May 28, 2020

To: California Association of Clerks and Election Officials

From: Matt Siverling, Legislative Advocate

Re: Legislative Update

The California Legislature recently ended a six-week hiatus and returned to some form of business earlier this month. The Speaker and Pro Tem announced a shut down that began March 16th and blew through several benchmarks before finally being lifted. The Assembly returned first, resuming Committee hearings and Floor Session on May 4th, and the Senate returned a week later on May 11th. The Houses will be operating under some extraordinary rules and precautions; holding Committee hearings on the Chamber Floor, itself, and positioning medical staff and Capitol security at the single entry point to question those attempting to enter the building regarding their health issues and physically taking the temperatures of lobbyists and members of the public to screen out those who may be ill.

As of now, it has been announced that each Committee will hold very limited hearings for House of Origin bills and a second round of narrow hearing for Opposite House bills, should bills survive the policy, fiscal and Floor votes in the House of Origin. The target date to wrap up fiscal hearings is June 5th in the Assembly and June 19th in the Senate; so things will move quickly. It had been announced (and assumed) that the truncated Session and critical needs of the State due to the shutdown would streamline the scope of hearings and cause many non-COVID bills to be tabled for the year; however many bills that fall outside this subject matter are calendared for hearing and apparently moving.

The Houses also released amended Session Calendars to try to bring a semblance of order to the chaos. All signs point to the 2020 Session adjourning “on time” on the evening of August 28th; but all of the intermediate deadlines will be accelerated due to the loss of time in March and April.

State Budget

The other elephant in the room is the release of the Governor’s May Revise and its effect on any legislation that may carry a price tag. When the economy came to a complete halt in mid-March, the flow of sales tax, income tax and in some cases property tax has had an absolutely devastating impact on the State General Fund. The Budget proposal released in January included a healthy $20 billion surplus as a result of the previous administrations establishment and fostering of a “rainy day fund”. The Governor’s Budget and the Assembly and Senate plans for 2020 were also beginning to be loaded up with all sorts of social service augmentations. As of now, all proposed increases or commitments to spending have been tabled.

The only thing we know for sure is that the Houses will submit a “balanced” Budget to the Governor by June 15th, which is the Constitutional deadline to do so. (Missing this deadline would result in frozen paychecks for Legislators.) The report is that the Budget plan submitted in June will be viewed as an “interim” approach; due to the fact that income tax and sales tax collection has been pushed back from April to July to offer some relief to struggling Californians trying to pay day-to-day bills. The Governor, through Executive Order, also waived all penalties and fees for late property tax payments. Because of this, there is uncertainty how much money will be collected when it comes due in the summer. It is likely that the Budget Committees will reconvene in August or in a Special Session in the fall to reassess the damage and, in all likelihood, cut deeper in order to keep the lights on.

**Sponsored Bills**

**Assembly Bill 3365 (Judiciary)**

Existing law provides for a “confidential marriage,” whereby 2 unmarried people, not minors, who have been living together as spouses, may be married. Existing law requires a confidential marriage license to be issued by the county clerk, as specified, and then returned to the county clerk after the marriage has been solemnized. Under existing law, if a confidential marriage license is lost, damaged, or destroyed after the performance of the marriage, but before it is returned to the county clerk, the person solemnizing the marriage is required to obtain a duplicate marriage license by filing an affidavit setting forth the facts with the county clerk of the county in which the license was issued. Existing law requires the duplicate license to be issued by the county clerk no later than one year after the issuance of the original marriage license and returned to the clerk by the person solemnizing the marriage within one year of the date shown on the original marriage license.

This bill would instead require the county clerk to issue a duplicate confidential marriage license within one year after the date of the marriage and would require the person solemnizing the marriage to return the license to the clerk within one year of the date of the marriage.

This measure is moving, and has cleared the Assembly Judiciary Committee on consent. It will be heard in Assembly Appropriations next week.

**Other Bills of Interest**

**Assembly Bill 1912 (Boehner Horvath)**

Existing law requires a person who regularly conducts business in the state for profit under a fictitious name to file a fictitious business name statement with either the clerk of the county in which its principal place of business is located or the clerk of the County of Sacramento, as specified, not later than 40 days from the time the registrant commences to transact business. Existing law further requires that person to file, as applicable, a statement of abandonment and a statement of withdrawal from a partnership operating under a fictitious business name. Existing law requires a county clerk to maintain one or more indices that permit the determination of specified information, including whether any business using a specific fictitious business name has on file a fictitious business name statement setting forth that name and, if so, the file number of the statement.

