OLR Bill Analysis
sSB 641 (File 759, as amended by Senate "A")*

**AN ACT CONCERNING REVIEW OF ELECTION LAWS.**

**SUMMARY**

This bill makes various changes affecting state campaign finance laws, the Citizens’ Elections Program (CEP), and the State Elections Enforcement Commission (SEEC). A section-by-section analysis follows.

*Senate Amendment “A” replaces the original bill, which established an Election Law Revision Commission.

**EFFECTIVE DATE:** July 1, 2019, except where noted below.

**§ 1 — POLITICAL ATTRIBUTIONS**

By law, printed, video, and audio political communications must include certain attributions, known as “disclaimers.” Among other things, they must identify the person making the expenditure for the communication. The bill narrows various attribution requirements, as described below.

**Printed Communications**

Existing law generally requires printed communications, including web-based written communications, promoting or opposing a candidate or political party, to include a disclaimer. For candidate and town committees that make or incur expenditures for these communications, the bill eliminates the requirement that the communication bear the words “approved by,” together with the appropriate attribution. It retains the requirement that the communication bear the words “paid for by,” together with the appropriate attribution.

In addition, the bill specifies that if a candidate appears on a printed communication, including a web-based communication, to solicit
funds for any political or party committee, the communication need not bear on its face “paid for by” or “approved by,” as long as it does not promote or oppose a candidate’s campaign.

**Video Communications**

Existing law requires candidates, and their exploratory or candidate committees, that make or incur expenditures for television or Internet video advertising promoting or opposing a candidate, to include a disclaimer. Among other things, the disclaimer must display a clearly identifiable image of the candidate, together with a printed statement and audio message indicating that the candidate has approved the message.

The bill reduces, from four to two seconds, the required minimum length of time that a disclaimer must appear in these advertisements when the advertisement is less than 30 seconds long. Advertisements that are 30 seconds or longer must continue to show the disclaimer for at least four seconds.

**Certain Telephone Communications**

The bill specifies that telephone communications by candidates and their exploratory or candidate committees, other than calls (e.g., text messages), need not include a full disclaimer on the face of the communication. Rather, the bill requires these communications to list the candidate’s name and provide a link to a website displaying all the information that would otherwise be required in the disclaimer.

**Social Media**

The bill authorizes certain committees that make expenditures for images featured on social media, promoting or opposing a candidate, to provide a link to a website displaying all the information that would otherwise be required in the disclaimer, rather than including a full disclaimer on the face of the image. The authorization applies to candidate and exploratory committees, party committees, and legislative caucus and legislative leadership committees.

**§ 2 — CAMPAIGN FINANCE DEFINITIONS**
Under existing law, there is a rebuttable presumption that an expenditure is not independent if, among other things, it is made by an individual who, during the same election cycle, is serving or has served in the following roles:

1. campaign chairperson, treasurer, or deputy treasurer of a candidate committee, political committee (PAC), or party committee benefitting from the expenditure or

2. any other executive or policymaking position of a candidate committee, party committee, or PAC.

The bill defines “election cycle” for these purposes as starting on January 1st of the year in which a regular election is held and ending the day after the regular election.

§ 3 — CAMPAIGN FINANCE STATEMENTS

Under current law, candidate committees for municipal office candidates must file their campaign finance statements with their town clerk. For those candidates running for chief executive officer in municipalities with a population of 75,000 people or more, the bill requires that the statements instead be filed with SEEC.

§§ 4-5, 9, 17-18, 20 & 24 — CITIZENS’ ELECTION PROGRAM

Qualifying Contributions (§§ 4 & 5)

By law, candidates qualify for the CEP by raising an aggregate amount of qualifying contributions (QCs). In order for a contribution to be accepted as a QC, it must come from an individual donor and meet certain other criteria.

Currently, when candidate committees receive contributions that do not meet the criteria for QCs, treasurers have the option of returning them to the contributor or transmitting them to SEEC for deposit in the Citizens’ Election Fund (CEF). The bill eliminates the latter as an option, thus requiring treasurers to return these contributions to the contributor.

