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## **OLR Bill Analysis**

### **sSB 253**

#### ***AN ACT CONCERNING FOREIGN 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.

The bill makes these actions illegal campaign finance practices (§ 2). 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)).

Additionally, the bill requires that certain independent expenditure reports and political action committee (PAC) registration statements filed with the State Elections Enforcement Commission (SEEC) include a certification that the person making the expenditure is not a foreign national. It also exempts complaints regarding foreign nationals that are filed with SEEC from the statutory one-year deadline for the commission to adjudicate complaints.

EFFECTIVE DATE: Upon passage

#### **§ 1 — FOREIGN NATIONAL**

Federal law generally prohibits foreign nationals from making contributions, donations, or independent expenditures (IE) in connection with federal, state, or local elections (see BACKGROUND). The 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'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).

### **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 a firm, partnership, corporation, association, organization, or other entity ("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 another 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)).

### **§§ 3 & 4 — REPORTING**

Under existing law, any person that makes or obligates to make an independent expenditure or expenditures of more than \$1,000 in an election or primary for statewide or legislative office must electronically file a long-form and a short-form report with SEEC with specified information about the expenditure(s) (i.e., SEEC Form 26). The bill requires that the long-form report additionally include a certification that the person making the expenditure (if not an individual) is not a foreign national.

The bill also requires PACs, if established by a person other than an individual, to certify in their registration statement filed with SEEC that the person making the expenditure is not a foreign national.

## **§ 5 — SEEC COMPLAINTS**

The law requires SEEC to dismiss a complaint if it does not issue a final decision on it within one year after receipt, with certain exceptions (e.g., the timeline is extended if a subpoena is issued in connection with the complaint). The bill exempts from the one-year deadline complaints received on or after July 1, 2024, relating to potential violations of state election law by a foreign national.

## **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 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 another 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 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 (03/15/2024)