



STATE OF CALIFORNIA
Franchise Tax Board

Analysis of Original Bill

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Sponsor:

Bill Number: SB 920

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Introduced: January 23, 2018

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Related Bills: See Legislative
History

Subject: Limited Liability Partnerships & Foreign Limited Liability Partnerships/ Architects, Engineers & Land Surveyors

Summary

This bill, under the Business and Professions Code and the Corporations Code, would permanently allow architects, engineers, and land surveyors that meet specified liability insurance requirements to organize and operate as limited liability partnerships (LLP) and foreign LLPs.

This analysis only addresses those provisions of the bill that would impact the department's operations.

Recommendation – No position.

Reason for the Bill

The reason for this bill is to continue to provide architects, engineers, and land surveyors the flexibility to organize and operate as an LLP.

Effective/Operative Date

This bill would be effective January 1, 2019, and operative as of that date.

Federal/State Law

A discussion of current federal law is inapplicable because an LLP is formed under state LLP law.

Existing state law under the Business and Professions Code¹ provides that licensed engineers, land surveyors, and architects may practice as a sole proprietorship, partnership, LLP, firm, or corporation.

Existing state law under the Uniform Partnership Act (UPA)² defines “professional limited liability partnership services” as the practice of architecture, the practice of public accountancy, the practice of engineering, the practice of land surveying, or the practice of law.

Existing state law under the UPA³ defines “registered LLP” and “foreign LLP” to mean an LLP, other than a limited partnership, that engages in the practice of architecture, public accountancy, engineering, land surveying, or law.

Under existing state law, the authority to practice architecture, engineering, or land surveying as an authorized professional LLP will expire on January 1, 2019.

Existing state law⁴ imposes an annual tax in an amount equal to the minimum franchise tax (currently \$800) on every LLP organized in this state, registered with the Secretary of State (SOS), or doing business in this state. This annual tax is payable until a notice of cessation or withdrawal of registration is filed with the SOS or the LLP ceases to do business in this state, whichever is later.

This Bill

This bill, by repealing the January 1, 2019, sunset date, would permanently allow architects, engineers, and land surveyors that meet specified liability insurance requirements to organize and operate as registered LLPs and foreign LLPs.

Implementation Considerations

Implementing this bill would not significantly impact the department’s programs and operations.

Legislative History

SB 284 (Cannella, Chapter 157, Statutes of 2015), extended the sunset date to January 1, 2019, allowing licensed engineers and land surveyors to continue to organize and operate as LLPs and foreign LLPs through that date.

AB 560 (Gorell, Chapter 291, Statutes of 2011) extended the sunset date to January 1, 2019, allowing licensed architects to continue to organize and operate as LLPs and foreign LLPs through that date.

¹ Business and Professions Code sections 6738 and 8729.

² Corporations Code section 16101.

³ Corporations Code section 16101.

⁴ Revenue and Taxation Code section 17948.

SB 1008 (Padilla, Chapter 634, Statutes of 2010) authorized licensed engineers and land surveyors to organize and operate as LLPs and foreign LLPs until January 1, 2016.

AB 2914 (Leno, Chapter 426, Statutes of 2006) extended the sunset date to January 1, 2012, allowing licensed architects to continue to organize and operate as LLPs and foreign LLPs through that date.

AB 469 (Cardoza, Chapter 504, Statutes of 1998) authorized architects to organize and operate as registered and foreign LLPs until January 1, 2002.

Other States' Information

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Florida and *Michigan* provide for the formation of LLPs; however, *Florida* and *Michigan* do not specifically allow architects, engineers, and land surveyors to organize as an LLP.

Illinois, Massachusetts, Minnesota, and New York allow architects, engineers and land surveyors to organize as an LLP.

Fiscal Impact

This bill would not impact the department's costs.

Economic Impact

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of SB 920 as Introduced January 23, 2018
For Taxable Years Beginning On or After January 1, 2019
Assumed Enactment after June 30, 2018

(\$ in Millions)

| Fiscal Year | Revenue |
|-------------|---------|
| 2018-2019 | - \$1.6 |
| 2019-2020 | - \$2.9 |
| 2020-2021 | - \$3.2 |

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

The revenue loss is estimated by taking the amount of tax that would be owed by the existing LLPs under this bill less the tax the same LLPs would owe after they convert to C corporations and S corporations under current law.

It is estimated that there would be 650 architecture, engineering, and land survey LLPs in 2019 affected by this bill. It is assumed that all 650 LLPs would continue to operate as LLPs if this bill were enacted and the amount of tax owed by these LLPs and their partners is estimated to be \$4.8 million in 2019.

If this bill is not enacted, it is assumed that the LLPs would switch to either a C corporation or an S corporation and the estimated amount of tax owed by the C corporations, S corporations, and S corporation shareholders would be \$7.5 million.

The net impact of this bill is the difference between the tax due by allowing architects, engineers, and land surveyors to continue to operate as LLPs and the tax due under current law. This results in a net estimated loss of approximately \$2.7 million in 2019.

The tax-year estimates are converted to fiscal years and rounded to arrive at the amounts shown in the above table.

Support/Opposition

Support: None provided.

Opposition: None provided.

Arguments

Proponents: Some may say that this bill would provide flexibility for architects, engineers, and land surveyors by indefinitely extending the ability to organize and operate as an LLP.

Opponents: Some may argue that the indefinite extension is overly broad and would eliminate the periodic review by the Legislature.

Policy Concerns

This bill lacks a sunset date. Sunset dates generally are provided to allow periodic review of the effectiveness of a statute by the Legislature.

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