

Date of Hearing: July 5, 2023

ASSEMBLY COMMITTEE ON ELECTIONS
Gail Pellerin, Chair
SB 658 (McGuire) – As Amended June 27, 2023

SENATE VOTE: 40-0

SUBJECT: Nominations: tax return disclosures: candidates for Governor.

SUMMARY: Makes various minor modifications to the process by which candidates for Governor of California at a primary election must provide copies of their income tax returns to the Secretary of State (SOS) for public viewing in order to appear on the ballot, and makes that requirement applicable to candidates at gubernatorial recall elections. Specifically, **this bill:**

- 1) Expands provisions of existing law that require a candidate for Governor at a primary election to provide copies of their income tax returns to the SOS in order to appear on the ballot so that those provisions apply to candidates for Governor at a general or recall election. Requires two copies of each tax return to be submitted to the SOS no later than 5 p.m. on the 88th day prior to a primary or general election, or in the case of a recall election, no later than 5 p.m. on the 60th day before a recall election.
- 2) Clarifies that tax returns submitted without redactions are not subject to public disclosure.
- 3) Clarifies the definition of “income tax return,” and provides that it does not include transcripts from the Internal Revenue Service (IRS) nor accountant notes.
- 4) Expands the list of information required to be redacted from the tax returns submitted to the SOS to include bank account numbers and routing numbers, and IRS personal identification number (PIN).
- 5) Expands the list of information a candidate for Governor is permitted to redact from their tax returns to include the accountant’s tax identification number and contact information, and the candidate’s client number.
- 6) Requires a candidate for Governor, in the case of a recall election, to submit corrected tax returns, if necessary, no later than 5 p.m. on the 57th day before a recall election.
- 7) Deletes provisions of existing law that require the SOS to post redacted tax return copies within five days of receipt, and instead requires the SOS to post the redacted tax returns at the time the SOS issues the certified list of candidates for the direct primary election.
- 8) Requires the redacted tax returns of candidates for Governor who were nominated to participate in the general election to remain posted on the SOS’s website until the completion of the official canvass of the general election.
- 9) Makes other technical and conforming changes.

EXISTING LAW:

- 1) Prohibits the name of a candidate for Governor from being printed on a direct primary election ballot, unless the candidate, at least 88 days before the direct primary election, files with the SOS copies of every income tax return the candidate filed with the IRS in the five most recent taxable years, as specified. Defines the term “income tax return,” for these purposes, to mean any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of the Internal Revenue Code, and that is filed on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed. (Elections Code §§8901, 8902)
- 2) Requires a candidate for Governor to submit the following to the SOS when filing their tax returns:
 - a) Two hard copies of each tax return. Requires one copy of each tax return to be identical to the version submitted to the IRS, without redactions, and the second copy of each tax return to be redacted, as specified.
 - b) A written consent form, signed by the candidate, granting the SOS permission to publically release a redacted version of the candidate's tax returns. (Elections Code §§8903(a)(1), 8903(a)(2))
- 3) Requires the candidate to redact specified information from the redacted version of each tax return, and permits the candidate to redact certain other information from the redacted version of each tax return, as specified. (Elections Code §§8903(a)(1)(B), 8903(a)(1)(C))
- 4) Requires the SOS to review the redacted copy of each tax return submitted by the candidate to ensure that the redactions comply with existing law. Requires the candidate, if the SOS determines that the candidate has redacted information other than that required under existing law, to prepare and submit a corrected version of the tax return no later than 5 p.m. on the 78th day prior to the direct primary election. (Elections Code §8903(b))
- 5) Requires the SOS, within five days of receipt of a candidate’s tax returns, to make the redacted versions of the tax returns available to the public on the SOS’s internet website. (Elections Code §8903(c))
- 6) Requires the public versions of the tax returns to be continuously posted until the official canvass for the direct primary election is completed, and requires the SOS, upon completion of the official canvass, to remove the public versions of the tax returns, as specified. (Elections Code §8903(c))
- 7) Requires the SOS, at least 68 days before the direct primary election, to transmit to each county elections official a certified list of candidates who are eligible to be voted for in their county at that election. (Elections Code §8120)

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Rule 28.8 negligible state costs.