This bill would require the Secretary of State to maintain a ***searchable*** index on its internet website that meets the requirements of existing law with respect to those indices maintained by county clerks and would require a county clerk to ***timely*** provide to the Secretary of State a copy of a statement filed with the county clerk as described above, thereby imposing a state-mandated local program.

We’ve discussed concerns with the Author, who is the sponsor. There is a fundamental misunderstanding about the purpose and process for filing and maintaining a fictitious business name. There was an assumption that the filing of an FBN was equivalent to “reserving” or “claiming” the business name, leading the Author to believe that it is important to have a statewide database to ensure filers know what’s available.

This measure has been held for the year. Since it is a second of a two year session, she will need to re-introduce next year.

**Assembly Bill 2424 (Calderon)**

This measure was a reintroduction of a reintroduction of a bill from last year (Assembly Bill 2368, and AB 199 Calderon). These measures ended up not moving forward.

Essentially, the proposal would have shifted California into allowing for a system of electronic notaries to perform services from remote locations and maintain online/digital notary journals.

The bill was strongly opposed by the Secretary of State, and had no guidelines on the storage or retention requirements, uniformity or format issues.

Late last month, the measure was gutted and amended into a bill that would require notary publics to disclose to their clients that they are not licensed to practice law. The remote notary piece has been removed. Regardless, the bill is not moving.

**Senate Bill 741 (Galgiani)**

Adds marriage certificates and birth certificates of a person’s child to existing law that permits a person to file a petition seeking a judgment recognizing the change of gender to female, male, or nonbinary.

According to the author, current law allows transgender Californians to petition courts to change their name and gender to conform to their gender identity. The law then allows such a person’s old birth certificate to be sealed and a new one issued as an original to both protect the person’s privacy and respect their identity. However, there is no such provision in the law as to the treatment of transgender people’s marriage certificates and the birth certificates of their children. This bill would simply align the process for updating transgender people’s marriage certificates and the birth certificates of their children with the process for updating their own birth certificate. This will help to protect the privacy of transgender people and prevent discrimination when a transgender person enrolls their child in school, applies for a loan, or seeks to make medical decisions on behalf of an incapacitated spouse.

We have met with the sponsor and Author’s staff, as well as key Committee consultants to communicate the complexity of the concerns with the proposal. The main issue is the attempt to shoehorn the process for marriage licenses into the existing process to seal and issue new birth and death certificates for those who have gone through a gender change and wish to change their name (and eliminate records with prior identity). Since the process for marriage records is tangled between the State and counties, and the actual documents are issued by each county (each through a different mechanism); the application of the existing process for birth and death to marriage is not congruent.

We are still in search of a potential resolution to this issue, which was held over last year as a “two-year bill”. We have been in continued contact with the sponsors of the bill, as well as the Judicial Council. It is apparent that the groups behind this measure intend to pursue it at the earliest possible opportunity; and have been dedicated to working to resolve issues.

The measure is technically still active, and will be until the second house policy deadline in the Assembly, which is not until late July.

**Senate Bill 927 (Jackson)**

We were contacted early (and often) by the Senator’s office regarding SB 927 (Jackson); which is a reintroduction of several efforts undertaken by her and her staff in the late 1990’s and early 2000’s. Prior versions of this measure required the county clerk to provide pamphlets and literature to marriage registrants to ensure that they understood (or were aware of) the many nuances of the “contract” that is marriage, including division of assets, custody issues and cost of divorce. All past efforts, including two that reached the Governor’s Desk (Davis) were vetoed with a message that opined on the inappropriateness of placing the clerk in a position to kill the mood on such an important day.

After meeting with them and discussing the past issues, the current (and last) effort was introduced in a much less ambitious form. This bill would require the Judicial Council to prepare and annually update a brochure concerning marriage and domestic partnership rights and obligations, including property rights and spousal support obligations. On or before January 1, 2022, the bill would require the State Department of Public Health to post the brochure on its internet website and print the brochure with the department’s next scheduled reprinting.

Senator Jackson is currently in her final year of eligibility for State Legislative service, and this would have been her last run at a “pamphlet” for educating those who are about to get married.

The measure was tabled in favor of higher priority issues for 2020.