In addition, the bill establishes a procedure under which
contributions that are submitted as part of a CEP grant application, but rejected by SEEC because they do not meet the QC criteria, may be returned to the contributor, transmitted to the CEF, or donated to a 501(c)(3) tax exempt charitable organization. Currently SEEC transmits these contributions to the CEF.

Under the bill, if SEEC receives a contribution as part of a grant application that does not meet the QC criteria, it must (1) advise the applicant of its determination and (2) cite the applicable statutory reason for the determination. After receiving such advice, the treasurer may opt for SEEC to deposit the contribution in the CEF or return it to the candidate committee. If the treasurer opts for the latter, the bill authorizes the treasurer to either return the contribution to the contributor or donate it to a 501(c)(3) tax exempt charitable organization.

If SEEC deems a contribution as non-qualifying, the bill prohibits this determination from constituting grounds for any action, including a complaint SEEC investigates or any other investigation it initiates against the (1) contributor for making the contribution, or (2) treasurer, chairperson, candidate, or other person associated with the candidate committee for receiving the contribution.

By law and unchanged by the bill, the following contributions must not be deemed QCs:

1. contributions from a principal of a state contractor or prospective state contractor;
2. contributions of less than $5;
3. contributions of $5 or more from individuals who do not provide their full name and complete address;
4. contributions from out-of-state residents to candidates for statewide office, in excess of the applicable limit on out-of-state contributions; and
5. contributions from youth younger than age 12 (CGS § 9-704(e)).
Use of Personal Funds for Campaign Training (§ 9)

The bill specifies that any personal funds a CEP candidate spends to receive campaign training before or upon becoming a candidate (under the bill’s expenditure exemption, see below) do not count toward the CEP’s personal funds limit (e.g., $2,000 for candidates for state senator; $1,000 for candidates for state representative).

Grant Applications (§§ 17 & 18)

Application Submission and Review Deadlines. Under current law, participating CEP candidates may apply for a primary or general election grant by 5:00 pm each Wednesday beginning with the third Wednesday in May. (They may also apply by 5:00 pm on the fourth to last Friday before the applicable primary or election, which is the final deadline for submitting a grant application.)

The bill instead allows participating candidates to apply (1) beginning with the first Wednesday in May and (2) also apply by 5:00 pm on any subsequent Thursday or Friday, until the fourth to last Friday before the applicable primary or election.

Under existing law unchanged by the bill, SEEC generally must determine whether to approve or disapprove a grant application within five business days of receipt for legislative candidates and 10 business days for statewide candidates.

Review Procedures. The bill requires SEEC to meet three times weekly from the third week in June until the third week of July in even-numbered years, rather than the twice weekly during this timeframe as current law requires. It also requires the commission to prioritize grant applications in the order received.

Additionally, the bill allows SEEC to review applications remotely, including by telephone or web-based means.

Pre-Approval of Grant Applications. The bill allows CEP candidates, for the purpose of receiving pre-approval of a grant application, to apply to SEEC for a primary or general election grant in advance of the above schedule. It similarly allows SEEC to review and
pre-approve grant applications but specifies that payment of the grant remains contingent on the candidate meeting existing law’s ballot access requirements.

**Supplemental Campaign Finance Statements (§ 20)**

By law, the treasurer of a candidate committee in a primary or general election with at least one candidate participating in the CEP must file supplemental weekly campaign finance statements with SEEC according to a specified schedule. Treasurers of participating candidate committees must also file an excess expenditure declaration if they make or obligate to make expenditures that, in the aggregate, exceed CEP’s limits for a primary or general election campaign period.

The bill prohibits SEEC from imposing a penalty on a treasurer the first time he or she misses a filing deadline for such statements or declarations. It specifies that a second failure to file is subject to current law’s penalty for the first failure to file (i.e., a civil penalty of up to $1,000). As under existing law, subsequent failures are subject to a civil penalty of up to $5,000.

**Permissible Expenditures (§ 24)**

The bill authorizes candidate committees that have qualified for a CEP grant, to make de minimis expenditures to use a social media account, website, or e-mail or message accounts, systems, programs, or contact lists in order to solicit contributions for the benefit of a legislative caucus, legislative leadership, or party committee.

