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## OLR Bill Analysis

### SB 431

#### ***AN ACT CONCERNING REFERENDA, INDEPENDENT EXPENDITURES AND CERTAIN OTHER POLITICAL SPENDING.***

#### **SUMMARY**

This bill changes laws affecting campaign finance and elections. Principally, it does the following:

1. prohibits foreign nationals from making contributions or expenditures under the state's campaign finance laws (§§ 1 & 17);
2. codifies "independent expenditure political committee" (known as an IE-only PAC) as a type of political committee (PAC) and requires IE-only PACs to register with the State Elections Enforcement Commission (SEEC) (§§ 1-3, 6-7 & 9-15);
3. classifies referendum PACs as IE-only PACs and makes conforming changes (§ 15);
4. expands IE disclosure requirements (§ 4);
5. increases the maximum penalties for failing to file IE reports (§ 4);
6. modifies PAC registration requirements, including expanding the contents of the registration statement (§ 5);
7. eliminates aggregate individual contribution limits to certain committees (§ 8);
8. expands disclaimer requirements for referenda and party candidate listings (§ 16); and
9. narrows the circumstances under which SEEC must dismiss a complaint within one year after receiving it (§ 18).

The bill also makes minor, technical, and conforming changes.

EFFECTIVE DATE: Upon passage, except that the provisions on SEEC complaints are effective July 1, 2022.

## **§§ 1 & 17 — FOREIGN NATIONALS**

Federal law generally prohibits foreign nationals from making contributions, donations, or IEs in connection with federal, state, or local elections (see BACKGROUND). The bill explicitly prohibits foreign nationals (as defined in the bill, see below) from making contributions (or expressly or impliedly promising to do so) or expenditures that are subject to the state's campaign finance laws. It similarly prohibits a person from soliciting, accepting, or receiving a contribution or covered transfer from a foreign national. By law, a “covered transfer” is, with certain exceptions, any donation, transfer, or payment of funds by a person to a recipient that (1) makes IEs or (2) transfers funds to another person that makes IEs (CGS § 9-601(29)).

The bill’s prohibitions expand upon those in federal law by, among other things, explicitly applying them to referenda. The bill also subjects additional persons to the prohibitions by defining “foreign national” for purposes of state campaign finance laws more broadly than federal law does (see BACKGROUND).

### **Definitions (§ 1)**

**Foreign National.** Under the bill, “foreign national” includes (1) a foreign principal (as defined in federal law, see below) and any agent or segregated fund of the principal; (2) an individual who is not a U.S. citizen or national or lawfully admitted for permanent residence; and (3) certain entities with foreign owners (see below).

Under the bill, a “foreign owner” is an entity in which a foreign national holds, owns, controls, or otherwise has directly or indirectly acquired beneficial ownership of at least 50% of the total equity or outstanding voting shares, other than interests held in a widely held, diversified fund (i.e., a pooled investment that, among other things, has at least 100 investors, with no investor able to exercise control over the

investment's financial interests).

The bill deems an entity to be a foreign national if it meets any of the below criteria:

1. one "foreign owner" or "foreign national" (as described above) holds, owns, controls, or has directly or indirectly acquired beneficial ownership of at least 5% of the total equity or outstanding voting shares;
2. multiple foreign owners or nationals hold, own, control, or have directly or indirectly acquired beneficial ownership of at least 20% of the total equity or outstanding voting shares, other than interests held in a widely held, diversified fund (as described above);
3. any foreign owner or national directly or indirectly participates in decisions to engage in any activity subject to state campaign finance laws, including the Citizens' Election Program; or
4. (a) at least 20 % of the organization's income in the most recent taxable year is from one or more foreign owners and (b) the organization is a tax-exempt 501(c)(4) entity.

***Foreign Principal.*** Under federal law, "foreign principal" (deemed to be a foreign national under the bill) includes the following:

1. a government of a foreign country and a foreign political party;
2. a person outside of the United States unless it is established that the person is (a) an individual and a U.S. citizen domiciled within the United States or (b) not an individual, has its principal place of business in the United States, and is organized under, or created by, the United States, a state, or other place subject to U.S. jurisdiction;
3. a partnership, association, corporation, organization, or other combination of persons organized under the laws of, or having its principal place of business in, a foreign country (22 U.S.C. §

611(b)).

