



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: July 18, 2012

To: Members, Ethics Commission

From: John St. Croix, Executive Director
By: Steven Massey, Information Technology Officer

Re: Proposed Amendments to the Campaign Finance Reform Ordinance Section 1.112

Introduction

The Ethics Commission ("Commission") is the local filing officer for campaign finance statements filed by City elected officers, candidates for City elective office, their controlled committees, committees formed or existing primarily to support or oppose candidates or local measures to be voted upon in the City, and county general purpose committees. California Government Code section 84215(d) requires committees that file campaign disclosure statements to submit an original signed paper statement and a duplicate paper copy. Currently, the original signed paper statement is considered the official record for audits and any other official purpose.

In addition, Government Code section 84605 requires *state* committees – as opposed to the *local* committees that file with the Commission – that have financial activity exceeding certain thresholds to file electronic copies of statements with the Secretary of State. State law does not require local committees that file with local filing officers to do so electronically. Campaign Finance Reform Ordinance (CFRO) section 1.112 requires certain City or county committees that exceed a financial activity threshold to file copies of statements in electronic format with the Commission, in addition to the original and duplicate paper filings. Until recently, under state law, the Commission did not have the authority to eliminate the need to file duplicative paper filings, although it is more costly and inconvenient for the Commission and the local committees to continue to process and submit paper filings.

Since at least 2007, staff has worked to address the consolidation of paper and electronic filings. Paper statements are resource intensive – they must be manually processed and entered into the Commission's system, scanned, and filed, before they can be accessed by either the staff or the public. During a filing deadline, significant staff resources are devoted to processing paper statements instead of assisting committees or the public interested in viewing the statements themselves.

For committees that file electronic statements in addition to paper statements, they must first submit electronic statements. After the committees submit their electronic statements, they must print them out, obtain the necessary original signatures, and then deliver them to the Commission. Committees often pay for courier services to obtain signatures on statements and deliver the statements to the Commission's office on the eve of a filing deadline.

Electronic statements are made available on the Commission's web site within seconds of submission. However, currently, certain types of filers including those whose activities do not exceed the electronic financial activity threshold are not required to file electronically with the Ethics Commission. For this reason, the electronic data available to the public is always incomplete. Over the past few years, public demand for complete electronic campaign finance data has increased, where the demand to view paper statements in the Commission's office has tremendously decreased. Campaign finance data is also only searchable if it is submitted electronically; such information submitted on paper statements cannot be easily examined and reviewed by either members of the public or staff.

Assembly Bill (AB) 2452

This summer, the Legislature enacted AB 2452, an amendment to the Government Code that authorizes local jurisdictions to move to an electronic filing system for campaign statements filed by local committees that meet certain financial activity thresholds. Under AB 2452, local jurisdictions that wish move to such a system must approve an ordinance that specifically requires electronic filing and that makes certain legislative findings.

AB 2452 was the culmination of years of work by Commission staff:

- On September 26, 2007, staff provided testimony to a joint Fair Political Practices Commission (FPPC) and Secretary of State panel on whether campaigns that file reports electronically can be exempted from submitting paper statements. Staff spoke in support of moving to electronic filing.
- Staff provided extensive comments to the FPPC Chairman's Task Force on the Political Reform Act in support of filing campaign finance statements electronically. On January 19, 2011, the Task Force recommended that electronic filings should become the filings of record for audit and official purposes and that the Legislature should be encouraged to move forward on legislation.
- Staff worked with the Mayor's office to introduce state legislation to authorize local legislative bodies to require committees to file local campaign finance statements in electronic format as the official record for audits and any other official purpose. Under the legislation, committees that file in electronic format would no longer be required to file paper copies of the same statement.
- On February 24, 2012, Assemblyman Tom Ammiano introduced the proposed legislation as AB 2452.
- At the March 14, 2012 meeting of the San Francisco State Legislation Committee, staff proposed that the City should be the sponsor of the AB 2452. The Committee, by a vote of 7-0, agreed to sponsor the legislation.
- At its April 5, 2012 meeting, the FPPC adopted a position of "support" for AB 2452.

