law also requires state agencies, public universities, and community colleges to designate an employee (or employees) to lobby for legislative action. This category of personnel, called "liaison personnel," is subject to many of the requirements and prohibitions of G.S. Chapters 138A and 120C.<sup>57</sup> While local governments may choose to employ a local government liaison, they are specifically exempted from the requirement to designate liaison personnel.<sup>58</sup>

The person or entity that employs or retains a lobbyist is referred to as that lobbyist's "principal."<sup>59</sup> A local government that employs a local government liaison is *not* considered a lobbyist principal.

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the request of, for the benefit of, or on the behalf of a designated individual or that individual's immediate family member." G.S. 120C-100(a)(12).

53. G.S. 120C-100(a)(2). See Question 1, above, for a complete list of public servants.

54. See Question 1, above.

55. "Payment for services" includes any money, thing of value, or economic benefit paid to the lobbyist for the lobbyist's services (excluding reimbursement of actual expenses). G.S. 120C-100(a)(11k).

56. G.S. 120C-100(a)(10).

57. See Article 5 of G.S. Chapter 120C.

58. G.S. 120C-500(a).

59. G.S. 120C-100(a)(11).

**34. Do all communications with a designated individual constitute lobbying that is subject to the provisions of the lobbying law?**

No. Generally, the provisions of the lobbying law apply only when the communication

- constitutes lobbying (that is, is directly and/or through goodwill intended to influence legislative or executive action),
- is directed to a designated individual (or members of the designated individual's immediate family), and
- comes from a lobbyist or liaison personnel (including local government liaisons when the communication is directed at a legislator or legislative employee).

Only if the communication or activity satisfies all three parts of this definition is it subject to the provisions of the lobbying law.

In addition, the following persons and entities are specifically exempted from the requirements of G.S. Chapter 120C:<sup>60</sup>

- individuals expressing their personal opinions;
- persons appearing before committees, boards, and commissions at the particular group's request;
- elected or appointed officials and employees of units of state and local governments appearing solely in connection with matters pertaining to their own offices and public duties (this exemption includes appointed city and county attorneys even though they may not be employees of the cities or counties they represent);
- persons performing professional services, for example, drafting bills or advising and rendering opinions to clients or to designated individuals on behalf of clients about the effects of proposed or pending legislative or executive actions. Such persons are exempt as long as they only render professional services and do not attempt to influence actions;
- members of the news media when engaged in reporting;
- designated individuals when acting in their official capacities;
- persons merely responding to inquiries from designated individuals;
- political committees and their employees and contractors.

**35. What requirements and restrictions apply to lobbyists?**

Generally, lobbyists are required to register with the Secretary of State's Office, report lobbying expenditures, and identify themselves as lobbyists when engaged in lobbying. (Lobbyists' principals are also required to register with the Secretary of State's Office and comply with certain reporting requirements.) Lobbyists may also participate in lobbying education programs approved by the State Ethics Commission (SEC), although they are not required to do so.

Lobbyists are subject to a number of restrictions and prohibitions, including bans on making, soliciting, or transferring campaign contributions to state elected officials and legislators and on serving as campaign treasurers in campaigns for state office. Under the ethics law, both lobbyists and their principals are prohibited from giving gifts to designated individuals, with certain very limited exceptions.

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60. G.S. 120C-700.

**36. Are local government officials subject to the lobbying law?**

In general, no. A duly elected or appointed official of a county, municipality, school district, or other local governmental agency is exempt from most of the lobbying law requirements when engaged in communications with designated legislative and executive officials and staff solely in connection with matters pertaining to their own offices and public duties.<sup>61</sup> Notwithstanding this general exemption, local officials (and some local employees) may be subject to a few of the law's expenditure reporting requirements.<sup>62</sup>

However, a local government official who engages in lobbying activities not connected to his or her office or duties may be subject to the lobbying law with respect to those nongovernment-related lobbying activities.

**37. Are local government personnel subject to the lobbying law?**

Generally no. Like local elected and appointed officials, employees of a city, county, school district, or other local government entity are specifically exempted from the requirements of the lobbying law when engaged in communications with designated persons solely in connection with matters pertaining to their position and public duties.<sup>63</sup> This exemption applies to all local government employees, *except for those whose principal job duties include lobbying on behalf of their local government employers.*<sup>64</sup> Even with this broad exemption, however, a few expenditure reporting requirements may apply to local government lobbying activities.<sup>65</sup>

The local government exemption applies when the employee is lobbying in connection with matters pertaining to the employee's position and public duties. A local government employee who engages in lobbying activities not connected with his or her official duties may be required to comply with the lobbying laws with respect to those nongovernment-related lobbying activities.

