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Political Law Update



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Recent State and Local Legislation Bans Foreign-Influenced Corporate Spending in U.S. Elections

In an attempt to further curb foreign influence in U.S. elections, there is a recent trend among states and localities to propose legislation restricting political spending by corporations with foreign owners. Existing federal law prohibits a foreign national (*i.e.*, a foreign entity or an individual who is neither a U.S. citizen nor a green card holder) from making political contributions or expenditures at the federal, state or local level. The federal ban, however, does not extend to foreign-owned U.S. subsidiaries, unless they coordinate their political activities with their foreign parents. The new state and local laws go beyond federal law by banning U.S. companies merely if they have foreign owners — in many cases even at minimal levels of ownership — or give the state a cause of action for violating the federal law's ban. Furthermore, given that these laws prohibit both direct and indirect activity, they may impact the ability of such U.S. companies to use PACs.

Below are descriptions of some of the recently enacted laws and proposed bills that address political spending by foreign-influenced corporations.

Enacted Laws

- Seattle, Washington and St. Petersburg, Florida: Ordinances prohibit political spending from a "foreign-influenced corporation."
  - The Seattle law (enacted on January 17, 2020, and effective March 18, 2020) covers corporations with 1% or more stake directly or indirectly owned by a single foreign entity; 5% or more directly or indirectly owned by multiple foreign entities; or where a foreign owner participates directly or indirectly in the U.S. political activity decision-making of the company. Contributions to candidates for city office and independent expenditure committees are covered, as well as independent expenditures.
  - The St. Petersburg law (enacted on October 5, 2017, and effective January 1, 2018) covers business entities with 5% or more stake directly or indirectly owned by a single foreign entity; 20% or more directly or indirectly owned by multiple foreign entities; or where a foreign owner directly or indirectly participates in the U.S. political activity decision-making of the company. Independent expenditures, electioneering communications and contributions to outside spending groups are covered.
- Washington state enacted S.B. 6152 into law on March 25, 2020, taking effect on June 11, 2020. The law requires certifications regarding compliance with the restriction

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under the federal foreign national contribution ban (*i.e.*, that no foreign national was involved in any way in the financing of or decision-making regarding the contribution/expenditure).

- Montana enacted S.B. 326 into law on May 8, 2019, (effective October 1, 2019) creating a state cause of action for violations of a foreign-national contribution ban that is consistent with the restriction under current federal law.

Legislation Proposed This Session

The following are examples of jurisdictions where legislators proposed bills during the most recent legislative session that prohibit election spending from a "foreign-influenced corporation":

- Connecticut: H.B. 5410 prohibits contributions and expenditures, including independent expenditures, from entities with 5% or more stake directly or indirectly owned by a single foreign entity; 20% or more directly or indirectly owned by multiple foreign entities; or where a foreign owner participates directly or indirectly in the process of making decisions with regard to the making of contributions or expenditures by the entity. Corporate contributions are already prohibited under state election law.
- Hawaii, Maryland, Minnesota and New York:
  - Hawaii (H.B. 2738): covers independent expenditures;
  - Maryland (H.B. 34): covers contributions, independent expenditures and electioneering communications;
  - Minnesota (H.F. 3405; several other bills introduced): covers ballot question contributions/expenditures and other public endorsements of candidates or ballot questions. Corporate contributions are already prohibited under state law; and
  - New York (S.B. 7578): covers contributions, independent expenditures and political communications.

These laws cover entities with 1% or more stake directly or indirectly owned by a single foreign entity; 5% or more directly or indirectly owned by multiple foreign entities; or where a foreign national participates directly or indirectly in the political activity decision making of the company.

- Massachusetts: Several bills are currently being considered by the state's House of Representatives, including H.B. 703, which prohibits corporations with 5% or more equity owned by a single foreign entity; or 20% or more owned by multiple foreign entities from making any independent expenditure, electioneering communication or contribution to an independent expenditure PAC. Corporate contributions are already prohibited under state election law.
- Pennsylvania: S.B. 11 (2019) prohibits independent expenditures, electioneering communications and contributions to an independent expenditure PAC from a corporation with 5% or more stake directly or indirectly owned by a single foreign entity; or 20% or more directly or indirectly owned by multiple foreign entities. Corporate contributions are already prohibited under state election law.

In addition to the above bills, California currently has a bill pending (S.B. 300) that mirrors the federal foreign-national ban. Under current California law, foreign nationals are prohibited from making contributions/expenditures in connection with a ballot measure.

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