

Date of Hearing: May 1, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 2452 (Ammiano) – As Introduced: February 24, 2012

AS PROPOSED TO BE AMENDED

SUBJECT: Political Reform Act of 1974: online disclosure.

SUMMARY: Permits local government agencies to require elected officials, candidates, and campaign committees to file campaign disclosure reports online or electronically. Specifically, this bill:

- 1) Permits a local government agency to require an elected officer, candidate, committee, or other person required to file statements, reports, or other campaign disclosure documents required by the Political Reform Act (PRA), to file those statements, reports, or documents online or electronically with a local filing officer.
- 2) Requires a local government agency that requires online or electronic filing pursuant to this bill to comply with all of the following conditions:
 - a) Requires the legislative body for the agency to adopt an ordinance approving the use of online or electronic filing, including a legislative finding that the system will operate securely and effectively and would not unduly burden filers. Permits the ordinance to specify that the requirements apply only to specifically identified types of filings or are triggered only by identified monetary thresholds.
 - b) Provides that the ordinance may not require an official, candidate, committee, or other person that receives contributions or makes expenditures of less than \$1,000 in a calendar year to file reports online or electronically. Provides that the ordinance may not require, but may permit, an official, candidate, committee, or other person to file a copy of a report online or electronically if the original report is required to be filed with the Secretary of State (SOS).
 - c) Requires the online or electronic filing system to accept a filing only in the standardized record format developed by the SOS pursuant to a provision of existing law, and that is compatible with the SOS's system for online or electronic filing.
 - d) Requires the online or electronic filing system to ensure the integrity of the data transmitted and to include safeguards against efforts to tamper with, manipulate, alter, or subvert the data.
 - e) Provides that the date of filing for a statement, report, or other document that is filed online or electronically shall be the day that it is received by the local filing officer.
 - f) Requires the filing system to issue a confirmation notifying a filer that his or her statement, report, or other disclosure document was received. Requires the confirmation

to include the date and time that the report was received by the filing officer and the method by which the filer may view and print the data received by the filing officer.

- g) Provides that a copy of the confirmation retained by the filer creates a rebuttable presumption that the filer timely filed the report.
- h) Requires the local filing officer to make all the data filed available on the Internet in an easily understood format that provides the greatest public access. Requires the data to be made available free of charge as soon as possible after receipt. Prohibits the data made available on the Internet from containing the street name and building number of the persons or entity representatives listed on the electronically filed forms or any bank account number required to be disclosed by the filer. Requires the filing officer to make the complete, unredacted version of the campaign reports available to a member of the public upon request.
- i) Requires the online or electronic filing system to include a procedure for filers to comply with the requirements that they sign statements and reports under penalty of perjury.
- j) Requires the local government agency to enable filers to complete and submit filings free of charge.
- k) Requires the local filing officer to maintain a secured, official version of each online or electronic statement, report, or other document filed pursuant to this bill online for a period of at least 10 years commencing from the date filed, and requires the information to be archived in a secure format after that period of time. Provides that the secured, official version of each online statement, report, or other document shall serve as the official version of that report for purpose of audits and any other legal purpose.
- l) Provides that, notwithstanding any other provision of law, any statement, report, or other document filed online or electronically pursuant to this bill shall not be required to be filed with the local filing officer in paper format.

EXISTING LAW:

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Requires the SOS, in consultation with the FPPC, to develop online and electronic filing processes for use by persons and entities that are required to file campaign disclosure reports and lobbying disclosure reports with the SOS's office. Required the SOS, not later than July 1, 1999, to develop a nonproprietary standardized record format or formats for the transmission of data required to be filed online or electronically with the SOS under the PRA.
- 3) Required the SOS, not later than December 31, 2002, to develop at least one means or method whereby filers subject to the online or electronic disclosure requirements of the PRA are able to submit required filings free of charge.

- 4) Requires certain elected officials, candidates, committees, slate mailer organizations, lobbyists, lobbying firms, lobbyist employers, and other persons required to file periodic lobbying disclosure reports, to file campaign and lobbying disclosure reports online or electronically with the SOS.
- 5) Requires all candidates, elected officers, and their controlled committees, with certain exceptions, to file one copy of all campaign statements with the elections official of the county in which the candidate or elected official is domiciled.

FISCAL EFFECT: Keyed non-fiscal by the Legislative Counsel.

COMMENTS:

- 1) Proposed Amendments: In response to questions and concerns raised by committee staff, the author has agreed to accept a number of amendments to this bill. This analysis reflects those proposed amendments. The details of the proposed amendments are as follows:

- a) Threshold for Online or Electronic Reporting: In order to avoid creating a burden for candidates, committees, and other filers that have limited campaign activity, the author has agreed to two amendments to this bill.

