

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 658 (McGuire)

Version: February 16, 2023

Hearing Date: April 11, 2023

Fiscal: Yes

Urgency: No

TSG

**SUBJECT**

Nominations: tax return disclosures: candidates for Governor

**DIGEST**

This bill clarifies and makes minor modifications to the process by which candidates for Governor of California must provide copies of their income tax returns to the Secretary of State for public viewing in order to appear on the primary ballot.

**EXECUTIVE SUMMARY**

As part of a 2019 effort to promote greater electoral transparency, California enacted a new law requiring candidates for the office of Governor to submit copies of their tax returns for the previous five years to the office of the Secretary of State before their name can appear on the primary ballot. The law then directs the Secretary of State's office to publish those tax returns on its website for public review and inspection. Experience over the ensuing four years has demonstrated the need for minor revisions to those procedures in order to further clarify and streamline the process. This bill would accomplish those revisions. In summary, those revisions include: (1) clarifying that accountant's notes and transcripts from the Internal Revenue Service do not have to be included; (2) adding bank account numbers, routing numbers, and PINs to the material that must be redacted from the return; (3) authorizing the redaction of the accountant's tax identification number, the client number, and the accountant's email address; (4) eliminating the requirement for a candidate to submit one redacted and one unredacted copy of their returns; (5) changing the time for public posting of the tax returns to coincide with certification of candidate names for the ballot; and (6) enabling the Secretary of State's office to take down the tax returns of gubernatorial candidates once they have been eliminated from contention in the general election.

The bill is author-sponsored. Support comes from California Secretary of State Shirley Weber. There is no opposition on file. The bill passed out of the Senate Elections and Constitutional Amendments Committee by a vote of 7-0. If the bill passes out of this Committee, it will next be heard in the Senate Appropriations Committee.

**PROPOSED CHANGES TO THE LAW**

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 Secretary of State copies of every income tax return the candidate filed with the Internal Revenue Service in the five most recent taxable years, in accordance with specified procedures, with an exception for any year in which the candidate was not required to file an income tax return. (Elec. Code § 8902(a) and (c).)
- 2) Specifies that if the candidate has not filed the candidate's income tax return with the Internal Revenue Service for the tax year immediately preceding the primary election, the candidate shall submit a copy of the income tax return to the Secretary of State within five days of filing the return with the Internal Revenue Service. (Elec. Code § 8902(b).)

This bill:

- 1) Modifies what constitutes the "tax return" that gubernatorial candidates must submit to the Secretary of State to exclude transcripts from the Internal Revenue Service and accountant notes.
- 2) Requires gubernatorial candidates to submit just one redacted copy of their tax return to the Secretary of State instead of two copies, one redacted and one unredacted.
- 3) Requires gubernatorial candidates to redact all of the following from the copy of their tax returns that they submit to the Secretary of State:
  - a) bank account numbers;
  - b) routing numbers; and
  - c) Internal Revenue Service personal identification number (PIN) from the copy of their tax returns that they submit to the Secretary of State.
- 4) Authorizes gubernatorial candidates to redact all of the following from the copy of their tax returns that they submit to the Secretary of State:
  - a) accountant tax identification number;
  - b) client number; and
  - c) accountant email address.
- 5) Aligns the date on which the Secretary of State is to post gubernatorial candidates' tax returns with the date for the Secretary of State to certify the names that are to appear on the gubernatorial primary ballot.

- 6) Authorizes the Secretary of State to remove from publication on its website, at the conclusion of the gubernatorial primary election, the tax returns of those candidates who did not progress to the general election ballot.

### COMMENTS

#### 1. Background on California’s candidate tax return transparency efforts

In 2016, Donald Trump became the first presidential candidate since Watergate to refuse to make his tax returns available to the public. In response, the California Legislature sought to establish new procedures that would obligate presidential candidates to submit the last five years of their tax returns to the Secretary of State for publication in order to appear on the state’s primary ballot. (SB 149, McGuire, 2017.) Late during consideration of that measure, the Legislature opted to extend the same requirement to gubernatorial candidates as well.

Initially, Governor Jerry Brown vetoed the bill. The Legislature resurrected the idea in 2019, however, and it found a more receptive audience in Governor Gavin Newsom. (SB 27, Ch. 121, Stats. 2019.) Shortly after it was enacted, however, the new law was challenged in court. Ultimately, the California Supreme Court determined that the California Constitution is the exclusive source of instructions for how the Secretary of State is to determine whose names to include on the presidential primary ballot. (*Patterson v. Padilla* (2019) 8 Cal. 5th 220.) Accordingly, the state high court struck down the part of the bill requiring the submission and publication of presidential candidates’ tax returns. Only the equivalent requirement for gubernatorial candidates remained.

#### 2. Summary of proposed revisions to the gubernatorial candidate tax return submission and publication procedure

The Secretary of State’s office has now had an opportunity to road test the law requiring submission and publication of gubernatorial candidate tax returns. Based on that experience, it is apparent that some minor modifications would be helpful. This bill provides them. It carries the support of the current Secretary of State.

