

SACRAMENTO LOCAL AGENCY FORMATION COMMISSION

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Item 7

Proposed LAFCo Lobbying & Disclosure Policies

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MEMORANDUM

TO: Sacramento Local Agency Formation Commission

FROM: Nancy C. Miller
Miller, Owen & Trost

DATE: November 30, 2007

RE: Draft Policy to Implement Assembly Bill 745 (AB 745), Disclosure of Political Expenditures

BACKGROUND

At the November LAFCo meeting, you were presented with a draft policy to implement AB 745. This memo provides you with additional information about AB 745 and the alternative provisions presented in the draft policy.

Before AB 745

Before AB 745 was passed, supporters and opponents of boundary change proposals submitted to LAFCo were not required to disclose contributions and expenditures to anyone, unless and until the matter was placed on the ballot. Once a measure was placed on the ballot, supporters and opponents were required to report their contributions and expenditures to the Fair Political Practices Act. LAFCos had the option to adopt written policies and procedures to require supporters and opponents of boundary change proposals to disclose contributions and expenditures to LAFCo, but very few LAFCos adopted such policies.

After AB 745

AB 745 was adopted to *require* the disclosure of contributions and expenditures for “political purposes”¹ related to proposals for changes of organization or reorganization, as well as contributions and expenditures in connection with a conducting authority proceeding. These

¹ The term “political purposes” is not defined in AB 745. As this term is defined under the Fair Political Practices Act, it would include any contributions or expenditures for the purpose of influencing public opinion concerning proposals for changes of organization or reorganization or conducting authority proceedings. “Political purposes” would also include any contribution to, or expenditure by, any organization formed to support or oppose a LAFCo proceeding. As discussed further below, should LAFCo adopt the draft disclosure policy, there are alternative definitions for “political purposes” that could be adopted to broaden or restrict the disclosures to be made to LAFCo.

contributions and expenditures must be reported to LAFCo to the same extent, and subject to the same requirements, as local initiative measures. Generally speaking, this means that individuals or committees must disclose their contributions and expenditures as soon as they have received contributions of \$1,000 or they have spent \$1,000 in connection with a proposal or conducting authority proceeding before LAFCo. Under AB 745, LAFCOs still have the option to adopt written policies and procedures to direct this disclosure, should they so choose. A written policy must, at a minimum, require the same disclosures required for local initiative measures under the Fair Political Practices Act, but it may also require additional disclosures beyond those required by the FPPC.

PROBLEM WITH MODEL POLICY

After review of the Model Policy and further discussions with CALAFCO's counsel, an error was discovered in the model policy. AB 745 applies to all proposals for changes of organization or reorganization, not just petitions. Thus, any contributions or expenditures in support of a proposal would be covered, whether initiated by a citizen/landowner petition or by a resolution from a city, a district, or LAFCo itself.

MATRIX

***LAFCo is not required to adopt a written disclosure policy.** However, should LAFCo adopt a written policy, certain provisions would be required, while others would be optional. The matrix below identifies the required disclosures under the statute and the optional provisions discussed in the draft Model Policy.

Required Disclosures Under Statute
(1) An individual or committee must begin filing disclosure reports within 10 calendar days of receiving contributions or making expenditures ² of \$1,000 or more for political purposes related to a LAFCo proceeding.
(2) LAFCo proceedings for which disclosure reports must be filed include: (1) a change of organization or reorganization, and (2) conducting authority proceedings.
(3) The required disclosures must be made to the Commission, unless the Commission requests that the disclosure be made to a county officer designated by the board of supervisors of the county in which the commission is located.

² As discussed at the November Board meeting, "contributions" and "expenditures" are defined in sections 82015 and 82025 of the Political Reform Act. The difference between these terms is further explained in the FPPC's regulations found at sections 18215 and 18225 of title 2, division 6, of the California Code of Regulations.

(4) The disclosure and reporting requirements must be the same as the requirements provided for local initiative measures under the Political Reform Act. Examples of these requirements include:

- (a) Filing two semi-annual reports each year, pre-election reports, and quarterly reports.
- (b) In each report, an individual or committee must disclose all expenditures, monetary contributions and loans received, as well as non-monetary contributions. Non-monetary contributions include mass mailings sent at the behest of an individual or committee, or 500 or more similar automated calls made at the behest of an individual or committee.

(5) Under the statute, disclosures must include contributions and expenditures made for a “political purpose” as defined in the Political Reform Act. This would include contributions and expenditures for the purpose of influencing or attempting to influence the action of the Commissioners or voters or received by or made at the behest of any committee formed primarily for the purpose of influencing or attempting to influence the action of the Commissioners or voters.