### **§§ 1-3, 6-7 & 9-15 — IE-ONLY PACS**

The law authorizes persons (including individuals, entities, and committees) to make unlimited IEs and defines “independent expenditure” as an expenditure made without the consent, coordination, or consultation of a (1) candidate or candidate’s agent, (2) candidate committee, (3) PAC, or (4) party committee.

The bill codifies “independent expenditure political committee” (known as an IE-only PAC) as a type of PAC under Connecticut’s campaign finance laws and, like other committees that make IEs, requires their registration with SEEC. It defines them as PACs that make only (1) IEs and (2) contributions to other IE-only PACs (see BACKGROUND). It also allows these PACs to (1) coordinate with other IE-only PACs to make IEs and (2) make donations to tax-exempt 501(c)(3) (nonprofit) and 501(c)(19) (veterans) organizations and refund contributor contributions.

The bill makes several conforming changes, including specifying that (1) individuals, business entities, and labor unions may make contributions to IE-only PACs and (2) various types of IE-only PACs, such as those formed for a single election or primary, may not make contributions except to other IE-only PACs (see BACKGROUND). It also classifies referendum PACs as IE-only PACs.

#### ***Lawful Purposes (§ 6)***

The bill defines “lawful purposes of the committee” for IE-only PACs as promoting the following:

1. a political party,
2. the success or defeat of candidates for nomination or election to a public office or position regulated by state campaign finance laws, or
3. the success or defeat of referendum questions.

Existing law generally allows PACs to pay specific expenses to accomplish their lawful purposes.

### ***Surplus Distributions (§ 7)***

By law, candidate committees and PACs, other than exploratory committees or PACs organized for ongoing political activities, must generally spend or distribute surplus funds (1) within 90 days after (a) a primary when a candidate loses or (b) an election or referendum not held in November or (2) by March 31 following an election or a referendum held in November.

The bill establishes a surplus distribution procedure for IE-only PACs, other than those formed for ongoing activities. Specifically, it requires them to distribute surplus funds, according to the schedule outlined above, to (1) their contributors, on a prorated basis; (2) state or municipal governments or agencies; or (3) tax-exempt 501(c)(3) and 501(c)(19) organizations.

The bill eliminates provisions in current law that establish permissible surplus distributions for referendum PACs and instead subjects them to the bill's procedure for IE-only PACs.

### ***Referendum PACs (§ 15)***

The bill classifies referendum PACs as IE-only PACs and makes conforming changes. Specifically, it allows any person to establish an IE-only PAC for a single referendum question or multiple questions submitted to a vote on the same day. Under the bill, the committee may make IEs only for these purposes.

## **§ 4 — REPORTING IEs AND COVERED TRANSFERS**

By law, persons must disclose information about IEs they make that exceed \$1,000 in the aggregate by filing certain reports. A "person" is an individual, committee, firm, partnership, organization, association, syndicate, company trust, corporation, limited liability company, or any other legal entity (other than the state or its political or administrative subdivisions) (CGS § 9-601(10)).

The bill does the following:

1. changes the period during which IE disclosure reports are subject to a 24-hour electronic filing deadline;
2. expands disclosure requirements for persons that make IEs without forming a PAC (known as “incidental spenders”) and for IE-only PACs; and
3. conforms law with practice by requiring that, to disclose IEs, (a) incidental spenders use SEEC’s long- and short-form reports and (b) PACs, including IE-only PACs, use SEEC’s campaign finance forms for PACs formed in Connecticut.

As under existing law, IEs made for or against (1) statewide office or legislative candidates, or statewide referenda, must be filed with SEEC and (2) municipal office candidates or municipal referenda must be filed with town clerks.

#### ***Twenty-four Hour Report Filing Deadline***

Under current law, a person must electronically file a disclosure report within 24 hours after making or obligating to make an IE that (1) is made or obligated during a primary or general election campaign and (2) promotes the success or defeat of a statewide office or legislative candidate.

The bill instead applies the 24-hour electronic filing requirement to these IEs made or obligated to be made during the period (1) beginning June 1 in a regular election year or, in the case of a special election for state senator or state representative, the day the governor issues writs of election and (2) ending on the day after the primary or general election for which the IE is made or incurred. In the case of a special election, a person that makes or obligates to make an IE that exceeds \$1,000 in the aggregate before the governor issues the writs must electronically file the IE report within 24 hours after the governor issues the writs.