**38. Is our local government itself subject to the lobbying law?**

Generally no. Because units of local government act through their elected or appointed officials and employees, who generally are exempt from the lobbying law, the law does not apply to the local government, even if the local government employs a local government liaison. This means that local officials and employees may spend public funds on lobbying activities and, in most instances, may give gifts;<sup>66</sup> they are not subject to the expenditure restrictions and reporting requirements imposed on lobbyists and their principals, except for those identified below in Question 44.

However, if a local government retains a contract lobbyist who is not its employee, it will be subject to the lobbying law as a principal, as discussed in Question 39, below.

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61. G.S. 120C-700(3).

62. G.S. 120C-800(a), (c).

63. G.S. 120C-700(3). See also Question 44, below.

64. Contrast the rules that apply if a local government uses an independent contractor to serve as its lobbyist. See Questions 39 and 40, below. See Question 49, below, for more information about local government liaisons.

65. G.S. 120C-800(a), (c).

66. As discussed in Questions 19, 20, and 21, above, local governments are subject to some restrictions on gift-giving under G.S. 138A-32, namely, the prohibitions against *quid pro quo* and honorariums. In addition, local government liaisons are prohibited from giving gifts to legislators and legislative employees. (See Question 21, above.)

**39. What if our local government retains a lobbyist who is an independent contractor and is not our employee? Is he or she a lobbyist? Are we a principal?**

Yes. G.S. Chapter 120C only exempts local government officials and employees from its requirements. If a local government retains an individual or firm on an independent contractor basis to lobby on its behalf, that lobbyist is not an employee of the local government and is therefore subject to the requirements of the lobbying law and certain prohibitions under the ethics law, such as the gift ban.<sup>67</sup>

Perhaps more significant from the local government's standpoint is that hiring a contract lobbyist makes the local government a principal for purposes of both the lobbying law (G.S. Chapter 120C) and the ethics law (G.S. Chapter 138A) and therefore makes it subject to all of the applicable requirements and prohibitions of those laws.<sup>68</sup> For example, the local government must comply with principal registration and reporting requirements under the lobbying law, and it is subject to the ethics law's prohibition against giving gifts to legislators, legislative employees, and public servants. A local government that is a lobbyist's principal cannot spend its public funds on any prohibited gifts to covered persons and legislative employees.<sup>69</sup>

Local government officials who hire a contract lobbyist need to become fully familiar with all specific requirements and restrictions in both the lobbying and ethics laws to ensure full compliance with these laws. They can obtain additional information about registration, reporting requirements, and other pertinent information by contacting the SEC and the North Carolina Secretary of State's Office.

It is important to note that both the ethics law (G.S. Chapter 138A) and the lobbying law (G.S. Chapter 120C) apply only to interactions with state officials. If a local government has contracted with a lobbyist or lobbying firm to represent its interests at the federal level, such as lobbying members of Congress or federal agencies, the provisions of the ethics and lobbying laws discussed in this bulletin do not apply (of course, federal laws regulating lobbying at the federal level will be applicable).

**40. What about other independent contractors or firms retained by our local government? Are they required to register as lobbyists?**

They may be if they act on behalf of the local government in a manner that constitutes lobbying and if they are compensated for doing so. As discussed in Question 39, immediately above, the local government exemption applies only to local elected and appointed officials and employees. Persons retained or working under contract with a local government are not considered officials or employees of that local government and thus are not exempt from the lobbying statute. If these individuals engage in lobbying activities and are compensated for it, they will be subject to the lobbying law's requirements, even if their activities are done on behalf of the local government.

For example, a local government seeking state funding for a new wastewater treatment facility might contract with an engineering design firm. During the course of its work, engineers with the firm might communicate with the local government's legislative delegation about costs associated with the project. If the engineers merely provide information or respond to inquiries from the legislators, their communications do not constitute lobbying (see Question 34, above).