Optional Provisions as Discussed Under the Model Policy

(1) The Model Policy suggests defining “Political Purpose” for LAFCo purposes: Because AB 745 does not define “Political Purpose” for LAFCo purposes, the draft Model Policy suggests two alternative definitions, including:

Alternative 1: “Political Purpose” would include expenditures or contributions for the purpose of:

- (1) influencing public opinion,
- (2) lobbying public officials,
- (3) influencing legislative or administrative action, and/or
- (4) complying with legal requirements and LAFCo rules for the processing of a proposal, including, by way of example, the preparation of a comprehensive fiscal analysis for an incorporation or the preparation of CEQA documents.

Alternative 2: “Political Purpose” would specifically exclude expenditures or contributions for the purpose of complying with legal requirements and LAFCo rules for the processing of a proposal.

(2) The Model Policy suggests defining “election date” for LAFCo purposes: The Political Reform Act requires contribution and expenditure reports to be filed on certain dates, relative to the applicable “election date.” For LAFCo, when there is no “election” just a hearing, the “election date” must be established. The Model Policy suggests defining “election date” as the originally scheduled hearing date.

(3) The Model Policy suggests that LAFCo’s Executive Director should establish due dates for the various contribution and expenditure reports required when no hearing date has been scheduled.

(4) The Model Policy requires continued disclosure when a hearing date is postponed.

(5) The Model Policy suggests requiring the disclosure of the name and address of any organization that pays for a mass mailing or automated telephone calls regarding a proposal for a change of organization or reorganization, or a related protest proceeding. We are uncertain whether our authority under AB 745 would allow us to require these disclosures.

RECOMMENDATIONS

- 1) Send the draft Model Policy to Interested parties, including city attorneys and county counsels to solicit their input.
- 2) Due to the complexities of the disclosure and reporting requirements under the Political Reform Act, request that CALAFCO pursue legislation to require the FPPC to enforce the provisions of AB 745 and promulgate regulations to clarify the extent to which expenditures and contributions for political purposes must be reported.
- 3) Post the draft Model Policy on the LAFCo website for comment.
- 4) Bring the draft Model Policy back to the Board for consideration in February.

Draft Policy to Implement AB 745
Disclosure of Political Expenditures Regarding LAFCO Proceedings

October 26, 2007 Draft

Pursuant to Government Code Sections 56700.1 and 57009, effective January 1, 2008, expenditures for political purposes related to a proposal for a change of organization or reorganization initiated by petition and contributions in support of or in opposition to any proposal at the conducting authority stage of the LAFCO process are subject to the reporting and disclosure to the same extent as required for local initiative measures under the Political Reform Act, Government Code Section 81000 et seq., and the regulations of the Fair Political Practices Commission implementing that law.

_____ LAFCO adopts the following reporting and disclosure requirements to implement Government Code Sections 56700.1 and 57009.

1. Definitions

- a. "Contribution" as used herein shall have the same definition as provided in Government Code Section 82015, as amended.
- b. "Expenditure" as used herein shall have the same definition as provided in Government Code Section 82025, as amended.
- c. "Independent expenditure" as used herein shall have the same definition as provided in Government Code Section 82031, as amended, except that the term "measure" as used in Section 82031 shall be replaced with the term "proposal for organization or reorganization."

[Alternative 1]

- d. "Political Purposes" as used herein shall mean for the purpose(s) of:
 - (i) influencing public opinion; (ii) lobbying public officials;
 - (iii) influencing legislative or administrative action as defined in Government Code § 82032; and/or, (iv) complying with legal requirements and LAFCO rules for the processing of a proposal, including, but not limited to and by way of example only, preparation of a comprehensive fiscal analysis for an incorporation (Government Code Section 56800) or documents necessary to comply with the California Environmental Quality Act, Public Resources Code Section 21000 et seq., such as a mitigated negative declaration or environmental impact report.

[Alternative 2]