- On May 1, 2012, staff testified at the California State Assembly Committee on Elections and Redistricting in support of AB 2452. The Committee passed the bill by a vote of 5-0.
- On May 21, 2012, the State Assembly passed the bill by a vote of 77-0.
- On June 19, 2012, staff testified at the California State Senate Elections and Constitutional Amendments Committee in support of AB 2452. The Committee passed the bill by a vote of 7-0.
- On July 2, 2012, the State Senate passed the bill by a vote of 38-0.
- On July 13, 2012, Governor Brown approved AB 2452.

AB 2452 requires amendments to the CFRO should the Commission decide to make electronic filings the official document of record for legal and audit purposes and eliminate the paper filing requirement. Staff strongly recommends that the Commission take this step. In addition, staff proposes additional changes to the CFRO to streamline the filing of campaign finance statements. The operative date of AB 2452 will be January 1, 2013.

This memorandum discusses the proposed changes and sets forth six decision points for the Commission's consideration. The proposed changes will also require approval from the Board of Supervisors. Under CFRO section 1.103, the Board of Supervisors may only amend the CFRO if:

- a. The amendment furthers the purpose of the CFRO;
- b. The Ethics Commission approves the proposed amendments in advance by at least a 4/5 vote of all its members;
- c. The proposed amendment is available for public review at least 30 days before the amendment is considered by the Board or any of its committees; and
- d. The Board of Supervisors approves the proposed amendment by at least a 2/3 vote of all its members.

Discussion and Decision Points

Section 1. Findings.

AB 2452 requires a local ordinance authorizing electronic filing to include a legislative finding that the electronic filing system will operate securely and effectively and would not unduly burden filers.

The Commission currently provides an electronic filing system free of charge for any committee to use to comply with electronic filing requirements. The majority of filers file statements electronically without any difficulty. For committees that require assistance, staff is available to walk users through the electronic system. By virtue of the system being online, staff is able to simultaneously view the form-in-progress with the filer, and provide assistance by phone or e-mail to respond to a filer's specific concerns. In the past few years, many committees not subject to local electronic filing requirements have requested to use the Commission's electronic filing system to complete campaign statements because it is easier to complete the forms using the electronic filing system than it is to fill out the paper forms. One reason that it is more

convenient is that the electronic filing system automatically tabulates all of the financial transactions listed in the campaign statement.

Local committees have been using the Commission's electronic filing system to submit campaign finance statements since 1998. The current version of the electronic filing system has been in operation since 2008. The Commission's electronic filing system is shared by over 20 local filing officers in California. The Commission's system accepts filings in the Secretary of State's .CAL electronic filing format established in 2001.

The Commission's electronic filing system's transmissions are logged and encrypted. Committee accounts are protected by login ID and passwords. All electronic filings are backed up in multiple locations and provide greater security than the Commission's paper archives.

Proposed Section 1 satisfies the requirements of AB 2452.

Decision Point 1:

Shall the Commission approve the proposed findings in Section 1, as set forth on page 1, line 10 through page 2, lines 19 of the draft legislation?

Section 2. Amendments to Section 1.112

a. Section 1.112(a)

Staff proposes the deletion of the words "at the same time a copy of" on page 3, line 3 of current section 1.112(a)(1). Because no paper copies of statements will be necessary, this language would be superfluous.

Decision Point 2:

Shall the Commission approve the changes to the language as set forth on page 3, line 3 of section 1.112(a)(1) of the draft legislation?

b. Section 1.112(b): Committees Subject to Electronic Filing Requirements

AB 2452 authorizes local jurisdictions to require local committees to file electronically only if they meet certain financial activity thresholds. To be subject to local electronic filing requirements, an elected officer, candidate, committee or other person must receive contributions or make expenditures that total \$1,000 or more in a calendar year. Currently, CFRO section 1.112(b)(1) requires a committee to file electronically only if it receives contributions or makes expenditures that total \$5,000 or more in a calendar year. To conform with the permitted thresholds under state law, staff proposes reducing the local electronic filing threshold to \$1,000.