67. G.S. 120C-100(a)(10)b.

68. G.S. 120C-100(a)(11).

69. See Question 18, above, for further discussion of gift restrictions.

However, if the engineers communicate directly to or engage in goodwill activities with the delegation members to advocate for the desired state funding, their communications and activities may constitute lobbying that is subject to the requirements of G.S. Chapter 120C. In that case, the local government on whose behalf the engineers are lobbying is considered a lobbyist's principal and becomes subject to the requirements of the lobbying law as well as certain prohibitions under the ethics law, such as the gift ban.<sup>70</sup>

**41. *What about our city or county attorney who works for us on retainer? Is he or she required to register as a lobbyist?***

As discussed in Questions 39 and 40, above, the local government exemption is specific to local elected and appointed officials and employees. Many units of local government do not employ full-time attorneys but instead retain private attorneys or law firms to serve as their legal advisors. These private attorneys are not normally considered employees of the government unit. However, "an individual appointed as a county or city attorney" is considered to be an employee of that county or city for purposes of G.S. Chapter 120C.<sup>71</sup> Thus, retained city and county attorneys are covered under the local government exemptions to the lobbying act.

It is important to note that this provision applies *only* to appointed city or county attorneys; attorneys who represent other units of government, such as local school boards, or attorneys retained to represent a city or county in a capacity other than as the city or county attorney are not covered under the local government exemption. However, a retained attorney, whether or not appointed as the city or county attorney, who merely provides information, responds to inquiries, or advises the local government client is exempt from the law's requirements.<sup>72</sup>

**42. *What if our local government is a member of an association or organization that has hired a lobbyist? Does that make our local government a lobbyist principal?***

No. If an association or other organization has employed or retained a lobbyist, the principal is the association or organization itself, not individual members or entities. Members of the organization do not become principals simply because of their membership in the group.

For example, both the North Carolina League of Municipalities and the North Carolina Association of County Commissioners employ registered lobbyists and thus are principals. However, the cities and counties that are members of these associations are not principals solely by virtue of those memberships.<sup>73</sup>

**43. *If local government officials and employees communicate with legislators, legislative employees, and public servants about matters not related to their local government, is that lobbying?***

It could be, depending on the circumstances and the nature of the communication. If a person is merely expressing a personal opinion, stating facts or recommendations, appearing before a legislative or executive committee at the request of that committee, responding to inquiries, rendering professional services in connection with proposed legislative or executive actions, rendering opinions to clients, or engaging in any of the other exempt activities listed in G.S. 120C-700,

70. See Question 39, above, for further discussion of local governments as principals.

71. G.S. 120C-700(3).

72. G.S. 120C-700.

73. See G.S. 120C-100(a)(11).



then that person is not subject to the lobbying law.<sup>74</sup> However, if the local government official or employee receives payment for services or some other economic consideration (besides reimbursement for actual travel and subsistence) from a nongovernment-related entity or group and carries out lobbying activities on its behalf, he or she will be subject to the requirements of the lobbying law.

**44. Do local government officials and employees have to comply with any lobbying reporting requirements?**

Generally speaking, no. Since local government officials and employees are exempt from G.S. Chapter 120C when lobbying in their official capacities on behalf of their units of government, they are not subject to the reporting requirements for lobbyists and their principals. If a local government has retained a contract lobbyist, however, it is subject to the law's registration and reporting requirements.<sup>75</sup>

There are two situations that may subject a local government (or otherwise exempt individual) to the lobbying law's reporting requirements, even if it has not hired a contract lobbyist and become a principal:

- If a local government spends more than \$200 lobbying a designated individual in a calendar quarter, the local government must report those expenditures.<sup>76</sup>
- If a local government spends more than \$200 for a designated individual to attend a conference, meeting, or similar event (referred to as a "scholarship" under the chapter), the local government must report those expenditures.

In both instances, a report must be filed with the North Carolina Secretary of State's Office within fifteen business days after the end of the calendar year quarter in which the expenditures occurred. The report must list the name of the group making the expenditure, the designated individual accepting the expenditure, the date(s) involved, and the fair market value of the expenditure.<sup>77</sup> The Secretary of State's Office is responsible for developing the forms to be used in reporting these kinds of expenditures.

**45. We have heard that the lobbying laws also contain solicitation reporting requirements. Do those rules apply to local governments?**

No. The law establishes reporting requirements for certain mass communication and advocacy activities that are defined as "solicitation of others." Those who engage in solicitation activities are referred to in the lobbying chapter as "solicitors," and they are required to comply with certain registration and expenditure reporting requirements. However, local governments' general exemption from most provisions of G.S. Chapter 120C includes exemption from the solicitation reporting requirements.<sup>78</sup>

**46. Whom do we contact if we have a question about the lobbying law's requirements?**

The SEC is authorized to issue advisory opinions on specific questions involving the meaning and application of the lobbying law and to adopt any rules necessary to implement it. Registration and expenditure reports relating to lobbying should be filed with the Secretary of State's

