

# HOUSE BILL REPORT

## SB 5078

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### As Reported by House Committee On: State Government & Tribal Relations

**Title:** An act relating to requiring disclosure of federal income tax returns of presidential and vice presidential candidates prior to appearing on the ballot.

**Brief Description:** Requiring disclosure of federal income tax returns of presidential and vice presidential candidates prior to appearing on the ballot.

**Sponsors:** Senators Kuderer, Hunt, Darneille, Saldaña, Conway, Frockt, Palumbo, Wellman, Pedersen, Mullet and Van De Wege.

#### **Brief History:**

##### **Committee Activity:**

State Government & Tribal Relations: 4/2/19, 4/3/19 [DP].

#### **Brief Summary of Bill**

- Requires a candidate for the presidential nomination in Washington state to publicly release a copy of his or her last five federal income tax returns by 63 days before the presidential preference primary.
- Provides that presidential and vice presidential candidates that do not comply with that requirement may not appear on the primary or general election ballots.

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### HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

**Majority Report:** Do pass. Signed by 5 members: Representatives Gregerson, Chair; Pellicciotti, Vice Chair; Appleton, Dolan and Hudgins.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Walsh, Ranking Minority Member; Goehner, Assistant Ranking Minority Member; Mosbrucker and Smith.

**Staff:** Jason Zolle (786-7124).

#### **Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Federal law requires most people to remit a portion of their income to the federal government through an income tax. People report their income and calculate their tax liability through forms called tax returns developed by the Internal Revenue Service (IRS). Tax returns must be filed annually. Information in a tax return includes a taxpayer's income (source and amount), deductions, and tax credits. While Washington does not have a state income tax, people and businesses in Washington may be required to file tax returns for business and occupation (B&O) or public utility taxes.

Federal tax returns are generally confidential, subject to a number of exceptions. Some of the people or organizations to whom federal tax returns and associated information may be released in certain circumstances include: federal officers involved in tax administration, criminal investigation, or statistical research; state officers involved in tax administration or auditing; state and local law enforcement agencies; federal agencies that administer or oversee Social Security, federal pensions, the Employee Retirement Income Security Act of 1974, student loans, and certain food, housing, and health care welfare programs; state and local child support enforcement agencies; persons involved in judicial proceedings; the Comptroller General, for auditing purposes; qualified tax collection contractors; persons having a material interest (e.g., officers of a corporation or heirs to an estate); committees of Congress; and the President. People that receive taxpayer information as part of their official duties may not disclose that information to others.

The United States Treasury Department (which oversees the IRS) may release tax returns with the consent of the taxpayer.

Taxpayer information is exempt from disclosure under the Public Records Act in Washington state when it would violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer. Other provisions of law preclude the release of excise or property tax information, except in certain circumstances similar to the exceptions under federal law.

Every four years, Washington holds a presidential preference primary for voters who subscribe to a major political party to express their preference for the party's presidential candidate in the general election. The Secretary of State (Secretary) selects candidates to appear on the ballot. A candidate must be "generally advocated" or recognized in national news media to be eligible. A party may also petition to have a candidate included on the ballot. The petition must have at least 1,000 signatures of registered voters who affiliate with that party, and it must be filed at least 75 days before the primary. The Secretary must certify the names of all candidates who will appear on the ballot on or before the fourth Tuesday in April (the primary is held the fourth Tuesday in May).

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### **Summary of Bill:**

By 63 days before the presidential preference primary, a candidate seeking the presidential nomination in Washington state must publicly release a copy of his or her tax returns, including supporting schedules, attachments, and supplemental lists, for the past five years. Alternatively, the candidate may file the tax returns with the Secretary, who must then

consult with the Director of the Department of Revenue to make needed redactions and post the tax returns online within seven days of receipt or release.

A presidential candidate that does not comply with this requirement may not appear on the primary election ballot in Washington.

A presidential or vice presidential candidate that does not comply with this requirement by 63 days before the general election may not appear on the general election ballot in Washington.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) For the past 40 years, citizens have had the benefit of being able to review tax returns for presidential candidates on both side of the aisle. This allows them to see if a candidate has conflicts of interest or questionable financial interests. That norm of 40 years has been broken and people can no longer rely on the voluntary release of tax returns. People want this information as they vet who should be the Commander in Chief. This bill simply says that in Washington state, if a candidate does not disclose tax returns, he or she cannot be on the ballot. It will not bar anyone from running for president, and it will not prevent anyone from voting for someone using a write-in vote. The Attorney General has submitted an advisory opinion that this bill is likely constitutional. Courts have upheld reasonable, politically neutral regulations on candidates.

(Opposed) There are potential unintended consequences to this bill because lawsuits would ensue and threaten the Secretary of State's ability to conduct the 2020 primary and general election. Democratic and Republican governors have vetoed similar proposals in other states. If releasing tax returns is so important, it should be required of every candidate, but state representatives in Washington are not advocating to release their own tax returns. The Constitution sets the eligibility requirements for president, and it says nothing about tax returns. States cannot add qualifications for federal candidates beyond those specified in the Constitution.

**Persons Testifying:** (In support) Senator Kuderer, prime sponsor; Deborah Viertel, Janet Way, Rim Miksys, Marguerite Dekker, Carol Butterfield, Carl Larson, and John Plimpton, Presidential Transparency; Carollynn Zimmers, North Kitsap Indivisible; Tula Holmes, Indivisible; Susan Edwards; Steve Zemke, Tax Sanity; and Catherine Griffith, Majority Rules.

(Opposed) Jay Jennings, Office of the Secretary of State; and Donald Armstrong.

**Persons Signed In To Testify But Not Testifying: None.**