

Date of Hearing: April 17, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 2062 (Davis) – As Introduced: February 23, 2012

SUBJECT: Political Reform Act of 1974: statements of economic interests: electronic filing.

SUMMARY: Allows an agency to permit the electronic filing of a statement of economic interests (SEI), in accordance with regulations adopted by the Fair Political Practices Commission (FPPC). Specifically, this bill:

- 1) Authorizes an agency to permit the electronic filing of an SEI, including amendments, in accordance with regulations adopted by the FPPC.
- 2) Requires the FPPC, in consultation with interested agencies, to use common database integration features in developing database design requirements for all electronic filings that may be used.
- 3) Requires an agency which intends to permit electronic filing of SEIs to submit a proposal, which includes a description of the electronic filing system the agency proposes to use, to the FPPC for approval and certification.
- 4) Requires the FPPC to review an agency's proposal for compliance with the system requirement regulations adopted as required by this bill. Requires the FPPC to approve and certify the agency's filing system as soon as practicable after receiving the agency's submitted proposal if the system complies with the regulations.
- 5) Requires an agency's proposed electronic filing system to meet the following requirements:
  - a) Requires an SEI filed electronically to include an electronic transmission submitted under penalty of perjury and conform to current electronic transaction law.
  - b) Requires the agency's filing officer to issue a confirmation notifying the filer that his or her SEI or amendment was received. Requires the confirmation to include the date and time that the SEI or amendment was received by the filing officer and the method by which the filer may view and print the data received by the filing officer.
  - c) Provides that a copy of the confirmation retained by the filer creates a rebuttable presumption that the filer timely filed his or her SEI or amendment.
  - d) Requires the electronic system to include layered security to ensure data integrity. Requires the system to have the capability to uniquely identify a filer electronically when he or she accesses the electronic filing system. Requires the operational process of the system to include industry best practices to ensure that the security and integrity of the data and information contained in the SEI or amendment is not jeopardized or compromised.

- e) Requires the agency to provide the public with a copy of an SEI, upon request. Requires the copy of the electronically filed SEI to be identical to the SEI published by the FPPC and include the date the statement was filed.
- 6) Permits the FPPC to adopt regulations to require an agency to redact information on an SEI prior to posting it on the Internet.
- 7) Permits the FPPC to conduct discretionary audits of an agency's approved and certified electronic filing system to evaluate its performance and compliance with the requirements of this bill.
- 8) Permits a city or county, which developed an electronic filing system pursuant to a specified pilot program established in law, to continue to use that system for purposes of this bill, including, but not limited to, the time during which the FPPC is adopting regulations as required by this bill. Requires the city or county, after the FPPC's regulations take effect, to submit a description of its electronic filing system for approval and certification within a reasonable time as determined by the FPPC. Prohibits a city or county from continuing to use an electronic filing system originally developed pursuant to law if the FPPC does not approve and certify that electronic filing system as complying with the requirements specified in this bill.
- 9) Provides that this bill is an urgency statute in order to allow the FPPC time to develop regulations and procedures critical to the implementation of a system for the electronic filing of SEIs prior to the 2013 filing period.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).
- 2) Requires that candidates for, and current holders of, specified elected or appointed state and local offices and designated employees of state and local agencies file SEIs disclosing their financial interests, including investments, real property interests, and income.
- 3) Establishes a pilot project which permits Los Angeles, Merced, Orange, Santa Clara, Stanislaus, and Ventura counties and the City of Long Beach to permit the electronic filing of an SEI in accordance with regulations adopted by the FPPC.
- 4) Requires the pilot project to cover the reporting periods of 2008 through 2011.
- 5) Required a city or county participating in the pilot project to submit a report to the FPPC not later than July 1, 2011. Required the report to include a listing and estimate of associated operational efficiencies; related savings and associated costs from implementing and operating the pilot program; a listing of the safety, security, or privacy issues encountered and an explanation of how those issues were addressed; available information related to feedback from electronic filing participants; and any other relevant information on the implementation of the pilot program.

- 6) Required the FPPC to transmit the city and county reports received, as well as any comments on the reports, to the Legislative Analyst's Office (LAO) no later than August 15, 2011, and required the LAO to provide a report to the Legislature evaluating the pilot project not later than February 1, 2012.
- 7) Allowed the FPPC, in conjunction with the LAO, to develop additional criteria for the report to be submitted to the FPPC by participating cities and counties.
- 8) Provides that the pilot project began on January 1, 2009, and will end on December 31, 2012.

FISCAL EFFECT: Unknown. State-mandated local program; contains a crimes and infractions disclaimer.

COMMENTS:

- 1) Purpose of the Bill: According to the author:

The Electronic Form 700 program has been undeniable success story. According to the Legislative Analyst's Office, the program has resulted in decreases in staff hours, overtime costs, and temporary employee costs. Furthermore, the Electronic Form 700 program was found to be "more efficient than the paper-based process" and garnered overwhelmingly positive responses from participants in the pilot program. This bill simply adopts the recommendation of the LAO that all counties be permitted to adopt the Electronic Form 700 Program.