74. See Question 34, above.

75. See Question 39, above.

76. See Question 32, above, for the definition of "designated individual."

77. G.S. 120C-800(a), (f).

78. G.S. 120C-100(a)(13).

Office, which is authorized to adopt the rules and forms necessary to carry out the provisions of G.S. Chapter 120C relating to registration and expenditure reporting. Individuals and entities that are or may be subject to the requirements of the law can contact the SEC and the Secretary of State's Office for more information about the law's requirements and restrictions.<sup>79</sup>

**47. Who enforces the lobbying law's requirements and restrictions?**

Both the SEC and the Secretary of State's Office have roles in enforcing G.S. Chapter 120C. The Secretary of State's Office is responsible for implementing the law's registration and expenditure reporting requirements and may conduct investigations into alleged violations of reporting requirements. The SEC is responsible for investigating alleged violations of all other provisions of the lobbying law.<sup>80</sup>

**48. What are the penalties for violations?**

A willful violation of G.S. Chapter 120C's registration requirements, prohibitions, or restrictions (including the ban on gifts) is punishable as a Class 1 misdemeanor. A lobbyist convicted of a violation of any of these rules is prohibited from lobbying in North Carolina for two years from the date of conviction. Also, the SEC may levy civil fines of up to \$5,000 per offense for any violation of these provisions of the lobbying law. In addition, the secretary of state may levy civil fines of up to \$5,000 per violation for any violation of the lobbying law's registration and expenditure-reporting requirements.<sup>81</sup>

As with the ethics act, under the lobbying law, if a covered person or legislative employee has relied in good faith on a written advisory opinion issued by the SEC on a specific matter, he or she is immune from investigation by the commission and the Secretary of State's Office, as well as from any applicable adverse action under G.S. Chapter 120C relating to that specific matter.<sup>82</sup>

**49. What are local government liaisons, and what requirements and restrictions apply to them and their units of government?**

During the 2010 short session, the General Assembly enacted requirements for local government employees whose principal duties—either in practice or as set out in their job descriptions—include lobbying members of the General Assembly and/or legislative staff.<sup>83</sup> These employees are referred to as “local government liaison equivalents” because the requirements that apply to them mirror those imposed on state agency lobbyists (referred to as “liaison personnel”).<sup>84</sup>

Local government liaisons are required to

- register with the Secretary of State's Office,
- report expenses related to lobbying state legislators and/or legislative employees, and
- comply with the prohibition against giving gifts to legislators and/or legislative employees (the “gift ban”).

79. See G.S. 120C-101, 120C-102.

80. Article 6 of G.S. Chapter 120C.

81. G.S. 120C-602.

82. G.S. 120C-102(a).

83. G.S. 120C-502.

84. Liaison personnel are state employees who lobby legislators and legislative staff on behalf of state government agencies—hence the phrase “local government *liaison equivalents*.”

It is important to note that these requirements are imposed on the individual local government liaison, *not* the unit of government itself or any elected or appointed officials or other employees of that local government. *Consequently, the requirements have little to no impact on interactions between local government officials and their legislators or legislative staff, even if the local government employs a legislative liaison. Local governments remain generally exempt from the state's lobbying laws, even if the local government employs a local government liaison (unless a local government has retained a contract lobbyist).*

Local governments fall into one of three categories when interacting with legislators and legislative staff (see Figure 1, below). What laws do and do not apply depend on the category into which the unit of local government falls. Below are some questions and answers relating to local government liaisons.

#### **A. Who is a local government liaison?**

Local government employees are subject to the local government liaison laws if their principal job duties—in practice or as set out in their job description—include lobbying legislators and/or legislative staff. Although the term “principal” is not defined in the law, it is commonly understood to mean “primary” or “most important, consequential, or influential.”<sup>85</sup> Merely engaging in lobbying legislators and/or legislative employees from time to time or on an occasional basis will likely not trigger the requirements of the law. A local government employee’s lobbying activities will trigger the requirements of the law *only* if

- the employee’s *job description* includes lobbying among his or her principal job duties or
- the employee’s lobbying activity occurs so frequently or regularly so as to render it among his or her principal job duties *in practice*.

The law applies to *any* local government liaison who is *any* employee of *any* political subdivision of the state and any other entity or organization created by a political subdivision of the state (referred to as a “governmental unit”).<sup>86</sup> This includes counties, municipalities, local boards of education, and local Alcoholic Beverage Control (ABC) boards.

A local government is not required to designate or employ a local government liaison to lobby on its behalf.

