
**SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**
Senator Steven Glazer, Chair
2021 - 2022 Regular

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| Bill No: | SB 686 | Hearing Date: | 4/12/21 |
| Author: | Glazer | | |
| Version: | 2/19/21 | | |
| Urgency: | No | Fiscal: | Yes |
| Consultant: | Scott Matsumoto | | |

Subject: Campaign disclosure: limited liability companies

DIGEST

This bill requires 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.

ANALYSIS

Existing law:

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act of 1974 (PRA).
- 2) Provides for the comprehensive regulation of campaign financing, including, but not limited to, requiring the reporting of campaign contributions and expenditures, as specified.
- 3) Defines a “person” to mean an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, LLC, association, committee, and any other organization or group of persons acting in concert.
- 4) Defines “committee” to mean any person or combination of persons who directly or indirectly does any of the following:
 - a) Receives contributions totaling \$2,000 or more in a calendar year (also known as a recipient committee).
 - b) Makes independent expenditures totaling \$1,000 or more in a calendar year to or at the behest of candidates or committees (also known as an “Independent Expenditure” committee).
 - c) Makes contributions totaling \$10,000 or more in a calendar year to or at the behest of candidates or committees (also known as a “Major Donor” committee).
- 5) Requires a qualified committee to file periodic statements and reports, as specified.

- 6) Requires a report or statement filed by a committee receiving contributions totaling at least \$2,000 in a calendar year be signed and verified by the treasurer. Requires that a report or statement filed by any other person be signed and verified by the filer.
- 7) Provides that if the filer is an entity other than an individual, the report or statement shall be signed and verified by a responsible officer of the entity, by an attorney, or a certified public accountant acting as an agent for the entity. Provides that every person who signs and verifies any report or statement required to be filed which contains material matter which the individual knows to be false is guilty of perjury.
- 8) Provides that any person who violates the PRA, purposely or negligently causes any other person to violate any provisions of the PRA, or who aids and abets any other person in the violation of the PRA shall be liable under the provisions of the PRA, as specified. Provides, that this only applies to persons who have filing or reporting obligations under the PRA, or who are compensated for services involving the planning, organizing, or directing any activity regulated or required by the PRA, as specified.

This bill:

- 1) Requires that an LLC that qualifies as a committee or qualifies as a sponsor of a committee to file a statement of members with the Secretary of State (SOS), as specified.
- 2) Requires the statement of members to include a list of all persons who either:
 - a) Have a membership interest in the LLC equal to or greater than 10 percent of the total outstanding membership interests.
 - b) 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.
- 3) Requires the statement of members to include the name of the LLC and the contact information for its responsible officer or principal officer. Requires 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.
- 4) Provides that the statement of members is due within 10 days of the LLC qualifying as a committee or sponsor of a committee.
- 5) Provides 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.

- 6) Requires 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.
- 7) Provides that a capital contribution 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.
- 8) Requires 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.
- 9) Requires that contributions from a member of an LLC identified in a statement of members be aggregated with contributions from the LLC, as specified.
- 10) Defines “capital contribution,” “limited liability company,” and “member,” as specified.
- 11) Requires an LLC that qualifies as an Independent Expenditure or Major Donor committee to identify a responsible officer on each statement and report filed, as specified.
- 12) Defines the “responsible officer” of the committee to mean the individual primarily responsible for approving the political activity of the LLC, including, but not limited to, both of the following:
 - a) Authorizing expenditures, including contributions, on behalf of the LLC.
 - b) Developing or approving campaign strategy on behalf of the LLC.
- 13) Provides 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.
- 14) Provides that a responsible officer may be held liable for a violation of the PRA.
- 15) Requires, 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.
- 16) Requires, 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.
- 17) Requires, 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.

BACKGROUND

FPPC Regulations and LLCs. In June 2020, the FPPC adopted two regulations requiring LLCs to disclose specified information about who is making political decisions on behalf of the LLC.

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. Prior to the adoption of this regulation, 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.

Additionally, while California and most other states require the founders of an LLC to disclose the LLC’s (company) name, address, and registered agent, it is possible to form an LLC without ever having to name a single human being associated with the company. Even when an individual is listed as an LLC’s registered agent and/or manager, that person may not be the true funding source of an LLC’s capital contributions. Investors may use multiple layers of LLCs to completely hide or obscure their identities from public disclosure. The same qualities that may make LLCs popular among legitimate businesses make LLCs an ideal business structure for those seeking to conceal activities.

This bill codifies these two regulations and additionally requires the disclosure of members of an LLC if specified criteria are met.

COMMENTS

- 1) According to the author: SB 686 would provide greater transparency and disclosure for limited liability companies that make political contributions. According to data from the Secretary of State's Political Reform Division, there were 2,635 Major Donor and IE committees in 2019. Of those, 253 were LLCs. Additionally, a 2019 FPPC Enforcement Division examination of LLCs found that while it was relatively easy to find information about an LLC's type of business, its address, and its agent for service of process, it was extremely difficult and many times impossible to identify an LLC's owners or the true source of funds for an LLC's political expenditures.

Californians deserve to know who is trying to influence their political process. This bill is a simple, yet meaningful, approach to provide clarity regarding political contributions that can oftentimes be murky.

- 2) Argument in Support. In a letter supporting SB 686, the League of Women Voters of California stated, in part, the following:

SB 686 is consistent with the League of Women Voters of California's mission to inform voters and protect democracy by adding transparency to the campaign financing process. It will help foster effective monitoring and enforcement of campaign finance laws and go a long way to ensure that special interests cannot use LLCs to hide the sources of spending designed to influence elections. In the absence of effective limits on campaign spending, it is critical that voters be informed of the interests which fuel the messages they receive.

- 3) Argument in Opposition. In a letter opposing SB 686, the California Chamber of Commerce stated, in part, the following:

SB 686 will bring a massive expansion of the disclosure obligations for LLCs that engage in political activity because it requires them to identify individual members of the LLC, even if they are not involved in the LLC's political activities. By contrast, unions are not required to identify every union member if the union engages in political activities. Even corporations are not required to identify every shareholder if the corporation engages in political activities. Additionally, current regulations already require LLCs to identify an individual "responsible officer" who directs the LLC's political activity. Thus, if the FPPC's goal is to identify an individual to "hold accountable" for an LLC's political activity, the current regulations suffice. Under the proposed SB 686, however, the statute intends to hold individuals responsible for a separate entity's political speech, regardless if the individual members of the LLC play a role in its democratic participation.

RELATED/PRIOR LEGISLATION

AB 236 (Berman) of 2021 would codify the two previously mentioned FPPC regulations and require the submission of a statement of members to the SOS, as specified. The language of AB 236 is identical to the language in this bill. The Assembly Committee on Elections is currently considering AB 236.

POSITIONS

Sponsor: Fair Political Practices Commission

Support: League of Women Voters of California

Oppose: California Chamber of Commerce

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