

Senate Election Law and Internal Affairs Committee

Kelly Flathers 271-3093

SB 115, relative to political contributions made by limited liability companies.

Hearing Date: January 31, 2017

Time Opened: 10:28 a.m.

Time Closed: 11:10 a.m.

Members of the Committee Present: Senators Woodburn, Gray, Birdsell and Sanborn

Members of the Committee Absent : Senator Soucy

Bill Analysis: This bill requires that a political contribution by a limited liability company be allocated to members for purposes of determining whether a member has exceeded the contribution limits.

Sponsors:

Sen. Feltes

Sen. Fuller Clark

Sen. Hennessey

Sen. Kahn

Sen. Lasky

Sen. Soucy

Sen. Watters

Rep. Rosenwald

Rep. Shurtleff

Rep. McConnell

Who supports the bill: Sen. Bette Lasky - District 13; Sen. Martha Hennessey - District 5; Rep. Jim McConnell - Cheshire 12; Michelle Sanborn; Diane St. Germain; Sen. Fuller Clark - District 21; Sen. Donna Soucy - District 18; Sen. Dan Feltes - District 15; John Carroll; Olivia Zink - NH Rebellion; Sen. David Watters - District 4; Sen. Jay Kahn - District 10; Rep. Martin - Hillsborough 23; Joe Magruder - Concord, NH; Rep. Cindy Rosenwald; Liz Tentarelli - Newbury League of Women Voters; Timothy McKernan - Granite State Progress; Rep. Michael Cahill; Mary Rose Deak

Who opposes the bill: None

Who is neutral on the bill: None

Summary of testimony presented in support:

Sen. Dan Feltes (Prime) – District 15: What is the purpose of a political contribution limit if you can create multiple LLC's to evade it? That's what's happening right now. We have contribution limits. They are constitutional. They are meaningless if there is a huge loophole. It's not your average Joe exploiting this loophole. It's exploited on a bipartisan basis. Both Van Ostern and Sununu used this

loophole in the last election. It ought to be closed on a bipartisan basis. Most LLCs are one or two members at most, so it's simple math for how you would attribute it. Let's say Sen. Gray LLC 1 also had Sen. Woodburn as a member. 50% would be attributed to Senator Gray and 50% would be attributed to Senator Woodburn. This also attributes upward, so you cannot create multiple LLCs to hide the fact that you are the one making the contribution. This is important for the integrity of our campaign finance laws.

Sen. Sanborn: Do you think it's a loophole if a member of a union contributes individually to a candidate and then the union itself does?

Sen. Feltes: The rational basis for the distinction is the fact that most LLCs are single member or two members. If you're part of a broad advocacy organization with thousands of members, you're not the one making that decision. It's about control and resolving an issue that exists in the law.

Sen. Sanborn: If an advocacy group spends money, at some point there is a vote to make that decision. How is that different from an individual making that decision within a legal entity? How do you account for LLCs with 50 members that would be impacted by this legislation?

Sen. Feltes: The overwhelming majority of LLCs registered with the state are single member LLCs and the remaining usually have two members. The math does not get too complicated. In broad-based advocacy organizations or corporations, most shareholders are not involved in these decisions. For a single holder LLC, they do make the decision. If we're going to give any teeth to our contribution limits, we need to address this.

Sen. Sanborn: Can't these corporations be single stockholder entities as well?

Sen. Feltes: In some cases, closed corporations might have 100% ownership, but if you're public there are sometimes hundreds of thousands of people with shares in the corporation.

Sen. Sanborn: I have been the sole member of an S Corp, so it is possible.

Sen. Feltes: I said it was legally possible, not impossible.

Sen. Woodburn: I want to disclose that I own an LLC. What else are LLCs being used for, besides real estate?

Sen. Feltes: You can create LLCs for many different reasons. Many people create them for properties that they lease to tenants. LLCs have a legal immunity function to make sure the member does not have personal liability when they are sued. The entity has liability.

Sen. Woodburn: Can you explain how other entities are impacted or regulated in terms of contributions?

Sen. Feltes: They are regulated under the same standard. Again, the vast majority of LLCs are single or two members. We've seen LLCs created to evade scrutiny in our campaign finance system. If the committee wants to put an intent feature in this legislation, I'd be interested in looking into that.

Sen. Woodburn: Should we prohibit all contributions made by political corporations in the State of New Hampshire?

Sen. Feltes: I fundamentally disagree with the Supreme Court's decision on Citizen's United; I don't think corporations or unions are people. This bill is trying to address a narrower problem that we know exists. It is trying to close a loophole. The question is: are we going to give strength to our contribution limits or not? It's not average citizens using this loophole; they're people who are well connected and well to do.

Sen. Sanborn: I want to disclose that I own several LLCs, C Corps, and S Corps, and I am a political candidate that receives contributions. I will still be participating.

