

California Fair Political Practices Commission

MEMORANDUM

To: Chair Ravel, Commissioners Eskovitz, Garrett, Montgomery and Rotunda

From: Zackery P. Morazzini, General Counsel
Hyla P. Wagner, Senior Commission Counsel

Subject: Adoption of Regulation 18756 – Statements of Economic Interests: Certification of Electronic Filing Systems

Date: December 3, 2012

Proposed Commission Action: Adopt Regulation 18756 permitting cities and counties to use online statement of economic interests (SEI) filing systems that are approved by the Fair Political Practices Commission.

Background: AB 2062 (Davis) took effect on September 24, 2012, permitting local agencies to use electronic filing of SEIs, in accordance with regulations adopted by the Commission. The bill requires the FPPC to approve and certify an electronic filing system proposed by an agency, upon payment by the agency of a fee of \$1,000 to the FPPC, if the system meets listed requirements. Under Section 87500.2, an agency's proposed electronic filing system must do the following:

- An SEI filed electronically shall include an electronic transmission that is submitted under penalty of perjury and conforms to the requirements of California Civil Code Section 1633.11(b) about secure electronic signatures.¹
- The agency's filing officer shall issue to a person who files his or her SEI electronically, an electronic confirmation that the statement was received.
- The agency shall use an electronic filing system for SEIs that includes layered security to ensure data integrity.
- The agency shall provide the public with a copy of an official's SEI upon request.

Regulation 18756 – Certification of Electronic SEI Filing Systems: As required by Section 87500.2, the proposed regulation sets forth the requirements for a city or county to obtain approval and certification of an online SEI filing system from the FPPC. A local agency will be required to provide the FPPC a description of its proposed electronic filing system, including system overviews, specifications and network diagrams. The Commission's Information Technology staff will review the local SEI filing programs from a systems

¹California Civil Code Section 1633.11(b) provides: "In a transaction, if a law requires that a statement be signed under penalty of perjury, the requirement is satisfied with respect to an electronic signature, if an electronic record includes, in addition to the electronic signature, all of the information as to which the declaration pertains together with a declaration under penalty of perjury by the person who submits the electronic signature that the information is true and correct."

perspective and Technical Assistance staff will make sure the documentation on the Form 700s is current with Commission changes to the form.

As discussed at the Interested Persons meeting held on this regulation on November 13, 2012, there are currently three online SEI filing systems in use by various cities and counties: Los Angeles County, NetFile and Southtech Systems. Although just three main systems currently exist, FPPC staff will review each agency's program for several reasons. Cities and counties sometimes add on different features to the programs provided by SouthTech Systems or NetFile, such as a schedule attached to the Form 700 for a "Family Gift Report" required by San Jose's local ordinance. Even though two cities may be using SouthTech Systems, or two cities may be using NetFile, the cities' programs may be customized. In addition, many of the cities and counties host their own system, using software provided by a vendor. In these cases, the security, firewalls and other features may differ between systems.

The regulation requires the agency's electronic filing system to include industry best practices to ensure that the integrity of the data is not jeopardized, by using secured authentication, complex passwords, firewalls, a back up and restore process, disaster recovery capability, and the capability redact information from an Internet posting.

The regulation requires the agency to update its electronic filing yearly to conform to Commission-approved changes to the SEI forms. It states that the FPPC will complete the review and certification process as soon as practicable after receiving a city or county's proposal. The regulation requires redaction of the address, telephone number and signature block from a public official's SEI that is publicly available on the Internet. (Section 87500.2(e).) It specifies that a city or county's SEI filing program needs to be recertified if a significant change in system architecture occurs, or after five years.

The statute requires cities and counties to include a \$1,000 certification fee when they submit their online SEI program to the FPPC for review. (Section 85700.2(c)(1).) The statute provides that the counties of Los Angeles, Orange, Santa Clara and Ventura and the City of Long Beach, which participated in the online SEI pilot program, "shall not be required to pay the one thousand dollar (\$1,000) fee."

FPPC staff held an interested persons meeting on this regulation on November 13, 2012. Representatives from the Los Angeles County Board of Supervisors, SouthTech Systems and NetFile were present as well as members of the public. We received a number of comments which have been incorporated into Regulation 18756. A useful discussion took place between vendors and FPPC staff about getting local online filing programs approved. Under this legislation, online SEI filing will now roll out to many cities and counties. It will be easier for officials to file their SEIs and for the public to view them.

