

CLIENT ALERT

March 2022



Navigating the New Statement of Economic Interests Form *by James G. Wargo*

The Illinois Governmental Ethics Act (the “Act”) requires certain local governmental office holders, candidates, appointed officials, and employees to file a “Statement of Economic Interests.” (5 ILCS 420/4A-101.5.) Following the passage of Public Act 102-0664 (effective January 1, 2022), significant changes have been made to the Statement of Financial Interests form. The following questions and answers detail the new disclosure requirements.

Q: Which local governmental officials and employees are required to file a Statement of Economic Interests under the Illinois Governmental Ethics Act?

- All elected officials and candidates for elected office in a unit of local government.
- All appointed members to a governing board of a unit of local government or a special district.
- All appointed members to a zoning board, zoning board of appeals, or plan commission, and appointed members of other boards or commissions of a unit of local government who have authority to authorize the expenditure of public funds. Members of boards and commissions who function in an advisory capacity are not required to file a Statement of Economic Interests.
- Members of the board of trustees of any pension fund established under the Illinois Pension Code, if not otherwise required to file under any other provision of Section 4A-101.5 of the Act.
- All compensated employees of a unit of local government (excluding independent contractors) who:
 - Function as the head of the department, division, bureau, authority, or other administrative unit, or who exercise similar authority;

- Have direct supervisory over or direct responsibility for the formulation, negotiation, issuance, or execution of contracts for the unit of local government in the amount of \$1,000 or greater;
- Have authority to approve licenses and permits by the unit of local government, but not including those employees who function in a ministerial capacity;
- Adjudicate, arbitrate, or decide any judicial or administrative proceeding, or review the adjudication, arbitration, or decision of any judicial or administrative proceeding within the authority of the unit of the local government;
- Have authority to issue or adopt rules and regulations within areas under the authority of the unit of local government; or
- Have supervisory responsibility for 20 or more employees of the unit of local government.

Q: What disclosures are required under the new Statement of Economic Interests form?

- **Assets.** Any single asset that was worth more than \$10,000 as of the end of the preceding calendar year held individually, jointly with a spouse, jointly with a minor child, or held in trust.
- **Income.** Any source of income in excess of \$7,500 earned by the filer and/or spouse that is required to be reported on the filer's federal income tax return excluding any compensation earned for service in the position for which the Statement of Economic Interests is being filed.
- **Sale or Transfer of Assets.** The sale or transfer of any asset that produces more than \$7,500 in capital gains in the preceding calendar year and the date of the transaction.
- **Debts/Creditors.** The name of any creditors who are owed any single debt in the preceding calendar year exceeding \$10,000 owed by the filer, jointly with a spouse, or jointly with a minor child or children excluding any debts incurred on terms available to the general public such as mortgages, student loans, and credit cards.
- **Other Associated Units of Local Government.** The name of each unit of government for which the filer or spouse were an employee, contractor, or office holder during the preceding calendar year other than the unit of local government that is the subject of the filing. The title of the position or the nature of contractual services must be included.
- **Relationship with Lobbyist.** Each person known to the filer to be a registered lobbyist with any unit of local government in the State of Illinois with whom the filer maintains an economic relationship, or who is a member of the filer's family, including the nature of the relationship with the lobbyist.
- **Gifts.** The source of each gift or honorarium valued singly or in the aggregate in excess of \$500 received during the preceding calendar year.
- **Public Utility Employees.** The name of any spouse or immediate family member living with the filer employed by a public utility in the State and the name of the public utility.

Q: Are filers required to disclose specific dollar amounts or values of their reported financial interests on the Statement of Economic Interests form?

No. The Illinois Governmental Ethics Act does not require filers to disclose the specific dollar amounts or values of their reported financial interests.

Q: What are considered assets subject to disclosure on the Statement of Economic Interests form?

The Act defines an "asset" to mean an item that is owned and has monetary value. For disclosure purposes, the Act specifically identifies several examples of items considered assets subject to disclosure as well as specific items not considered assets and not subject to disclosure as follows:

Assets to be disclosed include, but are not limited to:

Stocks;
Bonds;
Sector mutual funds;
Sector exchange traded funds;
Commodity futures;
Investment real estate;
Beneficial interests in trusts;
Business interests; and
Partnership interests.

Assets do not include:

Personal residences;
Personal vehicles;
Savings and checking accounts;
Bonds, notes, or other securities issued by any federal, state or local government;
Medicare benefits;
Inheritances or bequests (other than beneficial interests in trusts);
Diversified funds;
Annuities;
Pensions (including government pensions);
Retirement Accounts;
College savings plans that are qualified tuition plans; and
Qualified tax-advantaged savings programs that allow individuals to save for disability-related expenses or tangible personal property.

Q: What debts must be disclosed on the new Statement of Economic Interests form?

The Act defines “debts” to mean any money or monetary obligation owed at any time during the preceding calendar year to an individual, company, or other organization, other than a loan that is from a financial institution, government agency, or business entity and that is granted on terms made available to the general public.

For disclosure purposes, the Act identifies certain categories of obligations that constitute debts subject to disclosure:

Debts subject to disclosure, include, but are not limited to:

Personal loans from friends or business Associates;
Business loans made outside the lender’s regular course of business; and
Loans made below market rates.

