

Date of Hearing: August 16, 2023

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

SB 248 (Newman) – As Amended June 13, 2023

Policy Committee: Elections

Vote: 6 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: No

SUMMARY:

This bill requires, beginning on the January 1 after the Secretary of State (SOS) certifies a CAL-ACCESS Replacement System (CARS), a local or state candidate for elective office to file, as part of the existing statement of intention, a form disclosing the candidate's prior education and work history.

Specifically, this bill:

- 1) Requires the Fair Political Practices Commission (FPPC) to create a candidate experience disclosure form detailing a candidate's prior education and work history, including history of military service.
- 2) Requires a candidate to file the disclosure form with the SOS, along with a statement, signed under penalty of perjury, that the disclosed information is accurate to the best of the candidate's knowledge.
- 3) Requires the SOS to post online copies of completed disclosure forms, which must be made available to the public for four years after the date of the election associated with the filing.
- 4) Establishes penalties for failures to file or timely file the disclosure form.
- 5) Provides that making a knowingly false disclosure is a violation of the Political Reform Act (PRA), which is punishable as a misdemeanor under existing law. This bill specifies the Attorney General (AG) is responsible for investigating and enforcing such violations by a candidate for statewide elective office, with the district attorney (DA) responsible for investigating and enforcing such violations by all other candidates in the DA's jurisdiction.
- 6) Declares the intent of the Legislature that a disclosure form violation be considered grounds for disqualification from elective office.
- 7) Allows a governing body authorized to remove an elected official to investigate disclosure form violations and consider failure to file or making a false statement on the form grounds for the official's removal.

FISCAL EFFECT:

- 1) Minor and absorbable costs to the FPPC to create the candidate disclosure form.

- 2) Costs of approximately \$295,000 in the first year and \$285,000 annually thereafter to the SOS for two additional positions to administer the candidate experience disclosure form filing requirement, including posting forms online (General Fund (GF)).

The SOS also anticipates increased CARS project costs to incorporate the new filing requirement. However, the SOS notes it is too early in the project timeline to estimate these downstream costs.

- 3) Costs of up to \$435,000 in fiscal year (FY) 2023-24 and \$777,000 ongoing beginning FY 2024-25 to the Department of Justice for three positions and a contract investigator to investigate and enforce disclosure form violations by statewide candidates.

Similarly, DAs and specified governing bodies will incur cost pressures to investigate and enforce violations by candidates within their jurisdictions.

COMMENTS:

- 1) **Purpose.** According to the author:

The ongoing drama around newly elected congressman and sociopathic prevaricator George Santos of New York should be a cautionary tale. As has been extensively covered by the press since his surprise triumph in the most recent round of midterm elections, over the course of his campaign Representative Santos lied about nearly every aspect of his personal and professional history.

With public trust in politics already at all-time lows, the DUPE Act will provide voters the assurance of appropriate and effective recourse, while allowing for the full exercise of candidates' First Amendment rights, if and when it turns out that a candidate has achieved election by running on demonstrably falsified credentials.

This bill is supported by Indivisible CA 45.

- 2) **Background.**

PRA Disclosures. The PRA requires local and state elected officials, candidates, and committees to file pre-election statements and disclosures. For example, candidates must file a Candidate Statement of Intention (Form 501) for each election, prior to soliciting or receiving any contributions or making any expenditures. This bill requires the Form 501 to include, either as part of the existing statement or as an attachment, a candidate experience disclosure form requiring the candidate to disclose their prior education and work history.

Enforcement Considerations. Similar to the Form 501 and other PRA disclosures, the candidate experience disclosure form must be signed under penalty of perjury. Under the PRA, the FPPC has authority to seek injunctive relief to compel disclosure and violations are subject to administrative, civil, and criminal penalties. Although a violation of the PRA is already punishable as a misdemeanor, this bill specifically tasks the AG and DAs with investigating candidates in their jurisdictions who make a false experience disclosure. FPPC staff notes that such investigations would require tracking down and obtaining records from

schools and employers, as well as determining the standard for whether a statement is true, false, or incomplete, a significantly different scope from the campaign finance or conflict of interest investigations the FPPC generally conducts. Thus, a false experience disclosure will most likely be subject to criminal enforcement over administrative enforcement.

This bill provides that late disclosures are subject to a late filing fee, with failure to file subject to enforcement by the FPPC. However, this bill does not specify when a disclosure is no longer deemed “late” and “failure to file” has occurred. Furthermore, this bill authorizes a governing body to consider failure to file or making a false statement on the candidate experience disclosure form grounds for an elected official’s removal, while declaring the intent of the Legislature to consider such violations grounds for disqualification from elective office. While PRA compliance is undoubtedly important, it may contradict the will of the voters to allow removal an elected official for failing to file a form.

Analysis Prepared by: Irene Ho / APPR. / (916) 319-2081