



**Local Agency Formation Commission**  
**LAFCO of Napa County**

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**February 4, 2008**  
**Agenda Item No. 7c**

January 22, 2008

**TO:** Local Agency Formation Commission

**FROM:** Keene Simonds, Executive Officer  
Jacqueline Gong, Commission Counsel

**SUBJECT: Adoption of Policy on Political Contributions and Expenditures (Action)**  
The Commission will consider adopting a policy regarding the disclosure of political contributions and expenditures involving change of organization or reorganization proposals. The proposed policy specifies the circumstances and manner in which affected parties spending more than \$1,000 in support of or in opposition to a proposal must disclose their contributions to the Commission.

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On July 20, 2007, Governor Arnold Schwarzenegger signed Assembly Bill 745 (Silva). This legislation became effective January 1, 2008 and makes substantive changes to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 with respect to requiring disclosures on political contributions and expenditures involving change of organization or reorganization proposals. Specifically, this legislation requires that political contributions and expenditures in support of or in opposition to proposals be disclosed, reported, and subject to the same requirements of the Political Reform Act as provided for local initiative measures.

### **Background**

Beginning in 2001, Local Agency Formation Commissions (LAFCO) have been authorized to adopt their own written policies and procedures requiring disclosure of political contributions and expenditures involving change of organization or reorganization proposals (California Government Code Section 56100.1). This preexisting authority, however, has been optional and not applicable to political contributions and expenditures made during the conducting authority process, otherwise known as protest proceedings. LAFCO of Napa County is one of several LAFCOs that has not adopted local policies or procedures regarding the disclosure of political contributions and expenditures.

AB 745 makes disclosure of political contributions and expenditures involving change of organization or reorganization proposals *mandatory* and consistent with the reporting requirements for local ballot initiatives under the Political Reform Act. AB 745 also extends the reporting requirements to political financing made to influence the outcome of protest proceedings.

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Jack Gingles, Commissioner  
Mayor, City of Calistoga

Juliana Inman, Commissioner  
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Brad Wagenknecht, Chair  
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Representative of the General Public

Gregory Rodeno, Alternate Commissioner  
Representative of the General Public

Keene Simonds  
Executive Officer

## **Discussion**

LAFCO may enforce the provisions of AB 745 as written without taking any action. However, in order to avoid potential challenges, a local policy is recommended to specify the circumstances and manner in which affected parties must disclose their political contributions and expenditures involving change of organization or reorganization proposals. It is with this in mind that the California Association of Local Agency Formation Commissions (CALAFCO) recently asked attorneys from around the state to develop a policy model that can be adopted by individual LAFCOs. Staff has utilized the model developed for CALAFCO in preparing a draft policy for Commission consideration.

## **Analysis**

### **Intent and Impact**

The purpose of the disclosure requirements underlying AB 745 is to make more transparent the funding sources of campaigns 1) seeking to place a change of organization or reorganization proposal before the Commission or 2) attempting to influence protest proceedings. The substantive impact of AB 745 is that it now requires any individual or organization that spends more than \$1,000 in support of or in opposition to a proposal to disclose their “contribution” to LAFCO.

### **Enforcement**

The new disclosure requirements for change of organization or reorganization proposals make reference to the Political Reform Act, which is administered by the Fair Political Practices Commission (FPPC). However, no amendments to the Political Reform Act were enacted as part of AB 745. Accordingly, the FPPC does not have jurisdiction to enforce disclosure requirements until the proposal is placed on a ballot and becomes a “measure.” Therefore, unless an election is called, the enforcement of the new disclosure requirements for proposals is the responsibility of LAFCO.

- \* The California Association of Local Agency Formation Commissions is currently working with the Senate Local Government Committee to propose legislation to amend the Political Reform Act to shift enforcement duties to the FPPC.

### **Draft Policy**

As mentioned, in preparing a draft policy to implement AB 745, staff has utilized a policy model developed by a group of attorneys representing CALAFCO. The policy model developed for CALAFCO includes three particular areas of choice for each LAFCO as it relates to 1) the scope of disclosable political contributions and expenditures, 2) additional reporting requirements, and 3) designating a filing official. Staff has reviewed these options and offers the following recommendations.

***Scope of Disclosable Political Contributions (Section One)***

Alternative One broadly defines expenditures for political purposes that trigger a duty to disclose contributions to LAFCO. This would include reporting expenditures associated with complying with legal requirements and LAFCO rules for processing proposals. Alternative Two provides a narrower definition and excludes expenditures made in complying with legal requirements or LAFCO rules for processing proposals.

Alternative One would apply to most proposals because LAFCO's current application fees to process change or organization or reorganization proposals generally exceed \$1,000. The low threshold for reporting expenditures under Alternative One appears excessive and would create additional staff demands to effectively enforce. Staff recommends Alternative Two.

***Additional Reporting Requirements (Section Four)***

Alternative One specifically excludes reporting the sources of mass mailings and automated telephone calls as well as the disclosure of donors and expenditures for any political committee campaigning for or against a LAFCO proposal. Alternative Two requires these types of reporting.

Alternative One provides an appropriate level of disclosure without creating additional burdens for the affected parties and is recommended.

***Filing Official (Section Five)***

Alternative One directs disclosures to be filed with the LAFCO Executive Officer. Alternative Two directs disclosures to be filed with the County Registrar of Voters, who would be "deputized" by LAFCO to serve as Executive Officer for the purpose of administering this specific section.

The appointment of the County Registrar of Voters as Deputy Executive Officer under Alternative Two may create confusion among affected parties in terms of directing their questions regarding LAFCO proposals. Alternative Two is also predicated on the willingness of the Registrar of Voters to serve as Deputy Executive Officer, which is unknown at this time. Staff recommends Alternative One.

**Recommendation:**

It is recommended that the Commission take the following action:

- 1) Adopt the attached draft policy with any desired changes relating to the disclosure of political contributions and expenditures pursuant to California Government Code Sections 56100.1, 56700.1, and 57009.

Respectfully submitted,

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Keene Simonds  
Executive Officer

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Jacqueline Gong  
Commission Counsel

Attachments:

- 1) Draft Policy
- 2) ~~Memorandum on Policy Model Implementing AB 745~~
- 3) ~~Report on AB 745 from 2007 CALAFCO Conference~~

## Local Agency Formation Commission of Napa County

### Disclosure of Political Expenditures for Change of Organization or Reorganization Proposals

Adopted on \_\_\_\_\_

Pursuant to California 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 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, California Government Code Section 81000 et seq., and the regulations of the Fair Political Practices Commission implementing that law.

LAFCO of Napa County adopts the following reporting and disclosure requirements to implement California Government Code Sections 56700.1 and 57009.

#### 1. Definitions

- a. "Contribution" as used herein shall have the same definition as provided in California Government Code Section 82015, as amended.
- b. "Expenditure" as used herein shall have the same definition as provided in California Government Code Section 82025, as amended.
- c. "Independent expenditure" as used herein shall have the same definition as provided in California 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 California Government Code Section 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 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 California 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 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 and reports shall be filed on or before the 10<sup>th</sup> 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 California 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 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 10<sup>th</sup> 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 proposal for an organization or reorganization. It 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 California 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 LAFCO 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 California 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.