Staff believes that lowering the electronic filing threshold to \$1,000 will not unduly burden committees. In fact, staff believes that both committees and the public would be better served by lowering the threshold to \$1,000.

For some time, there has been a disconnect between filing electronically and filing a FPPC Form 460. As stated above, CFRO section 1.112(b)(1) requires a committee to file electronically only if its receives contributions or makes expenditures that total \$5,000 or more in a calendar year. The most commonly filed campaign statement, the FPPC Form 460, is required to be used if the committee receives contributions or makes expenditures that total \$1,000 or more in a calendar year. Thus, committees that raise or spend between \$1,000 to \$4,999 file itemized paper statements but are currently exempt from the electronic filing requirement altogether. The consequences of this inconsistency are as follows:

- Committees that raise or spend between \$1,000 to \$4,999 during the first semi-annual period and subsequently raise or spend \$5,000 or more in a later period during the calendar year -- which qualifies the committee to file electronically -- must later re-enter previously disclosed contributions and expenditures filed in the first semi-annual period into the electronic filing system so that financial summary figures and cumulative contributions will calculate correctly on electronic statements. Committees that fail to enter transactions previously filed on paper often misreport cash balances, summary financial figures, or cumulative contributions from contributors that make multiple contributions to the same committee during a calendar year. The electronic filing system has no way to ascertain information previously disclosed only on a paper form. And those transactions are never made available to the public because the transactions were already disclosed and filed solely on a paper form.
- Researchers who download the electronic campaign finance transactions and summary data from the Commission's campaign finance database are often unaware that some committees filed initial statements on paper and filed subsequent statements in electronic format. During election periods, staff regularly warns members of the public and press to review campaign statements filed on paper, but not electronically, to account for activity disclosed before the committee qualified to file electronically.

Decision Point 3:

Shall the Commission approve the changes to the committees subject to electronic filing requirements as set forth on page 3, lines 22-24 of the draft legislation?

c. Section 1.112(b)(1)(D): Candidates for County Central Committee

Current CFRO section 1.112(b)(1) requires the following committees that meet the electronic filing financial activity threshold to file electronic statements:

- A committee controlled by a candidate for City elective office;
- A committee primarily formed to support or oppose a local measure or a candidate for City elective office; or
- A general purpose recipient, independent expenditure or major donor committee that qualifies, under state law, as a city or county general purpose committee in the City and County of San Francisco.

Currently, committees formed to support a candidate for a seat on a San Francisco County Central Committee are not required to file electronic statements. Since 2001, they have only

been required to file paper statements, regardless of financial activity, with the Ethics Commission.

While these committees are not subject to many provisions of the CFRO, many City elected officials have run for seats on a county central committee and have filed statements with the Commission regarding that political activity. And in general, there are many candidates for county central committee seats. For example, during the June 5, 2012 election, 107 candidates for County Central Committee filed statements with the Ethics Commission. In comparison, 64 candidates filed statements for Board of Supervisors in the November 11, 2010 election. The County Central Committee filers represent a significant portion of the paper filing volume and it would greatly increase efficiency to move these filers to electronic format. Many candidates for County Central Committee already use the Commission's electronic filing system to complete the forms because it is easier to complete than the paper forms, but have to print and file the electronically produced statement on paper.

In addition, the public would benefit from obtaining County Central Committee information online. Currently, County Central Committee candidate and primarily formed committee financial activity can only be reviewed on paper statements. By making the information available electronically, the public would benefit from more timely information and searchable transactions and summary data in the Commission's campaign finance database.

Staff recommends requiring County Central Committee candidate controlled committees and primarily formed committees to file electronically.

Decision Point 4:

Shall the Commission require persons seeking membership on County Central Committees to file electronically with the Commission, as set forth on page 4, lines 6-8 of the draft legislation?

d. Section 1.112(c): Voluntary Electronic Filing

Most committees file one of two primary types of campaign finance statements: FPPC Form 470 (Campaign Statements – Short Form) and FPPC Form 460 (Recipient Committee Campaign Statement).