- 2) Statements of Economic Interests: As part of the PRA's comprehensive scheme to prevent conflicts of interest by state and local public officials, existing law identifies certain elected and other high-level state and local officials who must file SEIs. Similarly, candidates for those positions must file SEIs. Other state and local public officials and employees are required to file SEIs if the position they hold is designated in an agency's conflict of interest code. A position is designated in an agency's conflict of interest code when the position entails the making or participation in the making of governmental decisions that may foreseeably have a material financial effect on the decision maker's financial interests. While the exact number of people that are required to file SEIs is unknown, the FPPC has estimated that the number exceeds 200,000 officials and employees statewide.

The information that must be disclosed on an SEI, and the location at which an SEI is filed, varies depending on the position held by the individual who is required to file an SEI. Although there are some exceptions, individuals who are required to file an SEI typically must file that document with the agency of which they are an elected official or by which they are employed.

- 3) Pilot Project: As noted above, existing law created a pilot project that began in 2009 and is currently scheduled to end in December 2012, to evaluate the efficiency and desirability of allowing for SEIs to be filed electronically. Participants in the pilot project were required to submit a report to the FPPC in 2011, and in turn the FPPC was required to forward the reports to the LAO along with comments that the FPPC had on those reports or the pilot project. Based on that information, the LAO was required to provide a report to the

Legislature evaluating the pilot project earlier this year.

- 4) LAO's Recommendations: As stated above, the LAO submitted a report to the Legislature in January of this year. According to the LAO report, the participating government entities indicated that the paper-based filing process was time-consuming and required significant amounts of staff time to review the SEIs, work with the filers to correct errors and maintain the paper file systems. However, after implementing the electronic filing system, participating entities found that that electronic filing resulted in operational efficiencies through reduced personnel due to the significant reduction in the number of errors in the filers' SEIs and other operational costs. Additionally, it was reported to the LAO that none of government entities reported any security issues with the electronic filing systems and found that most of the public officials and employees who filed using the electronic filing system considered it to be a useful and an easy process.

And as a result of these findings, the LAO made the following recommendations: (1) that due to success of the electronic filing systems generated savings and improved accuracy, the Legislature should allow participating entities to continue electronic filing on an ongoing basis; (2) that given the potential savings and improved accuracy, the Legislature should consider giving all governments the *option* to establish an electronic filing system; and (3) due to the FPPC's role in administering and overseeing the PRA, the Legislature should authorize the FPPC to establish any guidelines and specifications to be followed by the government entities when developing and using the electronic filing systems.

- 5) Urgency Clause: This bill contains an urgency clause. According to the sponsor, the urgency clause is necessary to allow the FPPC time to develop regulations and procedures critical to the implementation of the systems to facilitate the electronic filing of SEIs prior to the 2013 filing period.
- 6) Technical Amendment: The author has proposed a technical amendment, which was suggested by the FPPC, to ensure that electronic copies of filed SEIs that are received by the FPPC will comply with existing statutory requirements. To accomplish this purpose, the author has proposed the following amendment. On page 4, between lines 23 and 24, insert the following:

*(h) The Commission shall accept electronic copies of statements of economic interests forwarded to it by an agency that has received an electronically filed statement from a filer.*

- 7) Arguments in Support: California Association of Clerks and Election Officials, the sponsors of this bill, write:

Currently, five counties and one city are authorized to administer an electronic filing pilot program to test the efficiency and convenience of a paperless system for filing the Form 700. The local agencies have completed the program that resulted in very significant costs savings and greater compliance with the economic disclosure requirement of the act. The pilot agencies have also received favorable review from the Legislative Analyst's Office and the Fair Political Practices Commission (FPPC). Future entities would be subject to the same program security requirements as the existing entities and

would be required to utilize a system that would include layered security, secure authentication and industry best practices to ensure that the security and integrity of the data contained in the statement is not jeopardized or compromised.

AB 2062 would allow any local entity to apply for consideration from the FPPC to participate in the Form 700 electronic filing program. Participation would be contingent upon approval of the computer system by the Commission, and the requirement that the local entity bear all burden for the initial and ongoing cost of the program. The long-term savings of investing in this program have compelled existing pilot counties and city to seek permanent status, while authorizing and encouraging others to benefit from the program

- 8) Political Reform Act of 1974: California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders and lobbyists. That initiative is commonly known as the PRA. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.
- 9) Previous Legislation: AB 2607 (Davis), Chapter 498, Statutes of 2008, established a pilot project which permits Los Angeles, Merced, Orange, and Stanislaus Counties to permit the electronic filing of an SEI in accordance with regulations adopted by the FPPC. AB 1149 (Davis), Chapter 139, Statutes of 2009, made two minor changes to that pilot project.

AB 1921(Davis), Chapter 58, Statutes of 2010, allowed Santa Clara and Ventura Counties and the City of Long Beach to participate in the pilot project that was created by AB 2607.

AB 182 (Davis), Chapter 96, Statutes of 2011, extended the sunset of the pilot program that was created by AB 2607 to December 2012.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Clerks and Election Officials (sponsor)  
Common Cause  
Fair Political Practices Commission  
Santa Clara County Board of Supervisors

Opposition

None on file.

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