
UNFINISHED BUSINESS

Bill No: SB 686
Author: Glazer (D), et al.
Amended: 8/24/21
Vote: 27

SENATE ELECTIONS & C.A. COMMITTEE: 4-1, 4/12/21
AYES: Glazer, Hertzberg, Leyva, Newman
NOES: Nielsen

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/20/21
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski
NOES: Bates, Jones

SENATE FLOOR: 32-6, 6/2/21
AYES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener
NOES: Bates, Borgeas, Dahle, Grove, Jones, Wilk
NO VOTE RECORDED: Melendez, Nielsen

ASSEMBLY FLOOR: 59-17, 9/9/21 - See last page for vote

SUBJECT: Campaign disclosure: limited liability companies

SOURCE: Fair Political Practices Commission

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.

Assembly Amendments change the monetary threshold at which, and the time period during which, a person who provided a capital contribution to an LLC is required to be disclosed in the LLC's statement of members, as specified, and remove the codification of Fair Political Practices Commission (FPPC) regulations

related to LLCs. The amendments also require the Secretary of State (SOS) to post online all statements of members received and clarified the process for the submission of a qualifying LLC's statement of members, as specified. Finally, the amendments add coauthors.

ANALYSIS:

Existing law:

- 1) Creates the 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").
 - 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 SOS and requires all statements received by the SOS be posted online, 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 \$10,000 or more to the LLC after it qualified as a committee or sponsor of a committee, or within the preceding 12 months 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. 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.

- 5) 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.
- 6) 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.
- 7) 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.
- 8) Requires that contributions from a member of an LLC identified in a statement of members be aggregated with contributions from the LLC, as specified.
- 9) Defines “capital contribution,” “limited liability company,” and “member,” as specified.

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 with a more accurate picture of 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 typically been 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 whether the LLC is a committee under the PRA and the type of committee.

As part of its consideration of those regulations, FPPC staff prepared a memo that included an overview of some of the challenges to obtaining meaningful disclosure of political activity by LLCs (footnotes are excluded from this excerpt of the memo):

The [FPPC] has expressed concern with the lack of meaningful disclosure of political activity by LLCs. The Enforcement Division 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.

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.

Comments

- 1) According to the author, SB 686 provides greater transparency and disclosure for limited liability companies that make political contributions. According to data from the SOS' Political Reform Division, there were 2,635 Major Donor and Independent Expenditure 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) In a letter supporting SB 686, the League of Women Voters of California states, 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.

Related/Prior Legislation

AB 236 (Berman, 2021) requires an LLC that engages in campaign activity to submit a statement of members to the SOS, as specified.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee:

- First year SOS General Fund costs of approximately \$560,000, and \$120,000 annually thereafter, to implement the provisions of this bill.
- Ongoing annual FPPC General Fund costs of approximately \$120,000.

SUPPORT: (Verified 9/9/21)

Fair Political Practices Commission (source)
California Clean Money Campaign
League of Women Voters of California

OPPOSITION: (Verified 9/2/21)

None received

ASSEMBLY FLOOR: 59-17, 9/9/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Mia Bonta, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooper, Daly, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, Mayes, McCarty, Medina, Mullin, Muratsuchi,

Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz
Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting,
Villapudua, Ward, Akilah Weber, Wicks, Wood, Rendon

NOES: Bigelow, Chen, Choi, Cunningham, Megan Dahle, Davies, Flora, Fong,

Gallagher, Lackey, Mathis, Nguyen, Patterson, Seyarto, Smith, Voepel, Waldron

NO VOTE RECORDED: Cooley, Frazier, Kiley, Valladares

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9/9/21 20:49:40

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