

Date of Hearing: April 15, 2021

ASSEMBLY COMMITTEE ON ELECTIONS  
Marc Berman, Chair  
AB 236 (Berman) – As Amended March 10, 2021

**SUBJECT:** Campaign disclosure: limited liability companies.

**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 and of the individual responsible for approving the LLC's political activities. Specifically, **this bill:**

- 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). 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 \$1,000 or more to the LLC after it qualified as a committee or committee sponsor, or within the preceding two calendar years before it qualified.
- 2) Requires the statement of members to include all of the following information:
  - a) The name of the LLC and the contact information for its responsible officer or principal officer.
  - b) The following information for each person required to be listed on the statement of members:
    - i) The name of the person;
    - ii) The dollar amount of the cumulative capital contributions made by the person;
    - iii) The percentage ownership interest in the LLC of the person; and,
    - iv) In the case of a person who is listed because the person made a cumulative capital contribution of \$1,000 or more to the LLC after it qualified as a committee or committee sponsor, or within the preceding two calendar years before it qualified, the date of each capital contribution made by the person.
- 3) Requires an LLC to file its statement of members within 10 days of the LLC qualifying as a committee or committee sponsor. Requires an LLC to file its statement of members within 24 hours of qualifying as a committee or committee sponsor if it qualifies within 30 days of an election for which the LLC has made a contribution to, or an independent expenditure (IE) 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 IE supporting or opposing, a candidate or ballot measure on the ballot.

- 4) Requires an LLC to amend its statement of members if it receives a capital contribution of \$1,000 or more after qualifying as a committee or sponsor of a committee. Requires the amended statement of members to be filed within 10 days of receiving the additional capital contribution, or within 24 hours of receiving the additional capital contribution if the LLC receives the contribution within 90 days of an election and the LLC has made a contribution to, or IE supporting or opposing, a candidate or ballot measure on the ballot in that election.
- 5) 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.
- 6) 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.
- 7) Requires contributions from a member of an LLC identified in a statement of members to be aggregated with contributions from the LLC, as specified.
- 8) Codifies regulations adopted by the Fair Political Practices Commission (FPPC) 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.
  - a) Requires any campaign statement or report that is filed by an LLC to identify and be signed by the individual who is primarily responsible for approving the LLC's political activities. Specifies that this person may be held liable for a violation of the PRA, as specified.
  - b) Requires a committee that receives a contribution from an LLC, as specified, to include the name of the individual who is responsible for approving the LLC's political activity as a part of the name of the campaign contributor when disclosing the receipt of the contribution from the LLC on a campaign disclosure report. Requires a committee to return a contribution from an LLC within 60 days of receipt if the contribution does not include the required information about the individual who is responsible for approving the LLC's political activity.
- 9) Defines the following terms, for the purposes of this bill:
  - a) LLC to mean an entity that is defined as an LLC or a foreign LLC under specified provisions of the Corporations Code;
  - b) "Member" to mean a person that is considered a member of an LLC under specified provisions of the Corporations Code; and,
  - c) "Capital contribution," to mean money, or the fair market value of any other property, contributed to an LLC in exchange for a membership interest in the LLC.

**EXISTING LAW:**

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Enumerates various purposes of the PRA, including that “[r]eceipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.”
- 3) Defines the term “committee,” for the purposes of the PRA, as 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.
  - b) Makes IEs totaling \$1,000 or more in a calendar year; or,
  - c) Makes contributions totaling \$10,000 or more in a calendar year to or at the behest of candidates or committees.
- 4) Defines the term “sponsored committee,” for the purposes of the PRA, as a committee, other than a candidate controlled committee, that has one or more sponsors. Provides that a person sponsors a committee if any of the following apply:
  - a) The committee receives 80 percent or more of its contributions from the person or its members, officers, employees, or shareholders;
  - b) The person collects contributions for the committee by use of payroll deductions or dues from its members, officers, or employees;
  - c) The person, alone or in combination with other organizations, provides all or nearly all of the administrative services for the committee; or,
  - d) The person, alone or in combination with other organizations, sets the policies for soliciting contributions or making expenditures of committee funds.
- 5) Requires elected officers, candidates, and political committees to file periodic campaign disclosure reports that include specified campaign finance information including, among other information, the identity of each person from which the officer, candidate, or committee received cumulative contributions of \$100 or more.
- 6) Governs the formation and operation of LLCs in California pursuant to the California Revised Uniform Limited Liability Company Act.
- 7) Requires an LLC, pursuant to regulations adopted by the FPPC, to identify a “responsible officer” on campaign disclosure statements and reports filed pursuant to specified provisions of the PRA if the LLC qualifies as a committee by virtue of making IEs totaling \$1,000 or more in a calendar year or making contributions totaling \$10,000 or more in a calendar year. Provides that the “responsible officer” is the individual primarily responsible for approving the political activity of the LLC, as specified. Provides that at least one individual must be

identified as a responsible officer if more than one individual shares in the primary responsibility for approving the LLC's political activities. Permits a responsible officer to be held liable for a violation of the PRA, as specified.