The FPPC Form 470 is used by officeholders and candidates who:

- do not have a controlled committee;
- do not anticipate receiving contributions totaling \$1,000 or more during the calendar year; and
- do not anticipate spending \$1,000 or more during the calendar year.

The FPPC Form 470 itself does not disclose any financial information. Thus, the public would not gain any additional data if it obtained this form in electronic format. However, because some filers who do not meet the \$1,000 e-filing threshold may actually prefer to e-file, staff recommends that filers that do not reach the \$1,000 threshold be permitted to elect to file electronically. For this reason, staff recommends the adoption of new subsection 1.112(c).

Decision Point 5:

Shall the Commission approve new subsection 1.112(c), as set forth on page 4, lines 12-15 of the draft legislation?

4. Overall approval of the draft amendments

In section 1.112(b)(1)(C), on page 4, line 4, “city or” is removed since all local general purpose committees are county committees. To ensure that the Commission has fully considered and approved the changes set forth in the draft amendments, staff recommends that the Commission approve all of the changes set forth in the draft amendments, subject to changes otherwise approved by the Commission at its meeting on July 23, 2012.

Decision Point 6:

Shall the Commission approve the changes to CFRO section 1.112, as set forth in staff’s memorandum or as amended by the Commission at its July 23, 2012 meeting?

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1 [Campaign and Governmental Conduct Code – Requiring Electronic Filing of Campaign
2 Statements]

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4 **Ordinance amending the San Francisco Campaign and Governmental Conduct Code by**
5 **amending section 1.112 to requiring the electronic filing of campaign statements**
6 **submitted to the Ethics Commission.**

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NOTE: Additions are *single-underline italics Times New Roman*;
8 deletions are ~~*strike-through italics Times New Roman*~~.
9 Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough normal~~.

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10 Be it ordained by the People of the City and County of San Francisco:

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11 Section 1. Findings.

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12 1. The Political Reform Act of 1974, Government Code section 81000, et seq.,
13 requires certain candidates and committees to file campaign statements and reports with local
14 filing officers. The San Francisco Campaign and Governmental Conduct Code imposes
15 additional filing requirements on local candidates and committees. These state and local
16 filings disclose a candidate's contributors and the financial activity of committees. They also
17 provide necessary information for local campaign finance initiatives such as San Francisco's
18 public financing program.

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19 2. In the decades since the enactment of the Political Reform Act, candidates and
20 committees have complied with their filing requirements by filing paper copies of their
21 campaign statements and reports with the appropriate local and state agencies. Locally, the
22 San Francisco Ethics Commission has endeavored to make its paper filings readily available
23 to the public through its website by scanning and posting these documents as portable
24 document format (PDF) files. But to scan and post these filings requires a substantial amount
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1 of staff time, particularly around filing deadlines when the public often desires immediate
2 disclosure of campaign-related information.

3 3. In July 2012, the Legislature approved Assembly Bill 2452 (AB 2452),
4 sponsored by Assemblyman Tom Ammiano, which authorizes local jurisdictions to require
5 candidates and committees to forego paper filings and to instead file their required statements
6 electronically. The Governor approved the legislation on July 13, 2012. The City and County
7 of San Francisco sponsored the legislation, and the Ethics Commission played a significant
8 role in ensuring its passage.

9 4. To conserve staff resources and make the information publicly available in a
10 shorter time-frame and more usable format, the San Francisco Ethics Commission should
11 take advantage of this recent change in state law. By moving to an electronic filing system,
12 the Ethics Commission will no longer need to expend staff time and limited resources to
13 accept, process, and store copious campaign statements as paper copies. The public will
14 also be able to access the information disclosed in campaign statements in a more timely
15 manner, by eliminating any manual processing of filings. An electronic filing system also
16 allows the public to run searches and compile information more easily.

