



**STATE OF HAWAII
DEPARTMENT OF TAXATION**

830 PUNCHBOWL STREET, ROOM 221

HONOLULU, HAWAII 96813

<http://tax.hawaii.gov/>

Phone: (808) 587-1540 / Fax: (808) 587-1560

Email: Tax.Directors.Office@hawaii.gov

To: The Honorable Karl Rhoads, Chair
and Members of the Senate Committee on Judiciary

Date: Tuesday, February 12, 2019

Time: 9:00 A.M.

Place: Conference Room 016, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 94, Relating to Elections

The Department of Taxation (Department) appreciates the intent of S.B. 94 and offers the following comments for the Committee's consideration.

S.B. 94 would require all candidates for President and Vice President of the United States to disclose their most recent federal income tax return to the public. A summary of key provisions are as follows:

- Amends section 11-13, Hawaii Revised Statutes (HRS), by adding a new section requiring candidates for President and Vice President to include within their sworn application to the Chief Election Officer a statement that a copy of each candidate's income tax return has been posted at least sixty days prior to the date of the general election and will continue to be posted through the date of the general election on the internet for free access by the public, including the internet address where the return can be publicly accessed;
- Specifies that the posted income tax return of each candidate shall be for the most recent taxable year for which an income tax return has been filed with the Internal Revenue Service (IRS) as of the date of the application;
- Allows candidates to redact any social security numbers, names of minor dependents, and the candidate's home address from the income tax return;
- Amends section 14-28, HRS, to prohibit state electors from voting for candidates for President and Vice President of the United States who have not publicly released and posted their respective income tax returns on the internet for free access by the public at least sixty days prior to and continuing through the date of the general election; and
- Effective upon approval.

Although this measure would not directly affect the Department's administration of Hawaii tax law or any statute under Title 14, HRS, the Department has identified two areas in which it may be able to provide guidance on best practices for effective tax administration and tax-related policy.

First, the Department notes that although the measure requires that the income tax return posted by the candidate "be for the most recent taxable year for which an income tax return has been filed with the Internal Revenue Service as of the date" of the candidate's application with the Chief Election Officer, the measure does not explicitly state what type of tax return should be released. For example, if the intent of the Legislature is to have candidates release their most recent federal individual income tax return, the Committee may wish to amend the measure's language by adding the following language to Sections 2 and 3 where appropriate:

For the purposes of this section, "income tax return" shall have the same meaning as "individual income tax return" in section 6011(e)(3)(C) of the Internal Revenue Code (IRC).

This change will help avoid ambiguity and better effectuate the measure's desired intent.

Second, the Department appreciates the inclusion of language allowing candidates to redact social security numbers (SSNs), names of minor dependents, and the candidate's home address from their published tax returns. Although the Department acknowledges the public's interest in transparency, the Department recommends that the measure be amended to strengthen this provision and to require redaction of all personal identifying numbers, such as SSNs and Federal Employee Identification Numbers (FEINs), whether belonging to the taxpayer, a payor/payee, or any other entity. This will further the State's interest in effective tax administration and protect the privacy interests of non-candidates who may be indirectly affected by the new publishing requirement.

Thank you for the opportunity to provide comments.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:
S.B. NO. 94, RELATING TO ELECTIONS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 12, 2019 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Clare E. Connors, Attorney General, or
Valri Lei Kunimoto, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill and makes the following comments.

S.B. No. 94 requires candidates for President and Vice President of the United States to post their most recent income tax returns on the internet to be included on the state ballot. The tax returns are to be posted for at least sixty days prior to a general election and continuing through the general election to allow the public free access to the tax returns. The candidates may redact their social security numbers, the names of minor dependents and their home addresses in the returns. In addition, the bill prohibits the presidential electors from voting for candidates unless they have publicly released and posted their respective income tax returns on the internet.

The Department agrees that the posting of the candidates' tax returns promotes transparency and provides voters with information regarding a candidate's potential conflicts of interest, business dealings, and charitable donation and allows voters to better evaluate the fitness of the candidates. However, the bill's provisions may violate the Qualifications Clause of the U.S. Constitution.

Article II, section 1, clause 5, of the U.S. Constitution provides the qualifications a person must meet in order to be a candidate for President of the United States:

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any person be eligible to that Office

who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

Pursuant to the Twelfth Amendment to the U.S. Constitution, the Vice President has identical qualifications as the President.