- 8) Requires, pursuant to regulations adopted by the FPPC, a committee that receives a contribution from an LLC, as specified, to include the name of the individual who is responsible for approving the LLC's political activity as a part of the name of the campaign contributor when disclosing the receipt of the contribution from the LLC on a campaign disclosure report. Requires a committee to return a contribution from an LLC within 60 days of receipt if the contribution does not include the required information about the individual who is responsible for approving the LLC's political activity.

**FISCAL EFFECT:** Unknown. State-mandated local program; contains a crimes and infractions disclaimer.

**COMMENTS:**

- 1) **Purpose of the 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.

- 2) **Background on LLCs:** 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. Domestic LLCs may be managed by one or more managers or one or more members. In addition to filing applicable documents with the SOS, an operating agreement among the members as to the affairs of the LLC and the conduct of its business is required. The LLC does not file the operating agreement with the SOS, but maintains it at the office where the LLC's records are kept.

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).

- 3) **LLCs and Existing Campaign Disclosure Laws:** In February 2020, at the request of commissioners who had expressed concerns about the lack of meaningful disclosure of political activity by LLCs, 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. Those regulations are described in more detail in the "Existing Law" section above. (The FPPC determined that requiring disclosure of the source of funds that LLCs use to make contributions and expenditures would require a statutory change.)

As part of its consideration of those regulations, the FPPC staff prepared a memo that included the following helpful overview providing background on LLCs, and 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.

### **LLCs as Business Entities**

An LLC is a popular type of business structure that combines the benefits of a partnership and a corporation. LLCs, whose owners are referred to as members, may be formed to run a business, or simply to hold assets. There are numerous legitimate business reasons why a business may incorporate as an LLC as opposed to a different corporate structure, such as: protecting the members from personal liability for business debts and claims; fewer formalities and less paperwork; avoiding double-taxation; no restrictions on the number and types of owners; and no specific required management structure. For these reasons, many different types of businesses, from small family businesses to some of the world's largest companies, choose to incorporate as LLCs.

In addition, LLCs generally can be formed quickly, easily, and anonymously—often in as little as two hours for only several hundred dollars. Corporate laws in most states, including California, require very little information from LLCs about their formation, funding, management, and operation. Indeed, the U.S. House of

Representatives noted last year that “a person forming a corporation or limited liability company within the United States typically provides less information at the time of incorporation than is needed to obtain a bank account or driver’s license and typically does not name a single beneficial owner.”

While California and most other states require the founders of an LLC to at least 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 is usually not the true source of an LLC’s capital contributions (i.e. funding). Moreover, investors can use multiple layers of LLCs to obfuscate or completely hide their identities from public disclosure. For example, the California Corporations Code permits an LLC to list another corporate entity as its registered agent and/or manager; in such cases, no individual is identified in connection with the LLC.

### **Avenues for Abuse: “Shell Companies” and “Shelf Companies”**

The same qualities that make LLCs popular among legitimate businesses make LLCs an ideal business structure for those seeking to conceal activities. Two common ways in which LLCs are often abused are through so-called “shell companies” and “aged shelf companies.” Shell companies are typically business entities that exist only on paper, have no office or employees, and are created only to hold assets or facilitate transactions. While shell companies can and do serve legitimate business purposes (such as facilitating corporate mergers), a 2006 report by the US Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) found that “the LLC [...] provides an attractive vehicle for a shell company because it can be owned or managed anonymously, and is inherently vulnerable to abuse.” The same report notes that domestic shell companies, including LLCs, “have become common tools for money laundering and other financial crime.”