The proposed revisions and the reasoning behind them may be summarized as follows:

##### *a. Clarifying the precise meaning of tax return*

The existing law states that gubernatorial candidates must submit their tax returns for the last five years. It defines “tax return” by reference to another statute. The referenced statute says that a “tax return” is “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. (Elec. Code § 6882.) Such a broad definition raises the question of whether candidates must include accountant's notes and transcripts from the Internal Revenue Services (IRS) in their submission to the Secretary of State. This goes beyond the core components of a tax return. This bill clarifies that accountant's notes and IRS transcripts need not be included.

*b. Expanding the list of mandatory redactions*

Existing law requires gubernatorial candidates to redact certain information from the tax returns they submit to the Secretary of State's office. These mandatory redactions are meant to protect the candidate's privacy and exclude from public view information that has little or no bearing on the candidates' fitness for office. Existing law leaves out a few items that fall into this category, however; this bill adds them to the mandatory redaction list. Those items are: bank account numbers, routing numbers, and personal identification numbers (PINs).

*c. Expanding the discretionary redactions permitted*

Relatedly, existing law allows gubernatorial candidates the discretion to redact some other information that, while less private for the candidate, still has some degree of personal privacy associated with it and does not provide significant information about the candidate's fitness for office. This bill expands that discretionary redaction list to include the accountant's tax identification number and email address, as well as the candidate's client number.

*d. Reducing the number of copies that the candidates must submit*

The current process for submission and posting of gubernatorial candidate tax returns requires the candidates to submit two copies of their returns: one redacted and one unredacted. The purpose was to provide a mechanism by which the Secretary of State could verify that candidates were redacting only the information that they are allowed to redact by law. The dual submission leaves personal and private information in the hands of the Secretary of State, however, and also adds to the overall bureaucracy of the process. Accordingly, this bill would simplify the process and only require candidates to submit the redacted version of their returns.

While this slightly simplified approach is attractive in some ways, it removes an important safeguard against the possibility that gubernatorial candidates could game the system and thereby hide potentially relevant financial information from public view. If a candidate only has to submit a redacted copy of their tax return, there is no way for the Secretary of State's office to verify that the redaction was appropriate. A candidate whose tax return shows income received from Satan & His Minions, Inc., for example, could redact this information and, if questioned, claim that the redacted

information is among the private information that the law requires or allows candidates to redact. There would be no way for anyone to be any the wiser. With this problem in mind, the author proposes to offer amendments in Committee that restore the existing procedure in which candidates must submit one unredacted copy of their tax return to the Secretary of State together with the redacted copy. The Secretary of State would then have a basis for verifying that the candidate's redactions are appropriate and could request revised redactions if appropriate. Consistent with existing law, the Secretary of State's office would destroy the unredacted hard copy of each tax return as soon as practicable upon the completion of the general election, unless ordered to preserve them by a court or a state or federal agency.

- e. Aligning the timing of the tax return publication with the certification of which candidates will appear on the ballot*

The Secretary of State is charged with certifying what names will appear on the gubernatorial primary ballot. The tax return submission process requires the Secretary of State not to certify candidate's names to appear on the primary ballot unless they have complied with the tax return submission process. Under current law, however, the timing for certification and for posting of the tax returns is not necessarily aligned. This bill synchronizes the two.

- f. Eliminating the need to keep tax returns posted for candidates who have not advance to the general election*

Existing law specifies that the Secretary of State is to leave the tax returns of all gubernatorial candidates posted on its website until the general election has concluded. This is both unnecessary and potentially confusing to voters, because it means that candidates who have been eliminated in the primary still have their names and tax returns posted on the Secretary of State's website. To address this issue, this bill directs the Secretary of State, at the conclusion of the primary election, to remove the tax returns of any candidates who have not progressed to the general election.

### 3. Proposed amendments

To address some of the issues set forth in the comments above, the author proposes to offer amendments in Committee that would:

- restore the existing requirement that gubernatorial candidates submit both a redacted and an unredacted copy of their tax returns.

A mockup of the specific proposed amendments is attached to this analysis.

4. Arguments in support 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. [...] 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.

In support, California Secretary of State Shirley Weber 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 clarity of the definition of "income tax return." This term is not currently defined within the Election 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 duplicated copy of income tax returns, specific that the deadline for submitting the form to the SOS is 5 pm on the 88<sup>th</sup> day before the election, and permits candidates to redact certain personal identifying information. SB 68 also clearly established the timeframe during which tax records are publicly available to voters and members of the public.

### SUPPORT

Shirley Weber, California Secretary of State

### OPPOSITION

None known

### RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 27 (McGuire, Ch. 121, Stats. 2019) required candidates for President of the United States and for Governor of California to submit copies of their federal income tax returns for the five most recent taxable years to the California Secretary of State's Office (SOS) as a precondition for having their names appear on a California primary election ballot. SB 27 instructed the SOS, after redacting the returns for privacy purposes, to make the returns available to the public through its website.