**Replacement Candidates (§ 24)**

Under the CEP currently, candidates for state senator or state representative who replace grant-approved, nominated candidates (i.e., those who withdraw, die, or become disqualified) need not collect QCs in order to receive a grant.

The bill requires these replacement candidates to instead collect signatures, equal to the number of QCs they would have otherwise been required to collect, from electors residing in municipalities included (in whole or in part) in their district, as follows:
1. 300 signatures for state Senate candidates and
2. 150 signatures for state House candidates.

§§ 6 & 13 — ELECTION LAW COMMISSIONS
The bill establishes (1) an ongoing Election Law Review Commission to review state election laws and (2) a temporary Commission for the Revision of Election Laws, generally to recommend changes to such laws.

Election Law Review Commission (§ 6)

Membership and Meetings. Under the bill, the five-member Election Law Review Commission consists of the:

1. House speaker and Senate pro tempore;
2. House and Senate minority leaders; and
3. secretary of the state, or her designee.

The bill requires the Senate president pro tempore and House speaker to serve as the chairpersons. A majority of the membership constitutes a quorum, and all commission actions require an affirmative vote of a majority of the full commission membership. The commission must meet as often as is necessary to perform its duties.

Duties and Reporting. The bill requires the Election Law Review Commission to review state election laws, including those on the following:

1. joint campaigning by candidates for governor and lieutenant governor for a party’s nomination;
2. the timing and process for holding conventions to endorse, and primaries to nominate, candidates;
3. the criteria for including voting districts in post-election audits; and
4. using electronic devices (e.g., electronic poll books) in polling
places to assist official checkers in checking the names of electors seeking to vote.

By February 15, 2020, and annually thereafter, the commission must submit a report to Government Administration and Elections (GAE) Committee and include legislative recommendations.

**Commission for the Revision of Election Laws (§ 13)**

**Membership and Meetings.** The 18-member Commission for the Revision of Election Laws consists of the following nine ex-officio members, or their designees:

1. House speaker and Senate president pro tempore,
2. House speaker Senate minority leaders,
3. secretary of the state, and
4. chairpersons and ranking members of the GAE Committee.

(If the GAE Committee co-chairpersons or ranking members designate someone to sit in their place, they must choose from among the committee membership.)

Under the bill, the commission also has nine appointed members. The Senate president pro tempore and House speaker each appoint two members; the secretary of the state appoints five members who must have election administration experience. Appointed members serve for two-year terms or until a successor is appointed, and the secretary of the state fills any vacancy for the unexpired portion of the term. Members may serve successive terms. The commission must elect one of its members to serve as chairperson.

**Duties and Reporting.** Under the bill, the commission must do the following:

1. recommend changes in Title 9 of the General Statutes as it deems necessary to modify or eliminate antiquated and inequitable laws and bring the title into harmony with modern conditions;
2. recommend the express repeal of Title 9 provisions repealed by implication or held unconstitutional by the Connecticut Supreme Court or any federal court;

3. assist the GAE Committee and other commissions or groups appointed by the governor or General Assembly to study state election law;

4. conduct public hearings or community forums to educate the public about the need for revising state election law revision, giving the public an opportunity to be heard; and

5. organize and conduct meetings within the state for scholarly discussion of current problems in election law, bringing together representatives of the legislature, practicing attorneys, members of the bench and bar, and representatives of the law teaching profession.

The bill requires the commission to report to the General Assembly by February 1, 2020, and January 5, 2021. The commission terminates on July 1, 2021.

§§ 7 & 8 — CONTRIBUTION AND EXPENDITURE EXEMPTIONS

Generally, state law subjects contributions to, and expenditures by, candidate committees, party committees, and political committees to campaign finance reporting requirements. Exempted items or services need not be reported as contributions or expenditures.

