Fair Political Practices Commission
MEMORANDUM

TO: Chairman Randolph, Commissioners Blair, Downey, Karlan and Knox

FROM: C. Scott Tocher, Senior Counsel, Legal Division
Luisa Menchaca, General Counsel

DATE: January 4, 2005

SUBJECT: Discussion of Eliminating Paper Copies of Quarterly Lobbying Disclosure Reports; Prenotice Discussion of New Regulation 18465.1

EXECUTIVE SUMMARY

Under the electronic filing provisions of the Political Reform Act ("Act"), paper copies of electronically filed disclosure forms can be eliminated once it is determined that the electronic and online systems are operating effectively. (Gov't. Code § 84606.)[1]

The Commission and the Office of the Secretary of State jointly sponsored an interested persons' meeting in November of 2004 to solicit input relating to the proposed elimination of paper copies of electronically filed lobbying disclosure reports, possibly beginning with the first quarter reports that are due May 2, 2005.[2] Commission staff also met on two occasions with senior staff of the Office of the Secretary of State to discuss the propriety of eliminating the paper filings of these reports and to outline the issues raised by such action. The purpose of this memorandum is to provide the framework for discussing those issues and to assist the Commission in fulfilling its responsibility to consult with the Office of the Secretary of State prior to the elimination of this paper filing.

I. BACKGROUND

With the enactment of Proposition 9 in 1974, the voters of the State of California created one of the most comprehensive and detailed campaign and lobbying activity disclosure schemes in the nation. For many years after its passage, the Act has been amended to provide for disclosure of additional information to the voters, furthering one of the Act's stated purposes that the "activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials." (§ 81002, subd. (b).) Unfortunately for the voters, much of the information disclosed, especially in the case of lobbying activity reports,

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[1] All statutory references are to the Government Code unless specified otherwise.

[2] Please note that paper copies of all lobbying *registration* forms will still be required. Moreover, the Commission and the Secretary of State at this time are only considering eliminating the paper filings in the context of lobbying disclosure and are not considering the propriety of eliminating the paper filings of state campaign reports.

remained out of reach to most Californians because the information was available only to members of the public who were willing and able to review the documents on file with the Office of the Secretary of State in Sacramento. Practically speaking, then, the only information the public gained from these reports was that which was provided by press accounts.

Technological advancements in the 1980's and '90's provided for the first time the opportunity for Californians to realize the goals of disclosure they enacted into law in the 1970's. The Online Disclosure Act of 1997, and as amended in 1999 and 2001, directed the Secretary of State to develop a system allowing the use of computers and computer software to collect and transmit data for internet display which previously was only available in paper format. To that end, the Secretary of State created a new system named CAL-ACCESS (California Automated Lobbying And Campaign Contribution & Expenditure Search System). Under this system and pursuant to current law, lobbyists, lobbying firms and lobbyist employers must file electronically any reports required by the Act if they engage in reportable activity of $5,000 or more in a calendar quarter. (§ 84605, subd. (d).) The CAL-ACCESS system allows the public to search the respective databases of electronically filed information.

In addition to using private vendors who develop software and file reports electronically with the Secretary of State, lobbyists, their firms and employers may also use a system dubbed "Cal Online" by the Secretary of State, a system which allows *filers* using their own computers to submit the required disclosure information. This system allows filers a no-cost option to comply with on-line filing requirements. Periodic reports to the Legislature by the Office of the Secretary of State since 2001 indicate strong public and news media interest in these reports.

II. COMMISSION CONSULTATION OF PAPERLESS FILING

Ultimately, one of the goals of the online disclosure provisions is to eliminate the duplicative paper filing requirement. Once the Secretary of State determines the filing system is running satisfactorily, the paper filing requirement is eliminated. This determination, however, must be made in consultation with the Commission. The requirements for elimination of the paper filing are found in section 84606, which provides:

> "**§ 84606. Operation of Online System.**
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> "The Secretary of State shall determine and publicly disclose when the online and electronic disclosure systems are operating effectively. In making this determination, the Secretary of State shall consult with the Commission, the Department of Information Technology, and any other appropriate public or private entity. The online or electronic disclosure system shall not become operative until the Department of Information Technology approves the system. Upon this determination, filers required by this chapter to file online or electronically will no longer be required to file a paper copy or with local filing officers. Furthermore, the date that a

> filer transmits an online or electronic report shall be the date the filed report is received by the Secretary of State."

Under current operation, an online filer must obtain a logon password in order to file the required activity report. In addition, the filer may authorize a given vendor or service provider to submit reports electronically on behalf of the filer. To obtain the password and vendor authorization, the filer must fax a signed application for the password and identify the vendor authorized to file on the applicant's behalf. (Ex. 1.) In this way, the system ensures security and privacy for the actual filers and provides a method for verification of the given filer.