- d. "Political Purposes" as used herein shall mean for the purpose(s) of:
- (i) influencing public opinion; (ii) lobbying public officials; and/or,
 - (iii) influencing legislative or administrative action as defined in Government Code § 82032. It shall not include for the purpose(s) of complying with legal requirements and LAFCO rules for the processing of a proposal, including, but not limited to and by way of example only, preparation of a comprehensive fiscal analysis for an incorporation (Government Code Section 56800) or documents necessary to comply with the California Environmental Quality Act, Public Resources Code Section 21000 et seq., such as a mitigated negative declaration or environmental impact report.
2. Disclosure Requirements for Petitions for Proposals for a Change of Organization or Reorganization
- a. Any person or combination of persons who directly or indirectly makes an expenditure or independent expenditure for political purposes of \$1,000 or more in support of, or in opposition to, a change of organization or reorganization submitted to the commission to which Government Code Section 56700.1 applies, shall comply with the reporting and disclosure requirements of the Political Reform Act (Government Code §§ 81000 et seq.), to the same extent and subject to the same requirements as for local initiative measures. Such reporting and disclosure requirements, except as otherwise excluded herein, extend to those required by the Fair Political Practices Commission Regulations regarding such disclosures and shall include disclosure of contributions, expenditures and independent expenditures.
 - b. Disclosures made pursuant to this Section shall be filed the commission's executive officer as designated in Section 5 below.
 - c. For purposes of determining the deadlines by which such reports and disclosures must be filed, the term "election" as used in the Political Reform Act for determining such deadlines shall mean the date of the originally scheduled commission hearing on a proposal for organization or reorganization. If no hearing date has been scheduled at the time a person becomes subject to disclosure under this policy, he or she shall request that the executive officer establish a date to serve as the "election" date for this purpose. The executive officer shall establish a date, such as, but not limited to, the date which is 6 months after the first filing with the commission regarding the proposal, and inform the requestor of that date in writing.
 - d. In the event the originally scheduled hearing date for the proposal for organization or reorganization is rescheduled or continued to a later date,

the obligation to file continues reports shall be filed on or before the 10th day of each month following the original hearing date with respect to contributions and expenditures received in the previous calendar month up to and including the third calendar month following final action by the commission on the proposal.

3. Disclosure Requirements for Conducting Authority Proceedings

- a. Any person or combination of persons who directly or indirectly makes an expenditure for political purposes of \$1,000 or more related to conducting authority proceedings for a change of organization or reorganization to which Government Code Section 57009 applies, or in support of or in opposition to those conducting authority proceedings, shall comply with the reporting and disclosure requirements of the Political Reform Act (Government Code §§ 81000 et seq.), to the same extent and subject to the same requirements as for local initiative measures. Such reporting and disclosure requirements, except as otherwise excluded herein, extend to those required by the Fair Political Practices Commission Regulations regarding such disclosures and shall include disclosure of contributions, expenditures and independent expenditures.
- b. Disclosures made pursuant to this Section shall be filed with the commission's executive officer as designated in Section 5 below.
- c. For purposes of determining the deadlines by which such reports and disclosures must be filed, the term "election" as used in the Political Reform Act for determining such deadlines shall mean the date of the originally scheduled conducting authority hearing on the proposal for organization or reorganization. If no hearing date has been scheduled at the time a person becomes subject to disclosure under this policy, he or she shall request that the executive officer establish a date to serve as the "election" date for this purpose. The executive officer shall establish a date, such as, but not limited to, the date which is 6 months after the first filing with the commission regarding the proposal, and inform the requestor of that date in writing.
- d. In the event the originally scheduled conducting authority hearing date for a proposal for organization or reorganization is rescheduled or continued to a later date, the obligation to file continues and reports shall be filed on or before the 10th day of each month following the original hearing date with respect to contributions and expenditures received in the previous calendar month up to and including the third calendar month following final action by the commission on the proposal.

4. Certain Reports and Disclosures Excluded

[Alternative 1]

This policy requires only that the persons subject to it disclose via reports to the commission's executive officer contributions, expenditures and independent expenditures with respect to expenditures for political purposes related to a petition to the commission for a proposal for an organization or reorganization and does not impose on such persons the regulations regarding the names of campaign committees, disclosures of the sources of mass mailings, and disclosures of the source of automated telephone calls under Government Code Sections 84501 et seq. and the regulations of the Fair Political Practices Commission implementing those sections.

[Alternative 2]

This policy also requires that the persons subject to it comply with the regulations regarding the names of campaign committees, disclosures of the sources of mass mailings, and disclosures of the source of automated telephone calls under Government Code Sections 84501 et seq. and the regulations of the Fair Political Practices Commission implementing those sections.

5. Where to File

[Alternative 1]

All reports and disclosures required hereunder shall be filed with the commission's Executive Officer.

[Alternative 2]

All reports and disclosures required hereunder shall be filed with the _____ County elections official, who the _____ LAFCO hereby designates as a deputy Executive Officer of _____ LAFCO for purposes of receiving and filing such reports.

6. Reporting requirements are non-exclusive

The disclosure and reporting requirements herein are in addition to any other requirements that may be otherwise applicable under provisions of the Political Reform Act or by local ordinance.

7. Sunset provision

This policy is intended to implement Government Code Sections 56700.1 and 57009 and shall be of no further force and effect upon the effective date of legislation repealing or amending those sections to transfer responsibility for enforcing disclosure of expenditures for political purposes affecting

commission proceedings to the Fair Political Practices Commission or otherwise terminates the responsibility of this commission to adopt and implement this policy.