

## ASSEMBLY THIRD READING

AB 236 (Berman)

As Amended May 20, 2021

2/3 vote

**SUMMARY**

Requires a limited liability company (LLC) that makes contributions or expenditures in connection with California elections to publicly disclose the identities of specified members of the LLC.

**Major Provisions**

- 1) Requires an LLC that qualifies as a committee or a sponsor of a committee pursuant to the Political Reform Act (PRA), as specified, to file a statement of members with the Secretary of State (SOS) that contains specified information. Requires the statement of members to include a list of the following members of the LLC:
  - a) Each person who has a membership interest in the LLC equal to or greater than 10% of the total outstanding membership interests; and,
  - b) Each person who made a cumulative capital contribution of \$10,000 or more to the LLC after it qualified as a committee or committee sponsor, or within the preceding two calendar quarters before it qualified.
- 2) Requires an LLC to file its statement of members within 10 days of the LLC qualifying as a committee or committee sponsor, except as specified. Requires an LLC to amend its statement of members if it receives a capital contribution of \$10,000 or more after qualifying as a committee or sponsor of a committee.
- 3) Provides that if a member listed on an LLC's statement of members is itself an LLC, the statement shall list all members of that LLC who would be listed on a statement of members if the member LLC qualified as a committee or committee sponsor.

**COMMENTS**

According to information from the SOS, an LLC is a legal entity that generally offers liability protection similar to that of a corporation, but is taxed differently. To form an LLC in California, the organizers of the LLC must file articles of organization with the SOS. In those articles, the LLC must designate an agent and a manager, and list the name and address of both. An LLC must also indicate whether it is member-managed (i.e. managed by its investors) or manager-managed (i.e. professionally managed by an outsider). Many LLCs remain anonymous by appointing a professional agent and manager, such as an attorney or accountant, thereby never having to reveal their members or the sources of capital contributions (i.e. funding).

In February 2020, at the request of commissioners who had expressed concerns about the lack of meaningful disclosure of political activity by LLCs, Fair Political Practices Commission (FPPC) staff made a presentation to the FPPC that provided background on how existing campaign disclosure laws applied to politically-active LLCs, and that provided options on how to improve the disclosure of such political activity. Following that presentation, in June 2020, the FPPC adopted regulations that require the identity of the individual primarily responsible for approving

an LLC's political activities to be disclosed on campaign statements or reports that disclose contributions or expenditures by the LLC. The FPPC also determined that requiring disclosure of the source of funds that LLCs use to make contributions and expenditures would require a statutory change.

A memo prepared by staff in connection with the FPPC's consideration of the regulations that it adopted notes that its enforcement staff "has identified a pattern in which LLCs, often formed shortly before an election, make large contributions and expenditures in California elections without the sources of the money ever being disclosed to the public in any meaningful way. This lack of information about the individuals responsible for the political activity conducted through LLCs makes investigation of suspicious activity extremely challenging and burdensome and leaves no way for the public to determine the source of LLC political activity."

California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders and lobbyists. That initiative is commonly known as the PRA. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.

Please see the policy committee analysis for a full discussion of this bill.

### **According to the Author**

"California's campaign disclosure laws – which are among the strongest in the nation – are based on the principle that public disclosure of campaign contributions and expenditures helps inform voters and deter corruption. Consistent with that principle, California has regularly updated our campaign disclosure laws to ensure that voters have information about the source of funds that are used in attempts to influence voters. The FPPC – which enforces and administers California's campaign disclosure laws – has identified a troubling pattern in which LLCs have made large contributions and expenditures without meaningful disclosure about the identity of the individuals involved in those LLCs. While the FPPC has taken important steps to ensure that there is public disclosure of the individuals who are responsible for approving an LLC's political activity, existing law fails to ensure that an LLC must disclose the source of funds that it uses for its political activity. By requiring the public disclosure of specified members of politically-active LLCs, AB 236 will ensure that California voters have meaningful information about the true source of campaign contributions and expenditures made in California elections."

### **Arguments in Support**

The sponsor of this bill, the FPPC, writes in support, "Currently, [LLCs] can make large campaign contributions and expenditures in elections in the state without any meaningful disclosure to the public about the true source of those funds. Often, these LLCs are formed or purchased shortly before an election. AB 236...would require an LLC that qualifies as a committee or committee sponsor under the [PRA] to file a statement with the Secretary of State that includes disclosure of certain members of the LLC. The changes made by this bill increase transparency in the political process by providing the public with more information about the individuals behind LLCs that engage in campaign spending."

### **Arguments in Opposition**

There is no known opposition to this bill.

**FISCAL COMMENTS**

According to the Assembly Appropriations Committee, increased annual FPPC costs of about \$120,000 (General Fund).

**VOTES****ASM ELECTIONS: 5-1-1**

**YES:** Berman, Bennett, Low, Mullin, Blanca Rubio

**NO:** Seyarto

**ABS, ABST OR NV:** Mayes

**ASM APPROPRIATIONS: 12-4-0**

**YES:** Lorena Gonzalez, Bloom, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Kalra, Levine, Nazarian, Quirk, Robert Rivas

**NO:** Bigelow, Megan Dahle, Davies, Fong

**UPDATED**

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