Attachments – Regulation 18756
– AB 2062 (Davis)

1 Adopt 2 Cal. Code Regs. Section 18756 to read:

2 **§ 18756. Statements of Economic Interests: Certification of Electronic Filing**

3 **Systems.**

4 (a) Database Design. To permit compatibility among systems, an agency's
5 electronic filing system for statements of economic interests under Section 87500.2 shall
6 accept a filing using a system that permits data to be exported to a common file format
7 such as comma separated values (CSV) or Extensible Markup Language (XML),
8 allowing the data to be easily retrieved on a variety of spreadsheet and database
9 applications.

10 (b) Features. In addition to the requirements set forth in Section 87500.2, an
11 agency's electronic filing system for statements of economic interests shall include the
12 necessary industry best practices to ensure that the integrity of the data and information is
13 not jeopardized or compromised by using technology such as secured authentication,
14 complex password requirements, secure sockets layer (SSL), Web encryption,
15 enterprise-level network firewalls, database encryption, password encryption, system
16 hardening procedures, a back up and restore process, disaster recovery capability, and the
17 capability to completely redact or omit information from an Internet posting of the form.

18 (c) Proposal and Fee. Pursuant to Section 87500.2, an agency seeking approval
19 and certification of an electronic filing system for statements of economic interests shall
20 submit the following to the Commission:

21 (1) A description of the electronic filing system that the agency proposes to use
22 with documentation showing compliance with the technical requirements of Section

1 87500.2 and this regulation, including system overviews, specifications and network
2 diagrams.

3 (2) A certification fee of \$1,000 payable to the Fair Political Practices
4 Commission.

5 (d) The Commission shall complete the review and certification process as soon
6 as practicable after receiving the agency's submitted proposal.

7 (e) Redaction. A local agency that chooses to post statements of economic
8 interests online shall redact the address, telephone number, and signature block of a
9 public official's statement of economic interests from the cover page before it is made
10 available on the Internet. An agency may, at the request of a public official, redact
11 additional information from the official's statement of economic interests for purposes of
12 the Internet posting if the public official has a reasonable privacy concern related to an
13 individual's address, or a family member's name or other personally identifiable
14 information as set forth in Regulation 18313.6.

15 (f) Updates. An agency shall be required to update its electronic filing system
16 annually to conform to the Commission-approved changes to the statement of economic
17 interests forms.

18 (g) Re-certification. An agency shall be required to request re-certification of its
19 system by resubmitting a description of the electronic filing system each time either of
20 the following events occurs: (1) a significant change of product or system architecture
21 takes place or (2) five years have passed since the initial or most recent Commission
22 certification. The Commission may, at its discretion, charge a \$1,000 re-certification fee,
23 depending on the complexity of the system review.

1 (h) Failure to comply with subdivisions (f) or (g), above, may result in revocation
2 of an agency's system certification.

3 Note: Authority cited: Section 83112, Government Code. Reference: Section 87500.2,
4 Government Code.

5

Assembly Bill No. 2062

CHAPTER 500

An act to add Section 87500.2 to the Government Code, relating to the Political Reform Act of 1974, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 2012. Filed with
Secretary of State September 24, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2062, Davis. Political Reform Act of 1974: statements of economic interests: electronic filing.

Existing law establishes, until December 31, 2012, a pilot program authorizing specified local government agencies to develop and implement a system for the electronic filing of statements of economic interests by certain public officials, as specified.

This bill would authorize all agencies to permit the electronic filing of a statement of economic interests, in accordance with regulations adopted by the Fair Political Practices Commission. The bill would require the Commission to approve and certify an electronic filing system proposed by an agency, upon payment by the agency of a fee of \$1,000 to the Commission, if the system meets prescribed requirements. The bill would exempt the city and counties that participated in the existing pilot program from paying the \$1,000 fee. The bill would also authorize the Commission to conduct discretionary audits of an agency's electronic filing system to evaluate its performance and compliance with the requirements of this bill. The bill would require the Commission to accept electronic copies of statements of economic interests forwarded to it by an agency that has received an electronically filed statement from filers.

The bill would authorize a city or county that developed an electronic filing system pursuant to the pilot program to continue to use that system during the time it takes the Commission to adopt the regulations to govern the electronic filing system program, but would require the city or county to submit a description of its electronic filing system to the Commission for approval and certification after the Commission's regulations take effect, as specified.

