

Date of Hearing: June 21, 2023

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
SB 409 (Newman) – As Amended April 27, 2023

SENATE VOTE: 39-0

SUBJECT: Elections: candidate's statement.

SUMMARY: Requires the Secretary of State (SOS) to establish a pilot program that allows a candidate for elective state office to include in their candidate statement a quick response (QR) code link to a video statement, as specified. Specifically, **this bill:**

- 1) Requires the SOS to establish a pilot program that allows a candidate for statewide elective office or Board of Equalization (BOE) who accepts voluntary expenditure limits detailed below, and who pays to place a candidate statement in the state voter information guide sent to voters, to include a QR code link to a video statement in that candidate statement.
- 2) Requires the SOS to seek to collaborate with at least one but not more than four county elections offices to establish a county level program that allows a candidate for United States (US) House of Representatives, or a candidate for State Senate or Assembly who accepts voluntary expenditure limits detailed below, and who pays to place a statement in the voter information portion of the sample ballot pursuant to existing law, to include a QR code link to a video statement in that candidate statement.
- 3) Imposes the following restrictions on candidate video statements made pursuant to the pilot program established in this bill:
 - a) Permits a candidate to identify themselves as a candidate for office and provide a link to their campaign website, but prohibits the use of props or slogans, and prohibits the entire video statement from exceeding 250 words.
 - b) Requires a candidate to film their video statement, which shall be in one of three specified formats, using a blank wall as a background.
 - c) Permits a candidate to film their video statement in a participating county elections office or in a place designated by the SOS if the candidate is unable to provide the background, camera, and upload capability themselves.
 - d) Requires the SOS and any participating county to accept a candidate's video statement complying with the provisions of this bill, and to post it on their respective internet website so that it is accessible via the QR code link in the candidate statement.
- 4) Defines, for purposes of this bill, the term "QR code" to mean a machine-readable code consisting of an array of squares used for storing an internet website address.

EXISTING LAW:

- 1) Establishes, pursuant to the Political Reform Act (PRA), the following voluntary expenditure limits for candidates for elective state office:
 - a) For a candidate for Assembly, \$727,000 in a primary or special election and \$1,273,000 in a general or special runoff election;
 - b) For a candidate for Senate, \$1,091,000 in a primary or special election and \$1,636,000 in a general or special runoff election;
 - c) For a candidate for BOE, \$1,818,000 in a primary or special election and \$2,727,000 in a general or special runoff election;
 - d) For a candidate for Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, SOS, Superintendent of Public Instruction, or Treasurer, \$7,272,000 in a primary or special election and \$10,908,000 in a general or special runoff election; and,
 - e) For a candidate for Governor, \$10,908,000 in a primary or special election and \$18,181,000 in a general or special runoff election. (Government Code §85400; 2 Code of California Regulations §18545)
- 2) Allows a candidate for elective state office who accepts voluntary expenditure limits detailed above to pay to place a candidate statement in official election materials that are sent to voters, as specified. (Government Code §85601)
- 3) Permits each candidate for local nonpartisan elective office to submit a candidate statement to appear in the county voter information guide, subject to specified procedures and restrictions. (Elections Code §13307)
- 4) Permits each candidate for US House of Representatives to purchase space to have a candidate statement appear in the county voter information guide, as specified. (Elections Code §13307.5)
- 5) Permits each candidate for US Senate to purchase space to have a candidate statement appear in the state voter information guide, as specified. (Elections Code §9084)

FISCAL EFFECT: According to the Senate Appropriations Committee:

- SOS indicates that it would incur first-year costs of \$413,000, and up to \$322,000 annually thereafter, to implement the provisions of the bill (General Fund).
- By imposing additional requirements on local elections officials, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines that the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs. The magnitude

is unknown, but minimally in the hundreds of thousands of dollars annually (General Fund).

COMMENTS:

- 1) **Purpose of the Bill:** According to the author, “By providing voters the opportunity to view those ballot statements in a medium that is accessible and already familiar, SB 409 will advance the cause of transparency and accountability on which our elections, and the governance they yield, ultimately depend.”
- 2) **Voluntary Spending Limits and Candidate Statements:** As detailed above, existing law establishes voluntary spending limits for candidates for elective state office (ranging from \$727,000 to \$18.181 million, depending on the office and whether the election is a primary or a general election). As an incentive for candidates to accept the voluntary spending limits, candidates for state office who agree to abide by the voluntary spending limits are allowed to pay to place a candidate statement in the state or county voter information guide. To accept the spending limits, candidates running for statewide office or state Senate or state Assembly, must file a Candidate Statement of Intention (Form 501) with the SOS’s office indicating whether they intend to abide by the spending limits prior to submitting a candidate statement.

Because state law does not impose voluntary spending limits for campaigns for local office, or for US Senate or US House of Representatives, candidates for those offices generally have the option of submitting a candidate statement that will appear in the state or local voter information guide without the need to agree to abide by such limits. Candidates for US Senate and US House of Representatives must pay to have their candidate statements included in official election materials, while local jurisdictions have the discretion to decide whether or not to require candidates for local elective office to pay to have their candidate statements included in the local voter information guide.