Additionally, the bill applies the 24-hour reporting requirement to IEs within this timeframe that promote the success or defeat of a referendum question proposing a constitutional amendment,

convention, or revision.

For any other IEs (those not subject to 24-hour reporting requirements), the bill requires that IE reports be filed according to the same schedule as the periodic statements filed by PACs.

***Disclosures by Incidental Spenders***

Existing law requires persons, other than PACs (as discussed above), to disclose information about IEs they make using SEEC's long- and short-form reports (i.e., SEEC Form 26) (see BACKGROUND). The bill adds to the information that these IE-makers must disclose in these reports.

Under the bill, they must additionally disclose the following in the long-form report:

1. the name of the human being who had direct, extensive, and substantive decision-making authority over the IE being disclosed, as well as his or her mailing address, telephone number, and e-mail;
2. a certification that the person making the IE is not a foreign national (see FOREIGN NATIONALS above);
3. for the person making or obligating to make the IE, a statement indicating if the person files a report with the Federal Election Commission (FEC), IRS, or any similar out-of-state agency, and identifying information under which the filing is made;
4. generally, any street address that differs from any mailing address required by the form; and
5. for a referendum, its date, the question's text, and whether the IE supported or opposed it.

Under the bill, the short-form report must additionally disclose, for a referendum, the question's text and an allocation of the expenditure in support or opposition to it.

***Disclosing Covered Transfers.*** As part of both the long- and short-form reports, the law requires a person to disclose the source and amount of any covered transfer of \$5,000 or more, in the aggregate, it received during the 12 months before the applicable primary or election if the IE (for which the report is being filed) is made or obligated to be made 180 or less days before the primary or election. The bill extends the requirement to covered transfers made to promote or oppose a referendum question proposing a constitutional amendment, convention, or revision.

The law exempts from this disclosure requirement a person that discloses the source and amount of a covered transfer in a report it files with the FEC or the IRS, as long as the person includes a copy of the report in the statement it files with SEEC. The bill extends the exemption to persons that include in their IE reports information sufficient for SEEC to find their FEC or IRS filing. The bill also extends this exemption to apply to similar out-of-state agency reports.

Under current law if a person makes the IE from a dedicated IE account, the IE report and disclaimer (see below) may include only persons who made covered transfers to it directly. The bill requires that the report and disclaimer include this information but removes a provision limiting it to only this information.

### ***Penalties for Failure to File an IE Report***

The bill increases the maximum civil penalties SEEC may impose for failure to file certain required IE reports. It also subjects IEs that support or oppose referendum questions to these penalties.

Specifically, existing law allows SEEC to impose a maximum penalty of \$10,000 for failure to file more than 90 days before a primary or general election. The bill extends this penalty and the penalties described below to IEs that support or oppose a referendum.

For failure to file in 90 days or less before a primary or general election, SEEC may currently impose a maximum penalty of \$20,000. The bill instead allows SEEC to impose a penalty of up to \$20,000 or



twice the amount of any unreported IE, including for a referendum, whichever is greater.

Currently, a knowing and willful failure to file an IE report is punishable by a fine of up to \$50,000. The bill instead allows SEEC to impose a civil penalty of up to \$50,000 or 10 times the amount of any unreported expenditure, whichever is greater.

In addition, the bill establishes personal liability for a civil penalty that remains unpaid after the latter of one year after the date when (1) SEEC imposed it or (2) a final judgment is issued following any judicial review of SEEC's action. Specifically, the bill makes the following individuals personally liable:

1. in the case of a committee, the chairperson and any officer or
2. in the case of a person other than a committee, (a) the CEO, CFO, or equivalent; (b) any other officer; and (c) any manager who had direct, extensive, and substantive decision-making authority over the IE or IEs made or obligated to be made.

## **§ 5 — PAC REGISTRATIONS**

By law, most PACs must register with SEEC and designate a treasurer; they may also designate a deputy treasurer. The registration statement must include, among other things, the committee's name and purpose.