17 5. The Board of Supervisors finds that the Ethics Commission's electronic filing
18 system will operate securely and effectively. The Board of Supervisors also finds that the
19 electronic filing system would not unduly burden filers.

20 Section 2. The San Francisco Campaign and Governmental Conduct Code is hereby
21 amended by amending Section 1.112, to read as follows:

22 SEC. 1.112. ELECTRONIC CAMPAIGN DISCLOSURE.

23 (a) FILING ELECTRONIC CAMPAIGN STATEMENTS.

24 (1) Filing Electronic Copies of Campaign Statements Required by State Law.

25 Whenever any committee that meets the requirements of Subsection (b) of this Section is

1 required by the California Political Reform Act, California Government Code Section 81000 et
2 seq., to file a campaign disclosure statement or report with the Ethics Commission, the
3 committee shall file ~~at the same time a copy of~~ the statement or report in an electronic format
4 with the Ethics Commission, provided the Ethics Commission has prescribed the format at
5 least 60 days before the statement or report is due to be filed.

6 (2) Filing Electronic Copies of Campaign Statements Required by Local Law.

7 Whenever any committee is required to file a campaign disclosure statement or report with the
8 Ethics Commission under this Chapter, the committee shall file the statement or report in an
9 electronic format, provided the Ethics Commission has prescribed the format at least 60 days
10 before the statement or report is due to be filed.

11 (3) Continuous Filing of Electronic Statements. Once a committee is subject

12 to the electronic filing requirements imposed by this Section, the committee shall remain
13 subject to the electronic filing requirements, regardless of the amount of contributions
14 received or expenditures made during each reporting period, until the committee terminates
15 pursuant to this Chapter and the California Political Reform Act, California Government Code
16 Section 81000 et seq.

17 (4) Disclosure of Expenditure Dates. All electronic statements filed under

18 this Section shall include the date any expenditure required to be reported on the statement
19 was incurred, provided that the Ethics Commission's forms accommodate the reporting of
20 such dates.

21 (b) COMMITTEES SUBJECT TO ELECTRONIC FILING REQUIREMENTS.

22 (1) A committee must file electronic copies of statements and reports *if it*

23 receives contributions or makes expenditures that total ~~\$5,000~~1,000 or more in a calendar year
24 and is:

25 (A) a committee controlled by a candidate for City elective office;

1 (B) a committee primarily formed to support or oppose a local
2 measure or a candidate for City elective office; or

3 (C) a general purpose recipient, independent expenditure or major
4 donor committee that qualifies, under state law, as a ~~city or~~ county general purpose committee
5 in the City and County of San Francisco; or

6 (D) a committee primarily formed to support or oppose a person seeking
7 membership on a San Francisco county central committee, including a committee controlled by the
8 person seeking membership on a San Francisco county central committee.

9 (2) The Ethics Commission may require additional committees not listed in
10 this Section to file electronically through regulations adopted at least 60 days before the
11 statement or report is due to be filed.

12 (c) VOLUNTARY ELECTRONIC FILING. Any committee not required to file electronic
13 statements by this Section may voluntarily opt to file electronic statements by submitting written notice
14 to the Ethics Commission. A committee that opts to file electronic statements shall be subject to the
15 requirements of this Section.

16 Section 3. Effective Date. This ordinance shall become effective 30 days from the
17 date of passage. If the effective date is prior to January 1, 2013, the ordinance shall not
18 become operative until January 1, 2013.

19 Section 4. This section is uncodified. In enacting this Ordinance, the Board intends to
20 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
21 punctuation, charts, diagrams, or any other constituent part of the Campaign and
22 Governmental Conduct Code that are explicitly shown in this legislation as additions,
23 deletions, Board amendment additions, and Board amendment deletions in accordance with
24 the "Note" that appears under the official title of the legislation.

1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3 By: _____
4 ANDREW SHEN
5 Deputy City Attorney
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Assembly Bill No. 2452

CHAPTER 126

An act to add Section 84615 to the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor July 13, 2012. Filed with
Secretary of State July 13, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2452, Ammiano. Political Reform Act of 1974: online disclosure.