#### **B. Does the local government liaison law apply to “appointed” employees?**

Yes. A number of local government employees are appointed to their positions, ranging from the manager to the clerk to the board to the social services and health directors to tax collectors and assessors. For purposes of the state’s lobbying laws, these individuals are likely considered “employees” and not “appointed officials” of their governmental units. Thus, these individuals may become subject to the law if their principal job duties include lobbying legislators and/or legislative employees.

#### **C. Does the local government liaison law apply to retained city and county attorneys?**

No. The local government exemption to the state’s lobbying laws applies to elected and appointed officials and employees of units of local government and specifically includes retained city and county attorneys. Because retained city and county attorneys are considered employees of their local government clients *specifically* for the purpose of the local government exemption, they are otherwise *not* considered employees of their local government clients under any other

85. MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 987 (11th ed. 2005).

86. G.S. 138A-3(15d).

**Figure 1.** The Three Categories into Which Local Governments Fall as of January 1, 2011

*Pre-2011*	*Current Law*	*Pre-2011*
Local government has NO lobbyist or liaison	Local government has <i>liaison</i>	Local government has <i>contract lobbyist</i>
↓	↓	↓
Lobbying laws DO NOT apply to local government	Some lobbying laws DO apply to liaison ONLY, NOT to local government	Lobbying laws DO apply to lobbyist AND local government

provisions of the state's lobbying laws, including the local government liaison provision. Thus, they are *not* subject to the requirements of the local government liaison law and remain covered under the local government exemption.

It is important to note that the inclusion of retained city and county attorneys under the general local government exemption to the state's lobbying laws is *specific* to retained attorneys appointed as county or city attorneys under Part 7 of Article 5 of Chapter 153A of the General Statutes or Part 6 of Article 7 of Chapter 160A of the General Statutes, respectively. This exemption does *not* apply to attorneys retained to represent other units of local government, such as local school boards, or to attorneys retained by units of local government in any capacity other than as appointed city or county attorneys. Since these attorneys are not covered under the local government exemption to the state's lobbying laws, if one such attorney lobbies on behalf of the unit of government he or she represents and is compensated for that lobbying activity, the attorney may be considered a lobbyist, and the unit of government he or she represents would then be considered a lobbyist principal. In this instance, *both* the attorney *and* the unit of government would be subject to all applicable provisions of the state's lobbying laws, including the gift ban, registration, and reporting requirements.

#### **D. To whom does the local government liaison law not apply?**

The local government liaison law is *not* applicable to

- units of local government themselves,
- elected and appointed local government officials, and
- local government employees whose principal job duties do *not* include lobbying legislators and/or legislative employees.

The local government exemption to the state's lobbying law is not affected *even if* the unit of local government employs a local government liaison. The requirements of the law are applicable *only* to the individual local government liaison, *not* to the unit of local government itself *or* to any of its elected or appointed officials or other employees.

Similarly, if a unit of local government employs a local government liaison, that local government is not considered a lobbyist principal (that is, the client of the local government liaison) and is not subject to the requirements and restrictions imposed on lobbyist principals.

Because the local government liaison law does not apply to the unit of local government itself, to local government elected and appointed officials, or to employees whose principal job duties do not include lobbying legislators and legislative employees, the law has little to no impact on

interactions between local government officials and their legislators or legislative staff, *even if* the local government employs a legislative liaison.<sup>87</sup>

For example:

- Local governments may still host legislative breakfasts in Raleigh for members of their legislative delegations.
- Local elected officials may still lobby legislators on behalf of their units of local government without having to register as lobbyists.
- Local government employees may speak with legislators and even lobby on behalf of their units of government without having to register as lobbyists (unless that lobbying is among an employee's principal job duties, in which case the employee must comply with the 2010 law).
- A local government may still invite a legislator to local events, functions, festivals, and conferences and provide food, beverages, and a gift in appreciation of the legislator's participation.
- Local officials may participate in legislative events organized by the N.C. Association of County Commissioners, the N.C. League of Municipalities, the N.C. School Boards Association, and other similar associations without having to register as lobbyists or without their local governments having to register as lobbyist principals.

**E. Is lobbying *any* public official covered under the local government liaison law?**

No. The local government liaison law applies *only* to lobbying members of the North Carolina General Assembly, including candidates for legislative office,<sup>88</sup> and legislative employees.

The law does *not* apply to the lobbying of

- state government officials and employees in the judicial or executive branches, such as the governor, cabinet secretaries, employees of state agencies, and members of state boards and commissions;<sup>89</sup>
- federal officials and employees of federal agencies; or
- other local government officials and employees.