With respect to the members of Congress, the courts have held that the states cannot impose qualifications on the offices in addition to those set forth in the Constitution. In Powell v. McCormack, 395 U.S. 486, 550 (1969), the U.S. Supreme Court held that "in judging the qualifications of its members, Congress is limited to the standing qualifications prescribed in the Constitution" and since Powell met those qualifications, the House was without power to exclude him. In Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995), Arkansas voters amended their state constitution to set term limits on its state officers and members serving in the U.S. House of Representatives and U.S. Senate by preventing the candidates from having their names printed on the election ballots. The Court held that states may not impose qualifications for United States Congress in addition to those set forth in the Constitution.

Pursuant to the Supremacy Clause in the second paragraph of article IV of the U.S. Constitution, these provisions are controlling and when any state statute conflicts with them or with laws enacted pursuant to these provisions, those statutes must fall. Ex Parte Siebold, 100 U.S. 371 (1879). The Department believes the same rationale could extend to the qualifications for the offices of President and Vice President of the United States. The U.S. Supreme Court has recognized bills that are merely regulatory and concerned only with the matters of conducting elections, may survive a Qualifications Clause challenge. Anderson v. Celebrezze, 460 U.S. 780 (1983); Storer v. Brown, 415 U.S. 724 (1974). However, this bill precludes candidates who are otherwise qualified under the U.S. Constitution from being placed on the ballot. We believe S.B. No. 94 may be found to be in violation of the Constitution.

Thank you for the opportunity to testify on this measure.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Mandatory Disclosure of Income Tax Returns for Candidates

BILL NUMBER: SB 94; HB 286 (Identical)

INTRODUCED BY: SB by K. RHOADS, HARIMOTO, IHARA, KEITH-AGARAN; HB by SAN BUENAVENTURA

EXECUTIVE SUMMARY: Requires candidates for president and vice president of the United States to post their most recent income tax return on the Internet at least sixty days prior to and continuing through the date of the general election for free access by the public in order to be included on the state ballot, subject to certain conditions. Prohibits electors from voting for a candidate for president or vice president of the United States unless the candidates have posted their most recent income tax return on the Internet at least sixty days prior to and continuing through the date of the general election for free access by the public, subject to certain conditions. Why don't we impose the same requirement for our elected officials?

SYNOPSIS: Adds a new section to HRS chapter 11 to require a U.S. presidential or vice presidential candidate to provide a statement that a copy of each candidate's income tax return has been posted at least sixty days prior to the date of the general election and will continue to be posted through the date of the general election on the Internet for free access by the public, including the internet address where the income tax returns can be publicly accessed. The income tax return of each candidate shall be for the most recent taxable year for which an income tax return has been filed with the Internal Revenue Service as of the date of the application. Allows for redaction of social security numbers, the names of minor dependents, and the candidate's home address.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: The measure apparently is in response to President Donald Trump's refusal to release his tax returns.

"It's a reasonable step since every modern president has released their tax returns and put their assets into a blind trust to make sure the only interest they have is the interest of our country and its people," the Star-Advertiser quoted one lawmaker as saying.

In most states, including ours, tax returns and tax return information are confidential. The reason for the confidentiality is that it is generally believed that people will be more honest with the government about their finances if the people won't have to worry about collateral consequences from other folks peeking. What might happen if a nosy neighbor wants to peek? Or a business competitor? Or an opposition candidate if you are trying to run for public office? The interest in confidentiality is strong enough so that in civil litigation where parties are suing each other, parties are usually able to demand that the other side disclose any information "designed to lead

to the discovery of admissible evidence,” but aren’t allowed to demand tax returns unless the judge thinks that there is a special need for them.

Even in Hawaii, people don’t like to cough up tax returns or other sensitive financial records. Back in 2014, when a law (Act 240, Session Laws of Hawaii 2014) required that sensitive financial disclosures of many state volunteer boards and commissions be made public, Hawaii News Now reported that at least sixteen board or commission members resigned rather than allow their financial disclosures to be released to the public. The state Land Use Commission lost five of its nine members (56%), the board of the Agribusiness Development Corporation lost four of 11 (45%), the University of Hawaii Board of Regents lost four of its 15 (27%), and the board of the Hawaii Housing Finance and Development Corporation lost two of eight (25%).

We need to ask ourselves what price is necessary to have a participatory role in government. If we want to have those with relevant experience and backgrounds to serve the public interest, do we need to have them bare all their financial information? In this digital age, potential office holders may well ask what consequences they or their family will suffer at the hands of those who may have a different political agenda once this information is irrevocably exposed. Some won’t want to take the heat and will get out of the proverbial water, leaving our country to be run by whoever is left.

We also note that many candidates are married and file joint returns. Exposing the candidate’s income tax return would then necessarily expose the spouse’s financial information as well. This issue can be avoided if the candidate and spouse elect “Married filing separately” status when they file their returns.