The Political Reform Act of 1974 requires specified candidates, committees, slate mailer organizations, and lobbyists, lobbying firms, and lobbyist employers to file campaign statements and reports online or electronically with the Secretary of State, as specified. The act requires certain of these entities to also file campaign statements and reports with local filing officers, as specified.

This bill, with certain exceptions, would authorize a local government agency to require an elected officer, candidate, committee, or other person required to file specified statements, reports, or other documents to file those statements, reports, or other documents online or electronically with a local filing officer. The bill would prescribe criteria that must be satisfied by a local government agency that requires online or electronic filing of statements, reports, or other documents, as specified, including, among others, that the system be available free of charge to filers and to the public for viewing filings, and that the system include a procedure for filers to comply with the requirement that they sign statements and reports under penalty of perjury.

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.

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

SECTION 1. Section 84615 is added to the Government Code, to read:
84615. A local government agency may require an elected officer, candidate, committee, or other person required to file statements, reports, or other documents required by Chapter 4 (commencing with Section 84100), except an elected officer, candidate, committee, or other person who receives contributions totaling less than one thousand dollars (\$1,000), and makes expenditures totaling less than one thousand dollars (\$1,000), in a calendar year, to file those statements, reports, or other documents online or

electronically with a local filing officer. A local government agency that requires online or electronic filing pursuant to this section shall comply with all of the following:

(a) The legislative body for the local government agency shall adopt an ordinance approving the use of online or electronic filing, which shall include a legislative finding that the online or electronic filing system will operate securely and effectively and would not unduly burden filers. The ordinance adopted by the legislative body for the local government agency may, at the discretion of that legislative body, specify that the electronic or online filing requirements apply only to specifically identified types of filings or are triggered only by identified monetary thresholds. In any instance in which the original statement, report, or other document is required to be filed with the Secretary of State and a copy of that statement, report, or other document is required to be filed with the local government agency, the ordinance may permit, but shall not require, that the copy be filed online or electronically.

(b) The online or electronic filing system shall only accept a filing in the standardized record format that is developed by the Secretary of State pursuant to paragraph (2) of subdivision (a) of Section 84602 and that is compatible with the Secretary of State's system for receiving an online or electronic filing.

(c) The online or electronic filing system shall ensure the integrity of the data transmitted and shall include safeguards against efforts to tamper with, manipulate, alter, or subvert the data.

(d) (1) The local filing officer shall issue to a person who files a statement, report, or other document online or electronically an electronic confirmation that notifies the filer that the statement, report, or other document was received. The confirmation shall include the date and the time that the statement, report, or other document was received by the filing officer and the method by which the filer may view and print the data received by the filing officer.

(2) A copy retained by the filer of a statement, report, or other document that was filed online or electronically and the confirmation issued pursuant to paragraph (1) that shows the filer timely filed the statement, report, or other document shall create a rebuttable presumption that the filer timely filed the statement, report, or other document.

(e) 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) The local filing officer shall make all the data filed available on the Internet in an easily understood format that provides the greatest public access. The data shall be made available free of charge and as soon as possible after receipt. The data made available on the Internet shall not contain 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. The local filing officer shall make a complete, unredacted copy of any statement, report, or other

document filed pursuant to this section, including any street names, building numbers, and bank account numbers disclosed by the filer, available to any person upon request.

(g) The online or electronic filing system shall include a procedure for filers to comply with the requirement that they sign statements and reports under penalty of perjury pursuant to Section 81004.

(h) The local government agency shall enable filers to complete and submit filings free of charge.

(i) The local filing officer shall maintain, for a period of at least 10 years commencing from the date filed, a secured, official version of each online or electronic statement, report, or other document filed pursuant to this section, which shall serve as the official version of that record for purpose of audits and any other legal purpose. Data that has been maintained for at least 10 years may then be archived in a secure format.

(j) Notwithstanding any other provision of law, any statement, report, or other document filed online or electronically pursuant to this section shall not be required to be filed with the local filing officer in paper format.

SEC. 2. 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.