The bill adds new exemptions to current law’s definitions of contribution and expenditure, as described below. It also makes technical changes, including conforming the expenditure exemption for endorsement communications to the parallel contribution exemption for these communications (CGS 9-601a(b)(22) & (23)). It thus clarifies that the (1) expenditure exemption applies when the endorsed candidate or his or her committee pays for the communication and (2) expenditure is on behalf of the candidate or committee paying for the communication.
EFFECTIVE DATE: July 1, 2019, and applicable to actions pending on or filed on or after July 1, 2019

Head of Party Communications

The bill exempts as a contribution to candidates for governor or U.S. President, a communication that (1) refers to a clearly identified candidate for governor or U.S. President and (2) is paid for by a candidate for nomination or election to any other office, or by such a candidate’s committee (hereafter, “head of party communication”). Under the bill, these head of party communications are considered a contribution to any other candidate for statewide, legislative, or municipal office who appears or is referenced in the communication.

The bill creates a parallel expenditure exemption for head of party communications. Under the bill, these communications are considered expenditures to the extent that they refer to any other statewide, legislative, or municipal office candidate.

The bill’s head of party contribution and expenditure exemptions apply to communications that (1) refer to one or more clearly identified candidates and (2) are broadcast by radio, television (other than on a public access channel), or satellite communication or via the Internet, or as a paid-for telephone communication, or that appear in a newspaper, magazine, or on a billboard, or that are sent by mail.

Campaign Training Events Provided by Party Committees

The bill exempts, from the definitions of contribution and expenditure, campaign training events and materials provided to multiple people by a party committee, up to $6,000 in the aggregate in a calendar year.

Solicitations for Online Contributions

The bill exempts, from the definition of expenditure, Internet solicitations for contributions to any committee (i.e., candidate or party committee or PAC). It specifies that any such online contribution is still considered an expenditure on the part of the person making the contribution.
§§ 10 & 11 — COMPLAINTS FILED WITH SEEC

Receipt of Complaints (§ 10)

By law, SEEC staff must conduct and complete a preliminary examination of a complaint within 14 days after receiving it. At that time, commission staff must do one of the following:

1. dismiss a complaint that fails to allege, with supporting evidence, a substantial violation of state election law;

2. attempt to speedily resolve a complaint about a de minimus violation by engaging the respondent in discussions; or

3. investigate and docket the complaint for a probable cause determination by the commission.

Additionally, staff must docket a complaint for a probable cause determination by the commission for any complaint they are unable to resolve within 45 days after receipt.

The bill requires SEEC staff, when investigating and docketing complaints for probable cause determinations, to prioritize them in the order received. For complaints that commission staff dismiss, the bill requires that the statement required under current law (1) be provided to the complainant and respondent only and (2) remain confidential unless otherwise requested by the respondent. (By law, this statement must briefly set forth the reasons for the dismissal.)

Confidentiality of SEEC Investigations (§ 11)

Under current law, SEEC members and staff, unless requested otherwise by specific parties (e.g., the chairperson of a respondent committee), must keep confidential any information concerning a complaint or preliminary investigation until the commission determines it is necessary to investigate a violation. The bill instead (1) requires confidentiality until SEEC makes a probable cause determination and (2) makes information about an investigation (not just a preliminary investigation) confidential.

Under the bill, if SEEC determines that no probable cause exists, the
complaint and investigation record must remain confidential except upon the respondent’s request. The bill prohibits the disclosure to a third party of any information learned from the investigation that the disclosing party would not have otherwise known, including knowledge of the complaint’s existence. The prohibition applies to SEEC members and staff and complainants, respondents, witnesses; or treasurers, deputy treasurers, candidates, or chairpersons associated with a committee that is the subject of a complaint.

Under the bill, if SEEC determines that probable cause exists for a violation, then it must make public the investigation’s record.

§§ 12 — POST-ELECTION AUDITS

The bill limits SEEC’s post-election audits of statewide and legislative office candidate committees to financial records required to show that vendor payments were properly made. The bill specifies that these records include books, financial statements, invoices, and checks.

By law, SEEC must audit all statewide office candidate committees after a primary or election. It cannot audit more than 50% of legislative candidate committees and must notify those committees of the audit no later than May 31 of the year following the election.