Is there any logical reason to mandate disclosure just for federal chief executive offices? Shouldn’t we be taking care of our own back yard and imposing this requirement for State elected officials as well?

Digested 2/7/2019

SB-94

Submitted on: 2/12/2019 5:44:08 AM

Testimony for JDC on 2/12/2019 9:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---|---------------------------|---------------------------|
| Brett Kulbis | Testifying for Honolulu County Republican Party | Oppose | No |

Comments:

SB-94

Submitted on: 2/6/2019 4:28:00 PM

Testimony for JDC on 2/12/2019 9:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Michael Golojuch Jr | Individual | Support | Yes |

Comments:

Aloha Senators,

Please pass this measure.

Mahalo,

Michael Golojuch, Jr.

SB-94

Submitted on: 2/6/2019 7:38:09 PM

Testimony for JDC on 2/12/2019 9:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Antya Miller | Individual | Oppose | No |

Comments:

Aloha Chair Rhodes and Committee Members,

I believe that you, as elected officials, are not required to provide your tax returns to run for election. Until you put this requirement on yourselves, I am opposed to this invasion of privacy. Why do you want to make it harder and harder for people to run for election? Even as a state representative candidate, the requirements are onerous, discourage people from running for election and protect the incumbent.

Vote "no" on this bill.

Mahalo,

Antya Miller, Haleiwa

342-8557

SB-94

Submitted on: 2/10/2019 11:00:33 AM

Testimony for JDC on 2/12/2019 9:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Mark Dietrich | Individual | Oppose | No |

Comments:

SB-94

Submitted on: 2/11/2019 7:55:14 AM

Testimony for JDC on 2/12/2019 9:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Dr Marion Ceruti | Individual | Oppose | No |

Comments:

This bill is a blatant attack on President Donald Trump. It is totally wrong and probably unconstitutional to ignore the vote of the people and prohibit electors from voting for a candidate for president or vice president of the United States unless the candidates have posted their most recent income tax return on the Internet at least sixty days prior to and continuing through the date of the general election for free access by the public, subject to certain conditions.

Instead of opposing everything President Donald Trump does, states like Hawai'i should be finding ways to cooperate with him to keep our country safe. We can start by cooperating with ICE agents to get criminal illegal aliens off our streets.

SB-94

Submitted on: 2/10/2019 8:26:19 PM

Testimony for JDC on 2/12/2019 9:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Bianca Mintz | Individual | Oppose | No |

Comments:

There is no federal law requiring that candidates for president and vice president of the United States make their most recent tax return public. Candidates are people and people have a right to privacy. In addition, other elected officials are not required to posted their tax returns, so why should the office of the president and vice president be subjected to this? Not choosing to post tax returns in no way affects a person's ability to effectively serve in the role of president or vice president.

The State of Hawaii cannot "prohibit electors from voting for a candidate for president or vice president of the United States" under any circumstances - that would be voter suppression. Of course electors may chose not to vote for a candidate because they did not release their tax returns, and that is the electors' right. But electors also have the right to vote for a candidate who has not released their tax returns if they so chose to and the state cannot constitutionally take this right away.

SB-94

Submitted on: 2/11/2019 9:05:21 AM

Testimony for JDC on 2/12/2019 9:00:00 AM



| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| William Hoover | Individual | Oppose | No |

Comments:

This bill is a blatant attack on President Donald Trump. It is totally wrong and probably unconstitutional to ignore the vote of the people and prohibit electors from voting for a candidate for president or vice president of the United States unless the candidates have posted their most recent income tax return on the Internet at least sixty days prior to and continuing through the date of the general election for free access by the public, subject to certain conditions.

This idea of requiring information that is totally irrelevant to a candidate's qualifications for office is idiotic.

Instead of opposing everything President Donald Trump does, states like Hawai'i should be finding ways to cooperate with him to keep our country safe. We can start by cooperating with ICE agents to get criminal illegal aliens off our streets.

LATE

SB-94

Submitted on: 2/11/2019 11:00:40 AM

Testimony for JDC on 2/12/2019 9:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Michelle Kerr | Individual | Oppose | No |

Comments:

Regarding the proposal requiring candidates for president and vice president of the United States to post their most recent income tax returns on the Internet: Why stop there? Why not have every Representative & Senator in leadership positions post their tax returns? We know many of them come into office common men & women of the people, but leave office some years multi-millionaires.

A person's tax returns are between themselves and the IRS period. I strongly oppose SB94!

SB-94

Submitted on: 2/12/2019 5:42:46 AM

Testimony for JDC on 2/12/2019 9:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Charlene Dierking | Individual | Oppose | No |

Comments:

Maybe ALL elected officials should submit their tax returns as well.