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## OLR Bill Analysis

**sSB 431 (File 477, as amended by Senate "A")\***

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

#### **SUMMARY**

This bill prohibits foreign nationals from making contributions or expenditures under 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.

Under current law, the State Elections Enforcement Commission (SEEC) must dismiss a complaint if it does not issue a final decision on it within one year after receipt, with certain exceptions. The bill narrows the circumstances under which the dismissal requirement applies. With certain exceptions, the bill instead requires the commission to dismiss after one year any complaint it receives on or after July 1, 2022, for which it has not (1) found reason to believe a state election law violation occurred and (2) initiated a contested case proceeding.

\*Senate Amendment "A" removes provisions in the original bill (File 477, §§ 2-16) that, among other things, (1) codified "independent expenditure political committees" (IE-only PACs); (2) expanded IE disclosure requirements and increased the maximum penalties for failing to file IE reports; (3) eliminated aggregate individual contribution limits to certain committees; and (4) expanded disclaimer requirements for referenda and party candidate listings.

EFFECTIVE DATE: Upon passage for the foreign national provisions and July 1, 2022, for provisions on SEEC complaints.

#### **§§ 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)).

## § 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 state election law violation by a foreign national (as defined in the bill, see above).

## **BACKGROUND**

### ***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).

## **COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable

Yea 14    Nay 5    (03/28/2022)