**F. What are the registration requirements of the local government liaison law?**

Local government liaisons are required to register with the Secretary of State's Office. In fact, it is *unlawful* for these liaisons to lobby legislators and/or legislative employees without undergoing registration; all liaisons must register within one business day of engaging in lobbying activities, and the registration is nontransferable.<sup>90</sup>

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87. It is important to remember that if the local government has retained a lobbyist, the local government is a lobbyist principal and is therefore subject to all applicable provisions of the state's lobbying laws, including the gift ban.

88. G.S. 120C-104. A "candidate" is an individual who has filed a notice of candidacy for an elected office in compliance with state law.

89. State executive and judicial branch officials and employees are subject to a number of ethics rules and laws (some specific to particular offices or positions) as well as to prohibitions against bribery, accepting gifts and favors from contractors, and financial self-benefiting. These rules and laws continue to apply even though the local government liaison law does not cover the lobbying of executive and judicial branch officials.

90. See G.S. 120C-200.



*Registration fees*—Local government liaisons are not required to pay the registration fee normally charged to lobbyists. Since the local government for whom the employee lobbies is not considered a lobbyist principal, the local government is not required to pay the lobbyist principal registration fee.

*Registration forms*—Registration forms are provided by the Secretary of State’s Office. Once filed, the registration remains in effect until January 1 of the following year, at which time it must be renewed. If the local government liaison’s status changes during the course of the year (for example, the employee no longer lobbies or retires or changes jobs), or if any of the information on the initial registration form changes, an amended registration form must be filed with the Secretary of State’s Office within ten business days after the change in status or information. For purposes of the lobbyist registry maintained by the secretary of state, local government employees will be listed under “liaison personnel.”

*Identification as a liaison*—As part of the registration requirement, the local government liaison must identify himself or herself as a local government liaison prior to engaging in lobbying communications or activities with legislators or legislative staff. The local government liaison must also disclose the name of the unit of government on whose behalf he or she is lobbying. *Local government liaisons should consult the Secretary of State’s Office for more information about registration and identification requirements.*

#### **G. What are the expense reporting requirements?**

Local government liaisons are required to file quarterly reports with the Secretary of State’s Office detailing all expenses (referred to as “reportable expenditures”) related to lobbying legislators and/or legislative employees.<sup>91</sup> If lobbying expenses are incurred while the General Assembly is in session, additional reports detailing these expenditures must be filed on a monthly basis. These reports must be filed on forms provided by the Secretary of State’s Office and must be filed under oath (notarized).

*Definition of “reportable expenditure”*—A “reportable expenditure” made by a local government liaison includes any of the following, whether directly or indirectly made to, provided at the request of, for the benefit of, or on behalf of a legislator, a legislative employee, or a member of a legislator’s or legislative employee’s immediate family for lobbying:

- any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or thing of value greater than ten dollars (\$10.00) per legislator or legislative employee per single calendar day or
- a contract, agreement, promise, or other obligation whether or not legally enforceable.

Reportable expenditures tend to fall into six main categories: transportation and lodging, entertainment, food and beverage, meetings and events, gifts, and other expenses. These categories are reflected on the reporting forms provided by the Secretary of State’s Office. *Because these reporting requirements are very specific, local government liaisons should contact the Secretary of State’s Office for more information and to obtain expenditure reporting forms.*

*Reporting other expenses*—In addition to “reportable expenditures,” local government liaisons are required also to report expenses related to the solicitation of others when the aggregate cost of such solicitation exceeds three thousand dollars (\$3,000); reportable expenditures for which

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91. See G.S. 120C-402.

the local government liaison is reimbursed; and gifts over ten dollars (\$10.00) in value given to legislators and/or legislative employees that are not prohibited under the gift ban.

*Local governments not subject to the expense reporting mandate*—Only local government liaisons must comply with the expense reporting requirement. Since the unit of government on whose behalf a local government liaison lobbies is not considered a lobbyist principal, the unit of government itself is not subject to the reporting requirements.

#### **H. What are the “gift ban” prohibitions?**

Local government liaisons are prohibited from giving gifts directly or indirectly to legislators or legislative employees.<sup>92</sup> (See Question 17, above, for the definition of a gift.)