Similarly, various services sell so-called “aged shelf companies,” LLCs that do not engage in real business, but are instead formed and then “shelved” for the purpose of accumulating several years’ worth of tax and bank account history, in an effort to give the company a veneer of longevity and legitimacy. Years later, the aged company is sold, often for tens or even hundreds of thousands of dollars, bestowing upon the buyer an LLC with a seemingly established business history, complete with IRS employer identification number (EIN), credit rating, and seasoned tradelines. Again, like shell companies, aged shelf companies can serve legitimate purposes, such as facilitating certain types of business transactions. But also like shell companies, shelf companies are an attractive vehicle for illicit activities, such as fraud, money laundering, and tax evasion, and pose major obstacles to regulators and auditors seeking to determine the true owners behind LLCs. Providers of “aged shelf companies” are frequently based in states with lax LLC disclosure laws, such as Delaware, Nevada, or Wyoming.

### **LLCs and “Dark Money” in California Elections**

The same attributes of LLCs discussed above make LLCs attractive vehicles for disguising the true source of political activity. An LLC can make campaign contributions or independent expenditures solely in the name of the LLC without disclosing any information about, or providing a way to determine, the source of the funds expended by the LLC and individuals responsible for operating the LLC. As the Center for Responsive Politics notes in the context of national elections, “This lack of accountability and transparency have helped disguise the source of millions of dollars in political spending each election cycle,” making LLCs “the darkest of the dark money groups.”

California’s state and local elections are just as vulnerable to LLC dark money as our national elections. According to data from the California Secretary of State’s Political Reform Division, LLCs accounted for eight percent of all major donors and independent expenditure committees in the 2017-18 election cycle. A 2019 Enforcement Division examination looked at a selection of such LLCs who were registered as major donors to determine what public information could be obtained for each without a subpoena. For each LLC, Enforcement was able to obtain information from the Secretary of State, Department of Business Oversight, Department of Real Estate, and other sources about the business entity type (i.e., LLC), jurisdiction, business address and agent for service of process. However, determining the identities of the LLC’s owners or the true source of the LLC’s political expenditures proved elusive. Moreover, the Enforcement Division has found that in addition to the lack of publicly available information about LLCs, LLC agents and managers often do not have, or are unwilling to share, basic information and records of the LLC that would facilitate an investigation.

Several recent examples further illustrate the lack of meaningful disclosure around LLC political activities in California elections. A 2017 KPBS San Diego investigation found that from Jan 1, 2017 through September 22 of that year, LLCs spent more than \$2.5 million in elections in San Diego City and County alone—79 percent of which was spent in support of one ballot measure. The same KPBS report found that, in 2016, a single LLC, LHR Investment Group LLC, gave \$3.8 million to a different local ballot measure. Though LHR Investment Group, LLC filed a Form 461 Major Donor Report, because state law does not require major donors to list their funding sources, the public could not determine where the money actually came from. In addition, because the LLC’s parent company was registered in Delaware, voters could not fully determine who operated the LLC.

In another prominent Southern California case, an LLC that formed the month before the November 2018 election contributed nearly \$200,000 to a local campaign committee, which in turn produced mailers supporting and opposing candidates for city council. Since the California Corporations Code does not require any disclosure of an LLC’s managers until 90 days after its formation, voters in that city had zero information as to where this money originated, or who authorized or directed these contributions, until after January 1st of the following year—well after the election was decided.

4) **Arguments in Support:** The sponsor of this bill, the FPPC, writes in support:

Currently, limited liability companies 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, as amended on March 10, 2021, would require an LLC that qualifies as a committee or committee sponsor under the Act 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. For this reason, the FPPC is pleased to sponsor AB 236.

- 5) **Arguments in Opposition:** In opposition to this bill, the California Chamber of Commerce writes:

AB 236 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 AB 236, 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.

- 6) **Previous Legislation:** AB 2407 (Berman) of 2020 would have required a political committee that receives campaign contributions from an LLC to disclose the name of each individual who owns or controls the LLC, and the name of each individual who controls the contributions or expenditures of the LLC. As was the case for many bills introduced in 2020, AB 2407 was not heard in committee after changes to the legislative calendar and operations that were made in an effort to slow the transmission of the 2019 novel coronavirus (COVID-19) limited the number of bills that the Legislature was able to consider in 2020.
- 7) **Related Legislation:** SB 686 (Glazer), which was scheduled to be heard in the Senate Elections & Constitutional Amendments Committee on April 12, 2021, is substantially similar to this bill.
- 8) **Political Reform Act of 1974:** 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.

**REGISTERED SUPPORT / OPPOSITION:**



**Support**

Fair Political Practices Commission (sponsor)  
League of Women Voters of California

**Opposition**

California Chamber of Commerce

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