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## **OLR Bill Analysis**

### **sSB 1188**

#### ***AN ACT CONCERNING FOREIGN POLITICAL SPENDING.***

#### **SUMMARY**

Federal law generally prohibits foreign nationals from making contributions, donations, or independent expenditures (IEs) in connection with federal, state, or local elections (see BACKGROUND). This bill explicitly prohibits foreign nationals (as defined in the bill, see below) from directly or indirectly 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 makes these actions illegal campaign finance practices. By law, an illegal campaign finance practice is subject to a civil penalty of up to \$2,000 per offense or twice the amount of any improper payment or contribution, whichever is greater (CGS § 9-7b(a)(2)(D)). If the act is knowing and willful, it is a class D felony, punishable by up to five years in prison, a fine of up to \$5,000, or both (CGS § 9-623(a)).

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 a "foreign national" under the state campaign finance laws more broadly than federal law does (see BACKGROUND).

EFFECTIVE DATE: Upon passage

#### **DEFINITIONS**

### ***Foreign National***

Under the bill, a “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 direct or indirect 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 following criteria:

1. one “foreign owner” or “foreign national” holds, owns, controls, or has direct or indirect 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 direct or indirect 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, a “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 shown that the person is (a) an individual and a U.S. citizen domiciled in 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, laws of the United States, a state, or other place subject to U.S. jurisdiction; and
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)).

## **BACKGROUND**

### ***Related Bills***

sHB 6904 (File 543, § 3) and sSB 1225 (§ 17), reported favorably by the Government Administration and Elections Committee, allow the State Elections Enforcement Commission to extend its complaint processing deadline if it is investigating a potential violation of state election law by a foreign national (as defined in federal law).

### ***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 shown that the person is (a) an individual and a U.S. citizen domiciled in 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, laws of 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) & 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 soliciting, accepting, or receiving any contribution or donation described above from a foreign national (52 U.S.C. § 30121 & 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 Montana ballot initiative. In doing so, the FEC concluded that spending related to referenda and other issue-based ballot measures is beyond 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 a candidate's election (FEC, MUR 7523 Stop I-186).

## COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 19    Nay 0    (03/27/2023)