COMMENTS:1) **Purpose of the Bill:** According to the author:

Transparency is a non-partisan issue and it is why we advanced the original bill, SB 27. In 2019, SB 27 established the framework for Governor candidates in the state of California to make public their income tax returns as a provision for inclusion on the primary election ballot. The reason for this, as I think we all believe, is that California voters should be made aware of potential conflicts of interest, domestic and international business dealings, financial status, as well as charitable donations.

SB 658 provides minor cleanup to the elections code to simplify and improve the process for Governor candidates to submit their tax returns.

Californians believe that transparency is vital to ensure the integrity of our electoral system. SB 658 will assist in continuing to ensure the system remains transparent, fair, and accountable to the people of our state.

2) **Secretary of State, Tax Return Disclosure Requirements, & Previous Legislation:** SB 27 (McGuire), Chapter 121, Statutes of 2019, requires a candidate for Governor, as a precondition for appearing on a California primary election ballot, to file copies of their income tax returns with the SOS. Specifically, SB 27 requires a candidate for Governor to submit to the SOS two copies of each tax return filed with the IRS in the five most recent taxable years, as specified. The bill requires one copy of each tax return to be identical to the version submitted to the IRS, without redactions, and the second copy of each tax return to be redacted, as specified. SB 27 similarly required candidates for United States President to file copies of their income tax returns as a precondition for appearing on the primary election ballot in California, but the California Supreme Court directed the SOS to refrain from enforcing those provisions if they would keep the name of a recognized candidate for President off of the ballot. (*Patterson v. Padilla* (2019) 8 Cal. 5th 220.)

According to the SOS's office, during the process of implementing the provisions of SB 27, and subsequent legal challenges and rulings pertaining to the September 14, 2021, gubernatorial recall election, various implementation issues were discovered. In order to address these concerns before candidate filing for the June 7, 2022, statewide gubernatorial primary election, the SOS requested statutory changes. Accordingly, SB 35 (Umberg), Chapter 318, Statutes of 2021, extended the deadline for a candidate for Governor to submit tax returns to the SOS to have the candidate's name printed on the direct primary ballot, from 98 days before the direct primary election to 88 days before the direct primary election, and aligned the submission of those documents with the deadline for a candidate to file a declaration of candidacy and nomination papers.

Additionally, SB 35 modified the procedure that applies when a candidate improperly redacts tax returns that are provided to the SOS, requires the SOS to notify a candidate for Governor of any deficiencies in their tax return submissions, as specified, and requires a candidate to submit corrected copies of their tax return no later than 5 p.m. on the 78th day before the direct primary election. SB 35 further clarified that a candidate is not qualified to appear on the direct primary ballot if the corrected copies are not timely submitted.

This bill makes further improvements to the process for a candidate for Governor to submit their tax returns. Notably, this bill requires tax return disclosure requirements to be applicable to general elections and recall elections, expands the list of mandatory and discretionary redactions, and requires the tax return to be made public at the time the SOS issues the certified list of candidates that will appear on the ballot.

- 3) **Arguments in Support:** The sponsor of this bill, Secretary of State Shirley N. Weber, Ph.D., writes:

Senate Bill 658 aims to remove any possible confusion about statutory policies and timelines that apply to disclosure of income tax records for candidates who seek the highest elective office in our state. Specifically, SB 658 would ensure uniformity and clarify [] the definition of "income tax return." This term is not currently defined within the Elections Code Chapter that sets forth the guidelines for preparing and submitting required tax returns to the Secretary of State (SOS). Therefore, SB 658 would insert the existing statutory definition of tax return into the appropriate code sections and further proscribe that candidates are not required to disclose certain types of tax documents and accountant notes.

In addition, SB 658 would make related technical changes to statute. The measure would remove a requirement for submitting a duplicate copy of income tax returns, specify that the deadline for submitting the form to the SOS is 5 p.m. on the 88th day before the election, and permits candidates to redact certain personal identifying information. SB 658 also clearly establishes the timeframe during which tax records are publicly available to voters and members of the public.

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State Shirley N. Weber, Ph.D. (Sponsor)

Opposition

None on file.

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