First, this bill will be amended to provide that a local government agency may not require an entity that made contributions or expenditures of less than \$1,000 in a calendar year to file reports online or electronically. Local governments would be able to set a higher monetary threshold for triggering mandatory online or electronic filing requirements, but could not establish a lower threshold.

Second, the author has agreed to accept an amendment to clarify that any local government agency that establishes online or electronic filing requirements pursuant to this bill must provide a method to enable filers to complete and submit those filings free of charge.

- b) Filing Confirmation: In order to protect candidates and committees from facing penalties for failure to file if the online or electronic system fails, the author has agreed to accept amendments that provide that any entity that files a campaign disclosure report online or electronically pursuant to this bill will be provided with a confirmation that the filing was received, including the date and time that the filing was received. That confirmation indicating that the entity timely filed the report would create a rebuttable presumption that the report was timely filed.
- c) Access to Redacted Information: In order to ensure that the public does not lose access to information that is disclosed on campaign reports, but that would be redacted from the version of reports that is posted on the Internet pursuant to this bill, the author has agreed to accept an amendment that requires a local jurisdiction to make the complete, unredacted version of campaign reports available to any member of the public upon request.

- d) Period for Retention of Campaign Reports: To conform to the retention policy that applies to campaign reports that are filed online or electronically with the SOS, the author has agreed to accept amendments to require the data from reports to be maintained online for a period of not less than 10 years, and then archived in a secure format after that period of time.
- e) Policy Regarding Copies of Reports Filed with Local Jurisdictions: In order to avoid subjecting candidates and committees who file reports with the SOS to the additional complexity that could be created by requiring those entities to also file copies of those reports online or electronically with local filing officers, the author has agreed to accept an amendment to provide that when a candidate or committee is required to file the original of a report with the SOS and a copy of the report with a local government agency, the agency may permit, but may not require, the candidate or committee to file those copies online or electronically.
- f) Technical Amendment: Finally, committee staff recommends the following technical amendment to this bill: On page 2, line 27, strike out "date" and insert "data."

2) Purpose of the Bill: According to the author:

Many campaign statements required by the Political Reform Act of 1974 filed by persons and committees at the state and local level are archived electronically and are available to the public on the Internet. Currently, persons and committees filing these campaign forms electronically must still print up to two paper copies of the forms already posted online and mail them to a local filing officer. These officers must then process and archive copious amounts of paper documents already available online.

Not only is this requirement redundant, but operating costs are increased because agencies must pay permanent and seasonal staff to process forms and maintain paper archives. In San Francisco, it has become so unwieldy that the Ethics Commission was forced to rent additional office space and off-site storage space to accommodate the growing mass of paper files. Rather than spending the bulk of their time assisting filers, clerks and local ethics officers are kept occupied by processing paper forms. These cumbersome archives are also much more difficult to navigate than those stored in an electronic database, making filing errors more likely while decreasing the accessibility of campaign finance information to the public.

AB 2452 would authorize local ethics agencies to require that all persons or committees filing campaign documents or reports must do so online or electronically. These changes would enormously reduce paper waste and allow county clerks to focus more attention to helping filers comply with campaign disclosure requirements instead of managing, in many cases, both electronic and paper-based filing systems containing the exact same data. Local ethics agencies also could devote less time and fewer resources to meticulously filing and providing public access to paper statements since they could be easily accessed online.

This bill acts on recommendations put forth by the 2010 Fair Political Practices Commission's Task Force on the Political Reform Act, which found that electronic filing already occurs in 21 local jurisdictions and is more desirable than the current system because it would increase transparency, simplify compliance for filers, and allow local officers to spend more time assisting filers with disclosure requirements. Pilot programs requiring only electronic filing have been implemented in the counties of Los Angeles, Stanislaus, Orange, Long Beach, Merced, Santa Clara, and Ventura and all programs demonstrated positive outcomes in terms of cost-savings, improved efficiency, and greater transparency.

- 3) Existing Online and Electronic Disclosure: SB 49 (Karnette), Chapter 866, Statutes of 1997, the Online Disclosure Act, required the SOS to develop a process whereby reports and statements required to be filed with the SOS under the PRA could be filed online and viewed by the public. SB 49 also required certain candidates, committees, slate mailer organizations, lobbyists, lobbyist employers, and lobbying firms to file campaign reports online. Since that time, subsequent legislation has gradually expanded the circumstances under which campaign and lobbying reports are required to be filed online or electronically. Most recently, the Legislature approved and Governor Schwarzenegger signed AB 1181 (Huber), Chapter 18, Statutes of 2010, which lowered the monetary thresholds that trigger mandatory online or electronic filing of reports required to be filed with the SOS under the PRA.