§§ 14-16 — DECLARATORY RULINGS ISSUED BY SEEC

The Uniform Administrative Procedure Act (UAPA) allows state agencies to issue declaratory rulings concerning the (1) validity of any regulation or (2) applicability to specified circumstances of state law, regulations, or any final decision on a matter within the agency’s jurisdiction. Under current law, such rulings are not considered state agency regulations.

The bill instead deems declaratory rulings issued by SEEC as regulations. (Presumably this applies to rulings issued on or after the bill’s effective date.) Among other things, this means that, before taking effect, they must be (1) approved by the legislative Regulation Review Committee and (2) published by the secretary of the state on
the eRegulations System (see BACKGROUND).

Under the bill, before a SEEC declaratory ruling takes effect, the commission must adopt it as a regulation under the UAPA. Within 60 days after receiving a petition for a declaratory ruling, SEEC must publish on the eRegulations system a notice of intent to adopt the ruling as a regulation.

The bill specifies that declaratory rulings issued by SEEC are not subject to certain deadlines in the UAPA associated with declaratory rulings (e.g., that they must be issued within 180 days after the agency receives a petition, or a longer period that the parties agree to).

EFFECTIVE DATE: October 1, 2019

§ 19 — CONTRIBUTOR CERTIFICATIONS

By law, persons that make certain political contributions must include with the contribution a certification that they are not prohibited from making the contribution. This requirement applies to contributions exceeding $50, separately or in the aggregate, to (1) exploratory and candidate committees for statewide and legislative office, (2) any PAC authorized to make contributions to such candidates or committees, or (3) any party committee.

The bill specifies that this certification constitutes prima facie evidence that the person is not prohibited from making the contribution.

§ 21 — APPOINTMENT OF SEEC EXECUTIVE DIRECTOR

Beginning January 15, 2021, the bill requires SEEC to employ an executive director for a term not to exceed four years. At the conclusion of the term, SEEC may reemploy the director for an additional four years. Currently, SEEC employs an executive director and general counsel, who is in the classified state service.

The bill requires SEEC, within 30 days after each employment or reemployment, to submit a report to the GAE Committee concerning the commission’s and executive director’s performance during his or
her immediately preceding term.

§ 22 — SPOUSES OF COMMUNICATOR LOBBYISTS SERVING AS CANDIDATE COMMITTEE TREASURERS

The bill allows spouses of communicator lobbyists to knowingly solicit certain contributions and ad book purchases (see below) if the spouse is (1) a member of a constitutional officer’s staff or employed by a legislative caucus and (2) designated as a candidate committee treasurer or deputy treasurer and acting in the course of his or her duties as treasurer or deputy treasurer. The provision applies to knowing solicitations from certain people associated with their client lobbyists (i.e., boards of directors, owners of at least 5% interest in the lobbying entity, employees, and partners)

The bill similarly allows such spouses to bundle contributions to a candidate committee in the course of his or her duties as treasurer or deputy treasurer. By law, bundling is the (1) forwarding of five or more contributions to a single committee by a communicator lobbyist, his or her agent, or immediate family member or (2) raising of contributions for a committee at a fundraising affair held, sponsored, or hosted by a communicator lobbyist, his or her agent, or immediate family member (CGS § 9-601(27)).

§ 23 — EXPENSE SHARING BY COMMITTEES

The bill specifies that a candidate who appears on a printed communication, including a web-based communication, to solicit funds for any political or party committee is not required to pay or reimburse the committee for its pro rata share of the expenses, as long as the communication does not promote or oppose a candidate’s campaign.

BACKGROUND

Regulation Adoption Process

The regulation-adoption process is governed by the UAPA and generally includes (1) notice by the agency of its intent to adopt regulations, (2) a public comment period, (3) review of the proposed regulation by the attorney general for legal sufficiency, (4) submission
by the agency of the proposed regulation to the Regulation Review Committee for approval, and (5) submission by the agency of the committee-approved regulation to the secretary of the state for posting on the eRegulations System. The UAPA establishes procedural requirements and deadlines (some of which the committee may extend) for each stage of the process. It also requires agencies to (1) analyze a proposed regulation’s impact on small businesses in Connecticut and (2) maintain an official regulation-making record (CGS §§ 4-166 to 4-176).

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 15  Nay 0  (04/01/2019)