The bill expands the required contents of the PAC registration statement. Under the bill, if a committee files a report with the FEC, IRS, or similar out-of-state agency, the bill requires that the statement include identifying information under which those filings are made.

In addition, if a committee is established or controlled by a person or individual acting as an agent for the person, the statement must indicate the person's name. If a committee is established or controlled by a person other than a human being, the statement must indicate the name of the CEO or an equivalent and a certification that he or she is not a foreign national (as defined by the bill). Current law requires only that

a PAC established by a business entity or organization (i.e., a labor union) indicate the name of the entity or organization.

## **§ 8 — AGGREGATE CONTRIBUTION LIMIT FOR INDIVIDUALS**

State law generally limits the amount that individuals may contribute to a specific candidate committee, party committee, or political committee. Additionally, current law prohibits an individual from contributing more than \$30,000 in the aggregate during a single primary and election to (1) candidate committees, (2) exploratory committees, and (3) slate committee for justice of the peace (in a primary). The bill removes this limit, thus allowing individuals to make unlimited aggregate contributions to these committees (see BACKGROUND).

## **§ 16 — POLITICAL ATTRIBUTIONS**

### ***Disclaimer Exceptions***

By law, printed, video, and audio political communications (both IEs and non-IEs) must include certain attributions, known as “disclaimers.” Among other things, they must identify the person making the expenditure for the communication.

The bill exempts from the law’s IE disclaimer requirements (1) editorials, news stories, or commentaries published independently and without compensation in any newspaper, magazine, or journal; (2) banners; (3) political paraphernalia, including pins, buttons, badges, emblems, hats, or bumper stickers; or (4) signs with a surface area of not more than 32 square feet. These communications are already exempt from the disclaimer requirements that the law establishes for non-IE spending.

### ***Referenda***

Under current law, only the disclaimer requirements for printed communications apply to expenditures made for a referendum. The bill extends, to IEs promoting a referendum question’s success or defeat, existing law’s disclaimer requirements for IEs made for video and audio communications and telephone calls applicable to elections and primaries. Generally, each of these disclaimers must (1) include the name of the IE-maker and a statement that the expenditure was made

independent of any candidate or political party and (2) state that additional information about the IE-maker is available on SEEC's website.

Additionally, communications made within 90 days before the primary or election must also state the names of the five persons that made the five largest covered transfers to the IE-maker, in the aggregate, during the 12 months immediately preceding the referendum. As under existing law for other communications, these disclaimers for referendum IEs may omit any person that made covered transfers to it of less than \$5,000, in the aggregate, during the 12 months immediately preceding the referendum.

### ***Party Candidate Listings***

Current law requires that party committees (i.e., state central and town) use the appropriate disclaimer in any print, television, or social media promotion of a slate of candidates (disclaimers by individual candidates are not required). The bill expands the disclaimer to cover organization expenditures for party candidate listings and extends it to legislative caucus and legislative leadership committees, as well as party committees.

By law, a "party candidate listing" is a communication that (1) lists the name or names of candidates for election; (2) is distributed through public advertising (e.g., cable television, newspapers, or similar media), direct mail, telephone, electronic mail, publicly accessible Internet sites, or personal delivery; and (3) is made to promote the success or defeat of a candidate or slate of candidates seeking nomination or election, or to aid or promote the success or defeat of a referendum question or a political party. The communication cannot be a solicitation for or on behalf of a candidate committee.

## **§ 18 — SEEC INVESTIGATIONS**

By law, SEEC receives complaints from the secretary of the state, registrars of voters, town clerks, and individuals under oath about alleged election law violations. It investigates and holds hearings as it deems appropriate (CGS § 9-7b(a)(1)). The bill narrows the

circumstances under which SEEC must dismiss a complaint within one year after receiving it.

***Time Limit***

Currently, SEEC must dismiss a complaint it receives on or after January 1, 2018, if it does not issue a final decision on it within one year after receiving the complaint. However, the deadline must be extended if specified actions delay the final decision’s issuance.

The bill relaxes this requirement for SEEC complaints received on or after July 1, 2022. It instead requires the commission to dismiss after one year any complaint for which it has not (1) found reason to believe a state election law violation occurred and (2) initiated a contested case proceeding.