*Exemptions for gifts from lobbyists and liaisons*—As discussed in Question 20, above, there are specific exemptions to the gift ban for lobbyists, lobbyist principals, and liaisons. These exemptions include food and beverages at certain kinds of events; travel, lodging, entertainment, and meals at certain kinds of meetings and conferences; plaques recognizing special achievements; and gifts based on a preexisting family, personal, business, fraternal, religious, or civic relationship. *Because these exemptions are very specifically defined in the State Government Ethics Act, local government liaisons should consult the law and seek guidance from the SEC to ensure compliance with these laws.* Gifts allowed under this category of exemptions *must* be reported on the local government liaison’s lobbying expense reports.

*Gifts from local governments*—The gift ban applies *only* to gifts given to legislators and/or legislative employees by local government liaisons. The gift ban does *not* apply to gifts given by the unit of local government for whom a local government liaison works, nor does it apply to gifts given by any elected or appointed officials or other employees of that local government.

*Example:* If members of a county board of commissioners and their local government liaison take their legislative delegation out to lunch, the local government liaison *could not* pay for the lunch with personal funds, but the lunch *could* be paid for with county funds.

It is unclear whether a local government liaison can deliver a gift or pay for a gift with government funds if other representatives of the employing unit of government are not present, for example, whether a county local government liaison should take a member of the county’s legislative delegation to lunch and pay for the lunch with county funds if no other representative from the county is present. *Local government liaisons should consult directly with the SEC about specific questions related to the gift ban.*

#### **I. What are the penalties for violating the local government liaison law?**

The state’s lobbying laws are enforced by both the Secretary of State’s Office and the North Carolina SEC. The secretary of state has jurisdiction over registration and expense reporting. The ethics commission has jurisdiction over all other matters, including the gift ban.

There are specific criminal and civil penalties for violations of these laws:<sup>93</sup>

- Registration requirements—A willful violation of the liaison registration requirement is punishable as a Class 1 misdemeanor; the secretary of state may level a civil fine of up to \$5,000 per violation.

92. See G.S. 120C-303.

93. G.S. 120C-602.

- Expense reporting requirements—Violations of the lobbying expense reporting requirement may result in a civil fine of up to \$5,000 per violation levied by the secretary of state; because expense reports must be filed under oath (notarized), a willful falsification of information contained in an expense report may constitute perjury, which is punishable as a Class F felony.<sup>94</sup>
- Gift ban—A willful violation of the gift ban is punishable as a Class 1 misdemeanor; the SEC may levy a civil fine of up to \$5,000 per violation.

**J. Where can one get more information and advice about local government liaison requirements?**

The SEC is authorized to issue advisory opinions on specific questions about the State Government Ethics Act and about the state's lobbying laws and can provide informal advice and opinions to persons who are subject to these laws. The secretary of state is authorized to adopt any rules and forms necessary for compliance with the registration and expense reporting requirements. Individuals who are (or who believe they are) covered under the local government liaison law are encouraged to contact these offices for more information:

North Carolina State Ethics Commission      (919) 715-2071  
[www.ethicscommission.nc.gov](http://www.ethicscommission.nc.gov)

North Carolina Department      (919) 807-2170  
of the Secretary of State,  
Lobbying Compliance Division  
[www.secretary.state.nc.us/lobbyists/](http://www.secretary.state.nc.us/lobbyists/)

**50. How do the state's ethics and lobbying laws apply to Rural Transportation Planning Organizations (RPOs) and Metropolitan Planning Organizations (MPOs)?**

During the 2012 short session, the General Assembly enacted legislation that covered members of local transportation planning groups known as MPOs and RPOs under the state ethics act. 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 repealed the 2012 legislation during the 2013 session and enacted specific ethics requirements and prohibitions that apply only to MPO and RPO policy-making boards.<sup>95</sup>

The 2013 legislation made two important changes to the 2012 law. It

1. repealed 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. established a more narrowly focused set of ethics requirements that apply *only* to members of MPOs and RPOs with voting authority, meaning the members of the organizations' policy boards (usually referred to as TACs (Transportation Advisory Committees)).

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?

94. G.S. 14-209.

95. S.L. 2013-156 (S 411), enacted June 19, 2013.

### A. What are RPOs and MPOs?

RPOs, which are state-mandated and authorized under Article 17 of G.S. Chapter 136, are voluntary organizations of local officials that work cooperatively with the North Carolina Department of Transportation (NCDOT) to plan rural transportation systems and advise NCDOT on rural transportation policy.<sup>96</sup> MPOs, the urban counterparts to RPOs, are federally mandated and authorized under Article 16 of G.S. 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). A TAC is typically composed of local elected officials (or their designees) representing partner local governments and is responsible for establishing goals, priorities, and objectives for transportation plans within the jurisdictions represented. A TCC is typically composed 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. Normally, recommended transportation plans are developed by the TCC, submitted to the TAC for approval, and then forwarded to NCDOT for consideration.

