

**LOCAL AGENCY FORMATION COMMISSION
COUNTY OF SAN BERNARDINO**

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DATE: NOVEMBER 16, 2007

FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer

TO: LOCAL AGENCY FORMATION COMMISSION

**SUBJECT: AGENDA ITEM #11 – ADOPTION OF POLICY RELATED TO
IMPLEMENTATION OF CAMPAIGN DISCLOSURE REQUIREMENTS
PURSUANT TO AB 745 (SILVA)**

RECOMMENDATION:

Staff recommends that the Commission adopt the following policy related to campaign disclosure requirements pursuant to Government Code Section 56100.1, 56700.1 and 57009 effective January 1, 2008. This policy will apply to all applications which have not completed the LAFCO process as of January 1, 2008.

POLICY #37 – CAMPAIGN DISCLOSURE REQUIREMENTS:

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.”
 - 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 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 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 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 six (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 six (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

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.

5. Where to File

All reports and disclosures required hereunder shall be filed with the commission's executive officer.

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.

BACKGROUND INFORMATION:

The Governor signed into law AB 745 (Silva), effective January 1, 2008, which has modified two sections of the Cortese-Knox-Hertzberg Act, and added a new section to address issues related to campaign disclosure requirements for LAFCO proceedings. Those sections are outlined below with the new language shown in italicized, red print:

1. 56100.1. A commission may require, through the adoption of written policies and procedures, the disclosure of contributions, as defined in Section 82015, expenditures, as defined in Section 82025, and independent expenditures, as defined in Section 82031, made in support of or opposition to a proposal. Disclosure shall be made either to the commission's executive officer, in which case it shall be posted on the commission's website, if applicable, or to the board of supervisors of the county in which the commission is located, which may designate a county officer to receive the disclosure. Disclosure pursuant to a requirement under the authority provided in this section shall be in addition to any disclosure required by *Section 56700.1, the Political Reform Act* (Title 9 (commencing with Section 81000)) or by local ordinance.
2. 56700.1. Expenditures for political purposes related to a *proposal for a* change of organization or reorganization ~~proposal~~ *that will be conducted pursuant to this part that has been submitted to a commission,* and contributions in support of, or in opposition to, those ~~measures,~~ proceedings shall be disclosed and reported to the same extent and subject to the same requirements *of the Political Reform Act (Title 9*

(commencing with Section 81000)) as provided for local initiative measures to be presented to the electorate.

3. 57009. Expenditures for political purposes related to proceedings for a change of organization or reorganization that will be conducted pursuant to this part, and contributions in support of, or in opposition to, those proceedings shall be disclosed and reported to the commission to the same extent and subject to the same requirements of the Political Reform Act (Title 9 (commencing with Section 81000)), as provided for local initiative measures.”

Following the signing of AB 745 (copy provided as Attachment #1 to this report) by the Governor, a group of attorneys representing LAFCOs throughout the State met to review the legislation and provide an outline of its implications. Representatives of this group provided a presentation at the CALAFCO Annual Conference (copy provided as Attachment #2) to discuss the rationale for the legislation and some of the anticipated requirements. The rationale for this legislation is the desire to allow the public and governments know who is funding campaigns to either seek to place a proposal before LAFCO (initiating petitions, preparing documents, soliciting support) or those seeking to influence whether or not an item is completed or placed upon a ballot. AB 745 does not change the duties or obligations under the Political Reform Act that requires disclosure once an item is placed upon a ballot.

The 58 LAFCOs collectively sought assistance from the LAFCO legal community in addressing implementation of these new requirements. As noted in the materials, only two of the most populous counties adopted the discretionary policies for disclosure after the adoption of Cortese-Knox-Hertzberg. Attached to this report is a memorandum which provides a draft policy and a discussion of the alternatives within the policy for each LAFCO to ponder.

For San Bernardino LAFCO these are new reporting requirements; however, they do not change the existing obligations upon the groups which have sought to influence the outcome of an application. Any matter which was placed upon a ballot carried with it the duty to report campaign expenditures by those in support or opposition to the measure. AB 745 clarifies that this same duty shall apply to actions seeking to place an item before the Commission and to affect the outcome of the process for a boundary change. LAFCO staff’s assessment of the alternatives presented by the Legal Counsel Committee is as follows:

1. Scope of Disclosable Expenditures, Section 1(d). As noted in the Memorandum from attorney Michael Colantuono, the first choice to be made regarding the policy relates to what is the trigger for reporting. Alternative #1 includes such items as preparation of a comprehensive fiscal analysis or environmental documents. Should the Commission chose Alternative #1 it would apply to most of the annexations to cities presented to San Bernardino LAFCO as the pre-zoning environmental documents easily exceed the \$1,000 threshold which begins the reporting requirement. Alternative #2 is a more narrow description of disclosable expenditures excluding these environmental documents. LAFCO staff recommends adoption of Alternative #2, the narrower scope of reporting.

2. Committee Names, Robocalls and Mass Mailings, Section 4. As noted in the memorandum, the choice for this alternative is a policy decision for the Commission. LAFCO staff is recommending the narrower view of this alternative as it requires disclosure but does not impose the additional reporting requirements on filers and administration regulation upon Commission staff.
3. Filing Official, Section 5. This alternative as presented indicates that either the Executive Officer or the County Elections official can be the receiver of the required filings. However, questions arise from the “deputizing” of the County Registrar of Voters personnel (our County Elections Official) since in the staff view this would then require them to be a part of our conflict of interest filings. Therefore, at this time, LAFCO staff is recommending the narrow view of Alternative #1 defining the Executive Officer to receive these documents as required by law.

In addition, LAFCO staff proposes to use the existing FPPC Forms, 410 – Statement of Organization, 460 Recipient Committee Campaign Statement, and 497 Late Contribution Report, as the filing documents required under this policy. Copies of these forms are available in the LAFCO office and will become a part of our application package. In addition, the filing of these reports will be made available upon our website with the home address and home or cellular phone number of individuals redacted for their protection.

KRM

Attachments:

- #1 Assembly Bill No. 745 as Chaptered
- #2 CALAFCO Annual Conference Presentation on Disclosure of Contributions and Expenditures to Influence Petition and Protest Drives on LAFCO Proposals
- #3 Memorandum Dated October 31, 2007 from Michael Colantuno on Model Policy Implementing AB 745 with October 26, 2007 Model Policy