- 3) **Different Standards and Suggested Amendment:** This bill requires the SOS to establish a pilot program that allows a candidate to include with their candidate statement a QR code link to a video statement, and imposes certain requirements relating to the content, word limit, and appearance of the video statements. For example, this bill prohibits the video candidate statement from using props or slogans, from exceeding 250 words, and requires the video to have a blank background. Unlike the written candidate statement, a video candidate statement is not prohibited from making reference to any opponent of the candidate; nor does the bill require the video statement to use the same or similar wording as is written candidate statement. Consequently, this bill allows certain candidates to provide two different candidate statements to voters.

The committee may wish to consider amending the bill to ensure that the same restrictions that apply to a written candidate statement also apply to the candidate video statement. Specifically, committee staff recommends amending the bill to add provisions that prohibit a candidate video statement from making reference to any opponent of the candidate.

- 4) **Other Jurisdictions and Suggested Amendment:** According to the author’s office, New York City, New York permits the use of candidate video statements, and defines a “candidate video statement” to mean a video recorded statement by the candidate for inclusion in the video and online edition of the voter guide. New York City requires the candidate video

statements to contain the same biographical information as candidate print statements, and permits the video statement to contain other information as the candidate may choose, including a concise audio description of the candidate. However, a candidate is prohibited from including the following: (1) referring to any opposing candidate by name; (2) using profanity, or statements, gestures, or materials that are patently offensive, obscene, or pornographic; (3) making statements that are slanderous, or defamatory, or assert facts that the candidate knows or should know to be false; (4) engaging in any commercial programming or advertising; (5) displaying any literature, graphs, or props; or (6) violating any city, state, or federal law. Additionally, candidates are prohibited from including the following: (1) being fully or partially nude; (2) wearing any distinctive uniform, including a judicial robe, or a military, police, or fraternal uniform; or (3) violating any city, state or federal law. Moreover, to ensure that a candidate script meets the requirements, candidate video statement scripts must be submitted for approval before the candidate's scheduled recording session, and a candidates must follow their approved video statement script during the recording.

The candidate video statement requirements in this bill, in contrast to the New York City rules, are significantly broad. The committee may wish to consider amending the bill to require the SOS to adopt regulations to provide basic guidelines on what may and may not be included in the candidate video statement.

- 5) **Pilot Program Amendment:** Generally, when legislation establishes a pilot program, it contains a sunset date and reporting requirements to evaluate the effectiveness of the pilot program. The committee may wish to amend the bill to add the following provisions:
- (1) Require each county that chooses to participate in the pilot program that allows a candidate to include in their candidate statements a QR code link to a video statement to report to the SOS an analysis of the effectiveness the program that includes, but is not limited to, the following information:
 - (a) The number of candidates that chose to include a QR code link to a video statement and the number of candidates that chose not to include a QR link;
 - (b) Statistics and information on how many voters accessed the video statements;
 - (c) The costs of implementing the pilot program; and,
 - (d) Any other benefits or problems that arose.
 - (2) Require the SOS to prepare and submit a report to the Legislature on or before January 1 after the first year the pilot program is implemented and each year thereafter.
 - (3) Contain a sunset date and require the provisions of this bill to remain in effect until the first January 1 that occurs four years after the bill becomes operative.
- 6) **Suggested Technical Amendment:** As currently drafted, the bill does not apply to candidates for US Senate. According to the author's office this is an error. Committee staff recommends the following amendment to fix the error:

On page 4, line 14, amend the bill as follows:

85602. (a) (1) The Secretary of State shall establish a pilot program that allows a candidate who is qualified to place a statement in the state ballot pamphlet pursuant to subdivision (a) of Section 85601 *or subdivision (i) of Section 9084 of the Elections Code* to additionally include in their candidate statement a QR code link to a video statement.

- 7) **Arguments in Support:** In support of a prior version of this bill, Citizens Take Action wrote:

[The] provisions of SB 409 take the next logical step toward bringing voter information guides into the digital age and making them accessible to the broadest possible audience, by directing the Secretary of State to implement a pilot program that would allow candidates in participating counties to videotape their ballot statements and post a QR code next to the ballot statement.

By ensuring that the words in a candidate's ballot statement are their own and by providing voters the opportunity to view those ballot statements in a medium that is accessible and already familiar, SB 409 will advance the cause of transparency and accountability on which our elections, and the governance they yield, ultimately depend.

- 8) **Related Legislation:** SB 632 (Caballero) requires a county elections official to accept any candidate statement from a candidate in a multicounty district if the statement has been preapproved by the SOS without requiring any additional modification or amendment to the statement. SB 632 is pending in this committee.

AB 773 (Pellerin) requires a county elections official to post and accept an electronic submission of a form to be used by a candidate to submit a candidate statement for inclusion in the voter information guide, among other provisions. AB 773 passed out of this committee on an 8-0 vote, was approved by a vote of 70-0 on the Assembly Floor, and is pending in the Senate Appropriations Committee.

- 9) **Political Reform Act of 1974:** California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders and lobbyists. That initiative is commonly known as the PRA. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

Citizens Take Action (prior version)

Opposition

None on file.

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