There are currently twenty RPOs and seventeen MPOs in the state, each consisting of a TAC and a TCC with 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.

### B. TCC Members No Longer Covered under State Ethics Act

Under the 2013 legislation (Senate Bill 411), 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.

Senate Bill 411 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 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 six-month time frame in which local employees serving on TCCs 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 TCC members are no longer subject to Chapter 138A, they are not required to file SEIs, which are a matter of public record. So, what will happen to those SEIs filed during that time 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 SEC is authorized

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96. G.S. 136-210.

to destroy SEIs filed by TCC members as well as the commission's written evaluations of those SEIs.

Any local government employee serving as an alternate for or designee of a TAC member becomes subject to the new ethics requirements applicable to TAC members. Coverage of alternates and designees is discussed in more detail below.

### C. New Ethics Requirements for TAC Members, Alternates, and Designees

Under the 2012 law, local government officials and others serving on TACs were subject to the entire scope of ethics requirements and prohibitions under G.S. Chapter 138A. Under the 2013 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.<sup>97</sup>

The new ethics requirements are as follows:

1. *Avoid conflicts of interest.* Members must refrain from participating in and voting on any action as an 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 related to the disclosed conflict occurred.
3. *Disclose economic interests.* Members must file an SEI as required under [Article 3 of Chapter 138A](#); the SEI must be filed and evaluated by the SEC 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 carried forward under the new law). Just as under the old law, the penalty for failure to timely file an 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 in which the member serves.
5. *Refrain from using confidential information.* Members cannot use or disclose nonpublic information the member learns as a result of serving on an 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 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 member's spouse, lineal descendants (such as children and grandchildren), lineal ascendants (parents, grandparents, and so forth), and siblings, as well as his or her spouse's lineal descendants, lineal ascendants, and siblings (that is, the member's in-laws), and the spouses of any of these individuals.<sup>98</sup>

97. 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.

98. G.S. 138A-3(13).



2. *Business with which associated.* A business in which a member or someone in 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 interest owned;
  - c. owns a legal, equitable, or beneficial interest of ten thousand dollars (\$10,000) or more in the business or 5 percent 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.<sup>99</sup>
3. *Financial benefit.* A “direct pecuniary gain or loss to a business competitor,” which mirrors the definition of financial benefit under Chapter 138A.

The new ethics requirements apply to “individuals with voting authority” who serve on MPOs and RPOs (that is, members of TACs). Members often designate individuals to serve as their alternates or designees on a TAC. Because alternates or designees act in the TAC member’s place, they have the same voting privileges as that member, 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 appointed as an alternate or designee of a TAC member would be covered.

#### **D. 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 an 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.

#### **E. 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 State Ethics Act provisions 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 are no longer subject to the prohibition on 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).

#### **F. 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

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<sup>99</sup> G.S. 138A-3(3).

with the SEC; 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 an 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 related to the disclosed conflict occurred. The conflict disclosure *should not* be filed with the clerk unless the clerk maintains the minutes of TAC meetings. A conflict of interest disclosure form is available from NCDOT.

#### **G. 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 (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), regardless of whether they serve on a TAC.

#### **H. Where to Go For More Information and Advice**

Under the 2012 law, TAC members could seek informal and formal advice from the SEC since that entity has jurisdiction over interpretations of Chapter 138A. TAC members are now subject to separate ethics requirements and are no longer covered under Chapter 138A except for the SEI filing requirement, and the SEC has no legal jurisdiction over questions of interpretation of the new law. TAC members should still contact the SEC if they have questions about SEI and real estate disclosure filing requirements (the commission has developed a separate form for real estate disclosures). For other questions about the new ethics requirements, a TAC member should consult the attorney that advises the MPO or RPO in which the member serves or contact Norma Houston at the UNC School of Government.

## **Conclusion**

Although primarily intended to govern the actions and conduct of state officials and those who lobby them, North Carolina's State Government Ethics Act and lobbying act also have certain implications for and applications to local governments. Historically, local government officials and personnel have enjoyed strong professional, even collegial, relationships with their state government counterparts. By and large, these relationships are not changed by the ethics and lobbying laws. However, as outlined in this bulletin, certain activities that may have been a part of those relationships in the past are now (or may be) subject to regulation or even prohibition. Local government officials and employees are encouraged to become familiar with these laws to ensure that their continued efforts on behalf of their citizens and communities are carried out in compliance with the laws.

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