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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair

2021 - 2022 Regular Session

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### **SB 686 (Glazer) - Campaign disclosure: limited liability companies**

**Version:** February 19, 2021

**Urgency:** No

**Hearing Date:** May 3, 2021

**Policy Vote:** E. & C.A. 4 - 1

**Mandate:** Yes

**Consultant:** Robert Ingenito

**Bill Summary:** SB 686 would require a limited liability company (LLC) that is engaged in campaign activity to provide additional information regarding the members and capital contributors to the LLC, as specified.

**Fiscal Impact:** The Secretary of State (SOS) indicates that it would incur first-year General Fund costs of \$561,000, and \$121,000 annually thereafter, to implement the provisions of the bill. Additionally, it result in ongoing General Fund implementation costs to the Fair Political Practices Commission (FPPC) of \$119,000.

**Background:** In June 2020, FPPC adopted two regulations requiring LLCs to disclose specified information about who is making political decisions on their behalf. The first regulation defined “responsible officer” for LLCs that qualify as an Independent Expenditure or Major Donor committee as “the individual primarily responsible for approving the political activity of the LLC.” This change provided the public a more accurate portrayal regarding who is directing an LLC’s expenditures and contributions. Previously, a registered agent or professional manager with no actual authority or control of the LLC would have been typically listed. The second regulation required additional information from a committee that receives a contribution from an LLC. The committee receiving the contribution would be required to provide the name of the individual responsible for the LLC’s political activity in addition to reporting the name of the LLC. It should be noted that the individual varies depending on the whether the LLC is a committee under the PRA and the type of committee.

According to an FPPC memo, when these proposed regulations were being considered, the FPPC’s Enforcement Division identified a pattern in which LLCs, often formed shortly before an election, made large contributions and expenditures in California elections without the sources of the money being disclosed to the public in a meaningful way. This lack of information about the individuals responsible for the political activity conducted through LLCs made the investigation of suspicious activity challenging and left it nearly impossible for the public to determine the source of an LLC’s political activity.

**Proposed Law:** This bill would, among other things, do the following:

- Require that an LLC, as defined, that qualifies as a committee or qualifies as a sponsor of a committee to file a statement of members with SOS, as specified.

- Require the statement of members to include a list of all persons who either: (1) have a membership interest in the LLC equal to or greater than 10 percent of the total outstanding membership interests, or (2) made a cumulative capital contribution of \$1,000 or more to the LLC after it qualified as a committee or sponsor of a committee, or within the preceding two calendar years before it qualified.
- Require the statement of members to include the name of the LLC and the contact information for its responsible officer or principal officer. Require the disclosure of the name, the dollar amount of the cumulative capital contributions, the date of each capital contribution, and the percentage ownership interest in the LLC of each member identified in the statement of members, as specified.
- Provide that the statement of members is due within 10 days of the LLC qualifying as a committee or sponsor of a committee.
- Provide that a statement of members is due within 24 hours of the LLC qualifying as a committee or sponsor of a committee if the LLC qualifies within 30 days of an election and made a contribution to, or an independent expenditure supporting or opposing, a candidate or ballot measure on the ballot in that election, or made a contribution to a committee that made a contribution to, or an independent expenditure supporting or opposing, a candidate or ballot measure on the ballot in that election.
- Require an LLC to file a statement of members if it receives a capital contribution of \$1,000 or more after qualifying as a committee or sponsor of a committee, as specified.
- Provide that a capital contribution, as defined, or other payment made to an LLC that qualified as a committee or sponsor of a committee that is earmarked, in whole or in part, for political purposes shall be deemed a contribution to the committee.
- Require that if a member listed on a statement of members is 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 sponsor of a committee, as specified.
- Require that contributions from a member of an LLC identified in a statement of members be aggregated with contributions from the LLC, as specified.
- Require an LLC that qualifies as an Independent Expenditure or Major Donor committee to identify a responsible officer, as defined, on each statement and report filed, as specified.
- Provide that if more than one individual shares the primary responsibility for approving the LLC's political activities, at least one of those individuals shall be listed as the committee's responsible officer, as specified.
- Provide that a responsible officer may be held liable for a violation of the PRA.

- Require, for a contribution of \$100 or more received from an LLC that has qualified as a recipient committee, the name of the contributor reported in a committee's statements and reports to include the name of the LLC's committee and the name of the committee's principal officer, as specified.
- Require, for a contribution of \$100 or more received from an LLC that has qualified as an Independent Expenditure or Major Donor committee, the name of the contributor reported in a committee's statements and reports to include the name of the LLC and the full legal name of the LLC's responsible officer, as specified.
- Require, for a contribution of \$100 or more received from an LLC that does not qualify as a committee, the name of the contributor reported in a committee's statements and reports to include the name of the LLC and the full legal name of the individual primarily responsible for approving the contribution, as specified. Provides that if more than one individual shares in the primary responsibility for approving a contribution, at least one of those individuals shall be identified.

**Related Legislation:** AB 236 (Berman) would codify the two previously mentioned FPPC regulations and require the submission of a statement of members to SOS, as specified. The language of AB 236 is identical to the language in this bill. The bill is currently pending in the Assembly Appropriations Committee.

**Staff Comments:** As noted previously, SOS estimates that its costs to administer the bill would total \$561,000 for the first year and \$121,000 ongoing. This amount reflects both program staff costs (one position in its Political Reform Division to accommodate the additional filings) and IT project related costs. The first year figure also reflects \$125,000 to promulgate regulations and change existing forms.

SOS notes that implementing the bill based on its current operative date may not be possible. A similar filing bill, SB 459 has a delayed implementation date that SOS says is more likely to be achieved. SOS notes that it will be necessary to update its forms and procedures to comply with the bill, but doing so will be predicated on how FPPC plans to implement the bill and design the form changes. Pursuant to the Political Reform Act, FPPC (not SOS) is responsible for those actions. FPPC likely would not begin a public process to change the forms until after enactment of this bill. Finally, SOS notes that making the necessary changes to CAL-ACCESS while it remains under active development (certification is expected in June) may also not be possible to do on an accelerated timeframe.

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