Sen. Gray: I also own an LLC that owns a piece of property. I don't believe that this LLC is any more affected than any other LLC in the state, so I don't believe I need to do a declaration form on this. You stated that many people in the larger organizations aren't the decision maker. So, if I am the decision maker in some organization that will make a contribution, shouldn't I be subject to the same thing?

Sen. Feltes: Corporations are subject to disclosing who's on the committee and who's making decisions.

Sen. Gray: If I were a union member on the executive committee who makes the financial decisions, should the contributions be attributed to them?

Sen. Feltes: It's different when you have many people in an advocacy organization or corporation compared to a single member LLC.

Sen. Gray: I used to be the business manager of a union and it was the executive board, a small group of people, who made the decisions of who to contribute to. I don't see the difference between that executive board and a three or four member LLC.

Sen. Feltes: If you're going to attribute every corporation's contributions to every board member, you'll end up with some difficult math. We're trying to resolve a problem we know exists. Whether there are other campaign finance reforms you want, I'd be happy to talk about those. In terms of attribution, this bill is narrowly tailored to this problem and the math is simple.

Sen. Woodburn: Corporations have a different limit than LLCs, so they have an

advantage in terms of being able to give. Is the problem here producing multiple LLCs to create multiple contributions?

Sen. Feltes: With some exceptions, corporations and unions must comply with RSA 664:4. Because it's legally difficult, they generally don't create nested corporations. It's easier for LLCs to do that. That's why we attribute upward to get to the single member who created it.

Sen. Woodburn: Does the LLC need to have assets?

Sen. Feltes: No.

Joe Magruder – Concord, NH: I am speaking in favor of the bill. I was in the news business for many decades and now I'm an activist for big money out of politics. If we're going to change this statute to affect LLCs, why don't we do it for union boards and corporations? In theory I'm in favor of that, but it does create logistical burdens. Pop up LLCs with the sole purpose of making contributions to close elections are a known problem. This bill is a good start. I have one concern. We must go all the way to the top to these LLCs to find the individual responsible. I think the underlying problem of this is Citizens United. The Citizens United decision goes against many decades of bipartisan consensus that direct corporate involvement in elections is a bad idea, perhaps with the exception of political action committees and unions, which must disclose their donors and spending. The American people across the political spectrum are being scammed and disenfranchised and they hate the way we finance campaigns, especially on the federal level. They think elected officials work for their funders, not the voters.

Sen. Sanborn: I agree with you on much of this. I passed a bill last year for better transparency. That being said, I hear you and the prime sponsor saying "we have a problem". Do we have a problem? Is there evidence of how many LLCs were formed exclusively to donate money? I have yet to see evidence proving this issue.

Joe Magruder: I cannot speak to any specific LLCs in NH, but nationally it has been documented in news rooms. The Center for Responsive Politics has the best information on aboveboard contributions. If we don't have pop-up LLCs in NH, I'd be surprised.

Sen. Birdsell: I can talk to the Secretary of State's office to see if they have a list of these for NH.

Olivia Zink – Executive Director, NH Rebellion: I am speaking in support of this bill. We need to reduce the influence of big money in politics. In 2010, gubernatorial candidate John Stevens raised over \$100,000 from 30 LLCs at 2 addresses, one in MA and one in CT. I have his campaign finance report. On August 18th, 13 LLCs at the same address in MA gave a contribution to the candidate for 13 \$1,000 checks. According to NHPR, 30 LLCs at two different addresses gave over \$100,000 to the

candidate. In gubernatorial candidate Kevin Smith's campaign finance report he lists \$99,000 from 50 LLCs related to Dunkin Donuts franchises, and 47 with the same MA address mentioned previously. Smith also received another \$55,000 from 11 LLCs located in Newington, NH and Yonkers, NY related to Planet Fitness health clubs. Nothing in our current law prohibits multiple LLCs controlled by the same individual to donate. This is an issue on both sides of the aisle. Everyone needs to play by common sense rules and be held accountable.

Sen. Sanborn: Do you believe that LLCs are a separate legal entity from an S Corp or C Corp?

Olivia Zink: I prepared today to speak specifically about LLCs avoiding campaign limits. Whether it should be broadened is your decision as a committee.

Sen. Sanborn: The bill as drafted makes me concerned that we're discriminating against a specific entity. Do you believe that an LLC is a separate legal entity?

Olivia Zink: If we have a contribution limit of \$1,000, then that's what can be given. You shouldn't be able to create multiple entities to evade contribution limits. We need to look at how money is going into our elections to make sure that they have integrity. I do agree that we need to look at all the ways money is funneled into our campaign finance system.

Sen. Sanborn: Do you believe that anything that the government has the power to tax or regulate should also have the power to protest?

Olivia Zink: Yes, but the larger point is that individuals are using LLCs to evade contribution limits. We need to have fairness. The other option is to just eliminate that contribution limit.

Summary of testimony presented in opposition: None

Neutral Information Presented: None

Future Action: Pending

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Date Hearing Report completed: February 3, 2017