Existing law makes a knowing or willful violation of the Political Reform Act of 1974 a misdemeanor and subjects offenders to criminal penalties.

By creating additional crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 87500.2 is added to the Government Code, to read:

87500.2. (a) An agency may permit the electronic filing of a statement of economic interests required by Article 2 (commencing with Section 87200) or Article 3 (commencing with Section 87300), including amendments, in accordance with regulations adopted by the Commission.

(b) In consultation with interested agencies, the Commission shall use common database integration features in developing database design requirements for all electronic filings that may be used.

(c) (1) An agency that intends to permit electronic filing of a statement of economic interests shall submit a proposal, which shall include a description of the electronic filing system that the agency proposes to use, to the Commission for approval and certification. An agency that submits a proposal shall include a fee of one thousand dollars (\$1,000) that is payable to the Commission for the costs of approving and certifying the proposal. However, the Counties of Los Angeles, Orange, Santa Clara, and Ventura and the City of Long Beach, which participated in the pilot program pursuant to Section 87500.1, shall not be required to pay the one thousand dollar (\$1,000) fee.

(2) An agency shall not charge a person to electronically file a statement of economic interests.

(3) The Commission shall review an agency's proposal for compliance with the system requirement regulations adopted pursuant to subdivisions (a) and (b) and the requirements of subdivision (d). If the proposed system complies with these requirements, the Commission shall approve and certify the agency's electronic filing system as soon as practicable after receiving the agency's submitted proposal.

(d) An agency's proposed electronic filing system shall meet the following requirements:

(1) A statement of economic interests filed electronically shall include an electronic transmission that is submitted under penalty of perjury and that conforms to subdivision (b) of Section 1633.11 of the Civil Code.

(2) (A) The agency's filing officer shall issue to a person who electronically files his or her statement of economic interests or amendment an electronic confirmation that notifies the filer that his or her statement of economic interests or amendment was received. The confirmation shall

include the date and the time that the statement of economic interests 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.

(B) A copy retained by the filer of a statement of economic interests or amendment that was electronically filed and the confirmation issued pursuant to subparagraph (A) that shows that the filer timely filed his or her statement of economic interests or amendment shall create a rebuttable presumption that the filer timely filed his or her statement of economic interests or amendment.

(3) The agency shall utilize an electronic filing system that includes layered security to ensure data integrity. The system shall have the capability to uniquely identify a filer electronically when he or she accesses the electronic filing system. The operational process for the system shall include industry best practices to ensure that the security and integrity of the data and information contained in the statement of economic interests are not jeopardized or compromised.

(4) The agency shall provide the public with a copy of an official's statement of economic interests upon request, in accordance with Section 81008. The copy of the electronically filed statement of economic interests shall be identical to the statement of economic interests published by the Commission and shall include the date that the statement was filed.

(e) The Commission may adopt regulations to require that an agency redact information on a statement of economic interests prior to posting the statement of economic interests on the Internet.

(f) The Commission may conduct discretionary audits of an agency's approved and certified electronic filing system to evaluate its performance and compliance with the requirements of this section.

(g) The Commission shall accept an electronic copy of a statement of economic interests that is forwarded to it by an agency that has received an electronically filed statement from a filer pursuant to this section.

(h) A city or county that developed an electronic filing system pursuant to the pilot program established by Section 87500.1 may continue to use that system for purposes of this section, including, but not limited to, the time during which the Commission is adopting the regulations required by this section. However, after the Commission's regulations take effect, the city or county shall submit a description of its electronic filing system to the Commission for approval and certification, within a reasonable time to be determined by the Commission. A city or county shall not continue to use an electronic filing system originally developed for purposes of Section 87500.1 if the Commission does not approve and certify that electronic filing system as complying with the requirements of the Commission's regulations and the other requirements of this section.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of

Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 3. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to allow the Fair Political Practices Commission time to develop regulations and procedures critical to the implementation of a system for the electronic filing of statements of economic interests prior to the 2013 filing period, which will allow state and local agencies to achieve significant savings, and to allow the city and county agencies that participated in the pilot program to continue using electronic filing while the Commission develops the necessary regulations in order to preserve the substantial investment those agencies have already made in developing electronic filing systems, it is necessary that this act take immediate effect.