The Office of the Secretary of State informed the Commission that the office was preparing to move forward with paperless filing of lobbying activity reports due for the first quarter of 2005, which are filed on May 2, 2005. Accordingly, Commission staff and staff from the Office of the Secretary of State held a joint Interested Persons' meeting at Commission offices on November 9, 2004. The purpose of the meeting was to brief members of the public on the preparedness for moving to paperless filing of lobbying activity reports[3] and to gain feedback from the public and regulated community about taking the next step in the online filing disclosure system. Present were counsel for filers, lobbyist employers, staff from the Franchise Tax Board and members of the press.

With one important exception, there seems broad agreement that the electronic filing system of lobbying activity reports functions well for both filers and consumers of the information. Counsel on behalf of filers indicated that their clients are "comfortable" with the online filing process and agreed that the system was ready for the final paperless stage. Vendors also indicated their comfort with the system, although they indicated that further work remained to standardize the representational view of the data from vendor to vendor. Nevertheless, the lack of concrete specifications at this time for the rendering of the data was not viewed by any of the participants as a reason for retaining the paper filings.

The one exception to the sentiment above is with regard to the Form 615, Lobbyist Report. This report is one filed by the individual lobbyist himself or herself, indicating the activity expenses incurred by the lobbyist, the name of the person benefiting from the payment, and a description of the activity. (A copy of Form 615 filing attached as Ex. 2.) Ideally, this report should be available when a given lobbyist's name is entered into a search field. Unfortunately, these forms are available only on a "daily reports" link, which is not specific to any given lobbyist. By comparison, when one brings up a given lobbying *firm*, one finds on that screen the firm's lobbying activity reports (Form 625). Consequently, one must know the day or period in which a lobbyist's report was filed and then search through the entire list of filings for

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[3] The lobbyist reports at issue for paperless filing consideration are the Form 615 (Lobbyist Report), the Form 625 (Report of Lobbying Firm), the Form 635 (Report of Lobbyist Employer/Lobbying Coalition) and the Form 645 (Report of Person Spending $5,000 or More to Influence Legislative or Administrative Action), along with various attachment forms required by these filers. The term "lobbying reports" used in this memorandum includes all of these reports, unless otherwise indicated.

that given day or period in order to locate the desired activity report (the daily listings are not in alphabetical order).

One important issue inherent in the elimination of paper filings is the consequences from an enforcement perspective of the lack of a physical signature of the filer in the online filing format. Traditionally, paper forms must be signed by the filer signifying that the filer attests under penalty of perjury to the accuracy and completeness of the information disclosed on the form. When one files lobbying disclosure reports online, however, no such physical signature from the individual filing is present, of course. This issue is addressed in the online scheme in the Act, which states that "[i]t shall be presumed that online or electronic filers file under penalty of perjury." (§ 84605, subd. (h).) As indicated above, filers obtain from the Secretary of State a login identification number and password unique to each filer. Only the filer can access his or her form and file under penalty of perjury. Of course, the filer may also designate a vendor or other service provider to file on his or her behalf. In light of the presumption of subdivision (h) above that any filing is presumed made under penalty of perjury, staff believes that it would be helpful to clarify in a regulation that the use of a third party vendor to make authorized filings does not insulate the filer from the perjury presumption of the statute. Since the vendor can file only if given the filer's password, it seems fair to clarify that the perjury presumption on the filer remains regardless of whether he or she uses a third party vendor.

RECOMMENDATIONS

1. Adopt Proposed Regulation 18465.1.

A draft regulation implementing subdivision (h) of section 84605 to read as follows:

> "18465.1 – Verification of Online Filers
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> "Any filing made on behalf of a filer by a vendor or service provider authorized by the filer to make such filings is presumed filed under penalty of perjury by the filer."

If the Commission agrees that such a regulation is appropriate, staff believes the regulation could be adopted at the March 2005 Commission meeting.

2. Recommend to Secretary of State Amendment of Password Application Verification.

Commission staff recommends, independent of the action taken on the first recommendation above, that the Commission recommend to the Office of the Secretary of State that it amend its "Lobbying – Application to Obtain Logon Password and Authorization of Vendor or Service Provider" form (see Ex. 1.) to emphasize the same concept discussed above in the first recommendation.

3. Recommend to Secretary of State that Paper Filing of Form 615 (Lobbyist Activity Report) *Not* be Eliminated.

Commission staff believes that the online filing and access system is not yet in place to allow elimination of the paper filing. Unlike the other lobbying disclosure forms slated for paper elimination, the Form 615 is not yet retrievable online in a satisfactory manner. As a result, the paper copy should be maintained.