
**SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**
Senator Steven Glazer, Chair
2023 - 2024 Regular

Bill No: SB 658 **Hearing Date:** 3/21/23
Author: McGuire
Version: 2/16/23
Urgency: No **Fiscal:** Yes
Consultant: Karen French

Subject: Nominations: tax return disclosures: candidates for Governor

DIGEST

This bill makes simplifying and clarifying changes to statutory guidelines for submitting and disclosing a gubernatorial candidate's income tax returns.

ANALYSIS

Existing law:

- 1) Prohibits the name of a candidate for Governor from being printed on the ballot of the direct primary election unless, at least 88 days before the direct primary election, the candidate files with the Secretary of State (SOS) two copies of every income tax return, as defined, the candidate filed with the Internal Revenue Service (IRS) in the five most recent taxable years.
- 2) Existing law requires the candidate to redact specified information from one copy of each submitted return, and authorizes the candidate to redact additional information as specified.
- 3) Existing law requires the SOS, within five days of receipt, to make the redacted versions of the candidate's tax returns available to the public on the SOS's internet website, and to post continuously the returns until the official canvass for the direct primary election is completed.

This bill:

- 1) Requires a candidate for Governor to submit a single redacted copy of their tax returns. Requires and authorizes redaction of additional information on those returns, including certain personally identifying bank and IRS information.
- 2) Clarifies that the deadline for submitting the form to the SOS is 5 p.m. on the 88th day before the election.
- 3) Excludes transcripts from the IRS and accountant notes from the definition of "income tax return" for these purposes.

- 4) Requires the SOS to make the tax returns public at the time the SOS issues the certified list of candidates for the direct primary election.
- 5) Requires the SOS to post the tax returns continuously until the official canvas is completed for the general election at which a candidate is elected to the office. Specifies that the tax returns of a candidate not nominated to participate in the general election only need to be posted until the official canvas for the direct primary election is completed.

BACKGROUND

Tax Return Disclosure Requirements. In 2019, the Legislature approved and Governor Newsom signed SB 27 (McGuire), Chapter 121, Statutes of 2019, which required 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. SB 27 required 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. One copy of each tax return was required to be identical to the version submitted to the IRS, without redactions, and the second copy of each tax return had to be redacted in accordance with existing law. 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, as specified. (*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 certain statutory changes be made. SB 35 (Umberg), Chapter 318, Statutes 2021, extended the deadline for a candidate for Governor to submit tax returns to the SOS and aligned the submission of those documents with the deadline for a candidate to file a declaration of candidacy and nomination papers.

SB 35 also modified the procedure that applies when a candidate improperly redacts copies of tax returns that are provided to the SOS. Instead of requiring the SOS to prepare a properly-redacted copy of the tax returns as required in certain situations under existing law, this bill 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 hard copies of the 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.

COMMENTS

- 1) Candidate Concern. By shifting responsibility from the SOS to the candidate for fixing any errors, this bill may not provide sufficient time between the 88th day and the 78th day for the SOS to complete their review and allow the candidate time to fix

any problems. In the event the SOS disagrees with the submittal or does not submit their comments in a timely fashion and the candidate cannot timely fix the problem and resubmit the paperwork, the candidate may not be listed on the ballot.

- 2) Special Election Application. The 2021 California gubernatorial recall election was a special election that concluded on September 14, 2021. The second question of the recall gave voters the option to select a replacement candidate. Had the recall been successful, the replacement candidate with the most votes would have assumed the office. Issues arose from one replacement candidate claiming that current law allowed the SOS to find deficiencies in tax returns which would result in removal from the ballot. Under this bill, it is unknown whether special elections involving the Office of Governor, such as gubernatorial recall elections, require tax return submissions. The committee should consider whether or not the bill provisions should be expanded to include gubernatorial special elections.
- 3) Argument in Support. In a letter supporting SB 658, the SOS states, in part, the following:

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 of 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 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.

RELATED/PRIOR LEGISLATION

SB 27 (McGuire), Chapter 121, Statutes of 2019, required that all candidates for Governor release the last five years of their tax returns in order to appear on the California ballot.

SB 35 (Umberg), Chapter 318, Statutes of 2021, codified minor clarifications to SB 27 by extending an existing deadline for a candidate for Governor to submit tax returns to the SOS in order to have the candidate's name printed on the direct primary election ballot, and makes changes to the process for submitting those documents, as specified.

POSITIONS

Sponsor: Secretary of State Shirley N. Weber, Ph.D.

Support: None received

Oppose: None received