Debts do not include:

Debts to or from financial institutions or government entities such as mortgages, student loans, credit card debts, or loans secured by automobiles, household furniture, or appliances, as long as those loans were made on terms available to the general public and do not exceed purchase price of the items securing them;
Debts to and from a political committee registered with the Illinois State Board of Elections or political committees, principal campaign committees, or authorized committees registered with the Federal Election Commission; and
A loan from a member of the filer’s family not known by the filer to be registered to lobby under the Lobbyist Registration Act.

Q. What are the definitions of the other key terms under the Act?

In addition to the definitions of assets and debts covered above, it is important for a filer to understand the other key terms defined under the Act to better understand the new disclosure requirements under the Act. These additional key terms are defined as follows:

- **Creditor** means an individual, organization, or other business entity to whom money or its equivalent is owed, no matter whether that obligation is secured or unsecured, except that if a filer makes a loan to members of his or her family then that filer does not, by making such a loan, become a creditor of that individual.
- **Diversified Funds** mean investment products, such as mutual funds, exchange traded funds, or unit of investment trusts, that invest in a wide variety of securities across multiple sectors of asset classes. Any such funds do not include “sector funds.”
- **Economic Relationship** means any joint or shared ownership interests in business and creditor-debtor relationships with third parties, other than commercial lending institutions, where: (a) the filer is entitled to receive (i) more than 7.5% of the total distributable income, or (ii) an amount in excess of the salary of the Governor; or (b) the filer together with his or her spouse or minor children is entitled to receive (i) more than 15%, in the aggregate, of the total distributable income, or (ii) an amount in excess of two times the salary of the Governor.
- **Family** means a filer’s spouse, children, step-children, parents, step-parents, siblings, step-siblings, half-siblings, sons-in-law, daughters-in-law, grandparents, and grandchildren, as well as the parents and grandparents of the filer’s spouse, and any person living with the filer.
- **Filer** means any person required to file a Statement of Economic Interests under the Act.
- **Income** means pension income and any income from whatever source derived, required to be reported on the filer’s federal income tax return, including, but not limited to: compensation received for services rendered or to be rendered (as required to be reported on any Internal Revenue Service forms, including, but not limited to, Forms W-2, 1099, or K-1); earnings or capital gains from the sale of assets; profit, interest or dividend income from all assets; revenue from leases and rentals, royalties, prizes, awards, or barter; forgiveness of debt; and earnings derived from annuities or trusts other than testamentary trusts. Income does not include compensation earned for service in the position that necessitates the filing of the Statement of Economic Interests, or investment or interest returns on items excluded from the definition of an asset, or income from the sale of a personal residence or personal vehicle.
- **Investment Real Estate** means any real property, other than filer’s personal residence, purchased to produce a profit, whether from income or resale. Investment real estate may be described by the city and state where the real estate is located.
- **Lobbying** means engaging in activities that require registration under the Lobbyist Registration Act.
- **Lobbyist** means an individual who is required to be registered to engage in lobbying activities pursuant to the Lobbyist Registration Act.
- **Personal Residence** means a filer’s primary home residence and any residential real property held by the filer and used by the filer for residential rather than commercial or income generating purposes.
- **Sector Funds** mean mutual funds or exchange traded funds invested in a particular industry or business.
- **Spouse** means a party to a marriage, a party to a civil union, or a registered domestic partner.

Q. Are the financial interests of a filer’s spouse required to be disclosed in the Statement of Economic Interests?

Yes. To the extent the filer constructively controls the interest of a spouse or other party, it shall be considered the same as the interest of the filer and subject to disclosure.

Q. Where is the Statement of Economic Interests to be filed?

The Statement of Economic Interests must be filed with the county clerk by May 1st of each year. Each local county clerk will provide the Statement of Economic Interests form for each unit of local government within the county and may require electronic or written filing.

Q. Does the Statement of Economic Interests form have to be signed by an ethics officer?

The Act does not require local governmental filers to have their Statement of Economic Interests certified by an ethics officer. Certification by an ethics officer is only required for State officials subject to the Act. To the extent the provided Statement of Economic Interests form includes an ethics officer certification, that provision may be disregarded.

Local governmental filers are encouraged to carefully review and complete the new Statement of Economic Interests form well in advance of the May 1st filing deadline.

* * *

If you have any questions, do not hesitate to contact one of our attorneys.

Ottosen DiNolfo Hasenbalg & Castaldo, Ltd.'s **Client Alert** is issued periodically to keep its clients and other interested parties informed of legal developments that may affect or otherwise be of interest to its readers. Due to the general nature of its contents, the comments herein do not constitute legal advice and should not be regarded as a substitute for detailed advice regarding a specific set of facts. Questions regarding any items should be directed to our main office at:

OTTOSEN DINOLFO HASENBALG & CASTALDO, LTD.
1804 North Naper Boulevard, Suite 350, Naperville, Illinois 60563
(630) 682-0085 ottosenlaw.com

Copyright 2022 by
OTTOSEN DINOLFO HASENBALG & CASTALDO, LTD.

All rights reserved. Pursuant to Rules 7.2-7.4 of the Illinois Rules of Professional Conduct, this publication may constitute advertising material.