SB 35 (Umberg, Ch. 318, Stats. 2021), among other things, extended an existing deadline for a candidate for Governor to submit tax returns to the Secretary of State in order to have the candidate's name printed on the direct primary election ballot, and made changes to the process for submitting those documents, as specified.

SB 505 (Umberg, Ch. 149, Stats. 2019) clarified the criteria that a candidate must meet in order to appear on the California presidential primary ballot.

SB 149 (McGuire, 2017) was nearly identical to SB 27, above. Then Governor Brown vetoed SB 149, writing: "[w]hile I recognize the political attractiveness – even the merits – of getting President Trump's tax returns, I worry about the political perils of individual states seeking to regulate presidential elections in this manner. First, it may not be constitutional. Second, it sets a "slippery slope" precedent. Today we require tax returns, but what would be next? Five years of health records? A certified birth certificate? High school report cards? And will these requirements vary depending on which political party is in power? A qualified candidate's ability to appear on the ballot is fundamental to our democratic system. For that reason, I hesitate to start down a road that well might lead to an ever escalating set of differing state requirements for presidential candidates."

SR 23 (Wiener, 2017) urged President Trump to release his tax returns as part of its broader call for an independent investigation into connections between Russia and Trump's presidential campaign and administration.

**PRIOR VOTES:**

Senate Elections and Constitutional Amendments Committee (Ayes 7, Noes 0)

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**Amended Mock-up for 2023-2024 SB-658 (McGuire (S))**

**Mock-up based on Version Number 99 - Introduced 2/16/23**

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 8901 of the Elections Code is amended to read:

**8901.** For the purposes of this part, “income tax return” means 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. For the purposes of this part, an “income tax return” does not include transcripts from the Internal Revenue Service nor accountant notes.

**SEC. 2.** Section 8903 of the Elections Code is amended to read:

**8903.** (a) The candidate shall submit the following to the Secretary of State:

(1) (A) Two copies ~~One copy~~ of each tax return required by Section 8902. ~~One~~The copy of each tax return shall be identical to the version submitted to the Internal Revenue Service, without redactions, and shall not be subject to disclosure pursuant to this section. One copy shall be identical to the version submitted to the Internal Revenue Service but shall be redacted pursuant to this paragraph. The tax returns shall be provided to the Secretary of State in hard-copy form not later than 5 p.m. on the 88th day prior to the direct primary election.

(B) The candidate shall redact the following information from the redacted copy of each tax return:

(i) Social security numbers.

(ii) Home address.

(iii) Telephone number.

(iv) Email address.

(v) Medical information.

(vi) Bank account numbers and routing numbers.

(vii) Internal Revenue Service personal identification number (PIN).

(C) The candidate may also redact the following information from the redacted copy of each tax return:

(i) Names of dependent minors.

(ii) Employer identification number.

(iii) Business addresses.

(iv) Preparer or accountant tax identification number, client number, address, telephone number, and email address of paid tax return preparers or accountants.

(2) A written consent form, signed by the candidate, granting the Secretary of State permission to publicly release a version of the candidate's tax returns redacted pursuant to this section. The Secretary of State shall prepare a standard consent form consistent with this paragraph.

(b) The Secretary of State shall review the redacted copy of each tax return submitted by the candidate to ensure that the redactions comply with subdivision (a). If the Secretary of State determines that the candidate has redacted information other than that permitted by subdivision (a), or failed to redact information required to be redacted by subdivision (a), the Secretary of State shall notify the candidate of any deficiencies. The candidate shall submit corrected hard copies of the tax return no later than 5:00 p.m. on the 78th day prior to the direct primary election. If the corrected hard copies are not timely submitted, the candidate shall not be qualified to have their name placed on the ballot of the direct primary election.

(c) (1) At the time the Secretary of State issues the certified list of candidates for the direct primary election in accordance with Section 8120, the Secretary of State shall make the redacted copies of the tax returns available to the public on the Secretary of State's internet website. Except as provided in paragraph (2), the Secretary of State shall make public the redacted copies of the tax returns submitted by the candidate pursuant to subdivision (a).

(2) If the candidate is required to submit a corrected ~~copy~~version of a tax return pursuant to subdivision (b), the Secretary of State shall make public that ~~version~~corrected copy.

(3) The redacted tax returns shall be continuously posted until such time as the official canvass is completed for the general election at which a candidate is elected to the office, except that the tax returns of a candidate who participated in the direct primary election and who was not nominated to participate in the general election need only be posted until the official canvasss for the direct primary election is completed.

(4) The Secretary of State shall retain the paper copies of the submitted tax returns until the completion of the official canvass of the ensuing general election. Thereafter, the paper copies of the submitted tax returns shall be destroyed as soon as practicable, unless the Secretary of State has received a court order, or a lawful written request from a state or federal governmental agency, directing the Secretary of State to preserve the submitted tax returns.