While the Online Disclosure Act and subsequent amendments have made information about certain candidates and committees widely available on the Internet, the information that is available through the SOS's website generally does not include information about local candidates or about committees that make contributions and expenditures exclusively or primarily in local campaigns. That's because the requirements of the Online Disclosure Act generally were limited to candidates, committees, and other entities that were required to file disclosure reports with the SOS. Campaign disclosure reports filed in connection with local candidates or ballot measures generally must be filed with local clerks or elections officials.

Many local clerks and elections officials have implemented their own online or electronic disclosure systems. In some cases, the local jurisdictions require certain candidates and committees to file disclosure reports online or electronically pursuant to a local campaign ordinance. Even in circumstances where local candidates and committees are required to file reports online or electronically, however, the PRA still generally requires paper copies of those reports to be filed with the local clerk or elections official. As a result, even in circumstances where local jurisdictions have taken steps to make campaign disclosure reports more broadly available by moving to an electronic reporting system, the local jurisdictions still must maintain paper versions of those reports.

- 4) Statements of Economic Interests Electronic Filing Pilot Project: As part of the PRA's comprehensive scheme to prevent conflicts of interest by state and local public officials, certain public officials are required to file statements of economic interests (SEIs). AB 2607 (Davis), Chapter 498, Statutes of 2008, and subsequent legislation established a pilot project which permitted certain jurisdictions to permit the electronic filing of an SEI in accordance with regulations adopted by the FPPC. That pilot project began in 2009 and is scheduled to end in December 2012. 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 Legislative Analyst's Office (LAO) along with comments that the FPPC had on those reports or the pilot project. Based on that information, the LAO submitted a report to the Legislature evaluating the pilot project 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 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.

Although the process for filing campaign reports is not identical to the process for filing SEIs, the author and the sponsor of this bill nonetheless argue that the pilot project demonstrates that moving from a paper-based filing process for campaign reports to an electronic-based process can significantly reduce costs to local governments.

- 5) Arguments in Support: The sponsor of this bill, the City and County of San Francisco, writes in support:

Many FPPC forms are electronically filed at the state level and in numerous local jurisdictions using the Secretary of State's CAL 2.01 electronic data format. The data files are converted into electronic FPPC forms. In jurisdictions with electronic filing, the electronic FPPC forms are immediately made available on the Internet. Committees that file electronically must then print up to two paper copies of the electronic FPPC forms and file with their respective state or local filing officer(s). Since the paper FPPC forms are derived from the electronic FPPC forms, the content is identical. Therefore, there would be no public harm in eliminating the paper copies.

The San Francisco Ethics Commission spends a significant portion of its operating budget on permanent and seasonal staff costs for processing paper forms, scanning and copier equipment, and storage for paper filings. In 2007, the Ethics Commission expanded into an additional office space for the sole purpose of storing the growing number of paper filings, in addition to its off-site storage facility. While the Ethics Commission's limited staff engages in this bureaucratic exercise, the public and filers remain underserved. Researchers are often confused by the duplicative electronic and paper filings in the Ethics Commission's records. Filers consistently reach out for assistance during filing deadlines when staff is busy processing paper forms.

In the face of repeated budget cuts, the Ethics Commission cannot afford to continue spending funds on outdated and inefficient procedures. If electronic filing is approved and paper filing eliminated, the resources spent on processing paper forms could alternatively be devoted towards increased assistance to filers and the public, additional audits, and increased enforcement.

- 6) Related Legislation: SB 1553 (Lowenthal), which is pending in the Senate Appropriations Committee, would create a pilot program for the 2013 through 2014 reporting periods that authorizes the City of Long Beach to permit any person who files a campaign statement with the city clerk to file that statement online or electronically.

AB 2062 (Davis), which is pending in the Assembly Appropriations Committee, allows any agency to permit the electronic filing of an SEI, subject to certain restrictions and in accordance with regulations adopted by the FPPC. AB 2062 was approved by this committee on a 7-0 vote.

- 7) 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.

REGISTERED SUPPORT / OPPOSITION:

Support

City and County of San Francisco (sponsor)
American Federation of State, County and Municipal Employees
Fair Political Practices Commission
Urban Counties Caucus

Opposition

None on file.

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094