The bill also (1) requires that the deadline for making this finding be extended for the same reasons that the final decision deadline must be extended under current law and (2) establishes additional reasons for extending this deadline. As under current law, the one-year deadline must be extended by the length of the delay.

***Extensions***

Under current law, the one-year deadline for SEEC to issue a final decision must be extended if its issuance is delayed for any of the following reasons:

1. extension or continuance granted to a respondent by SEEC or its staff before issuing the decision;
2. issuance of a subpoena in connection with the complaint;
3. litigation in state or federal court related to the complaint; or
4. consultation with the chief state’s attorney, attorney general, U.S. Department of Justice, or U.S. attorney for Connecticut.

The bill similarly requires an extension, for these same reasons, of the one-year deadline for finding reason to believe that an election law violation occurred and initiating a contested case. (SEEC regulations

generally prohibit the commission from proceeding with a contested case unless it finds, by a majority vote of a quorum, reason to believe that a violation occurred (Conn. Agencies Regs., § 9-7b-35).)

The bill also requires an extension if the finding and commencement are delayed because of an investigation by SEEC or its staff involving a potential (1) IE violation or (2) state election law violation by a foreign national (as defined in the bill, see above).

## **BACKGROUND**

### ***Aggregate Contribution Limits***

In *McCutcheon et al. v. Federal Election Commission*, 134 S. Ct. 1434 (2014), the U.S. Supreme Court held that aggregate limits on contributions by individuals to federal candidates, political parties, and PACs were unconstitutional under the First Amendment.

In Advisory Opinion 2014-03, SEEC announced that, unless it received further guidance from the legislature or a court of competent jurisdiction, it would no longer enforce current law's \$30,000 aggregate limit on contributions by individuals during a single primary and election to (1) candidate committees, (2) exploratory committees, and (3) slate committees for justice of the peace (in a primary).

### ***Foreign Nationals and Related Federal Law***

***Foreign Nationals.*** Federal campaign finance law defines a "foreign national" as any of the following:

1. a government of a foreign country and a foreign political party;
2. a person outside of the United States unless it is established that the person is (a) an individual and a U.S. citizen domiciled within the United States or (b) not an individual, has its principal place of business in the United States, and is organized under, or created by, the United States, a state, or other place subject to U.S. jurisdiction;
3. a partnership, association, corporation, organization, or other combination of persons organized under the laws of, or having

its principal place of business in, a foreign country; or

4. an individual who is not a U.S. citizen or national and is not lawfully admitted for permanent residence (52 U.S.C. § 30121(b) and 22 U.S.C. § 611(b)).

***Prohibited Activities.*** Federal law prohibits a foreign national from, among other things, directly or indirectly making:

1. in connection with a federal, state, or local election, a contribution or donation of money or anything of value; an express or implied promise to make a contribution or donation; or an expenditure or IE; or
2. a contribution or donation to a federal, state, or local political party's committee.

It similarly prohibits a person from soliciting, accepting, or receiving any contribution or donation described above from a foreign national (52 U.S.C. § 30121 and 11 C.F.R. § 110.20).

***2021 FEC Ruling.*** In 2021, the Federal Elections Commission (FEC) dismissed a complaint alleging that foreign nationals made prohibited contributions opposing a ballot initiative in Montana. In doing so, the commission concluded that spending related to referenda and other issue-based ballot measures is outside of federal law's purview because it is not in connection with an election (i.e., a regular or special election, primary, runoff, or a party convention or caucus). It noted that federal law applies to spending on ballot measures only if the measure is inextricably linked with the election of any candidate (FEC, MUR 7523 Stop I-186).

### ***IE-Only PACs***

In Declaratory Ruling 2013-02, SEEC ruled that, in light of a line of cases ruling that contribution limits to IE-Only PACs are unconstitutional, it would no longer enforce contribution limits to PACs that receive and spend funds only for IEs unless it received further guidance from the legislature or a court.

***Long- and Short-Form IE-Reports***

As part of these reports, a person must disclose the source and amount of any covered transfer of \$5,000 or more in the aggregate that it received during the 12 months before the applicable primary or election. This requirement applies if the IE (for which the report is being filed) is made or obligated to be made 180 days or less before the primary or election (CGS § 9-601d(f)).

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable

Yea 14    Nay 5    (03/28/2022)