September 24, 2019

To: California Association of Clerks and Election Officials

 County Clerk Legislative Committee

From: Matt Siverling, Legislative Advocate

Re: Legislative Update

On September 13th, the 2019 Session came to an end. The Legislature technically worked deep into the early morning hours of September 14th, and adjourned close to 4am on Saturday. When they finally gaveled the Session, any bill that had not collected adequate votes to ensure passage of both Floors was held and reclassified as a 2-year bill. These measures that failed to win approval this year will have an opportunity to move next year. Depending on the progress the measure made this year, bills will be subject to deadlines that correspond to their location. First, the measures that failed to clear the House of Origin will likely only have until the end of January to move. On the flip side, measures that were parked on the Second House Floor will have the entire year to locate the requisite votes to move.

The Governor has been slowly working his way through bills, and must complete his work by October 13th (or possibly October 14th, depending on how the rules are interpreted). Pursuant to the State Constitution, he has 30 days from adjournment to act on any bill that reaches his Desk. Any bill he does not sign or veto (no action) automatically becomes law.

The Legislature will return for the 2020 Session on January 6th, when they can take up any 2-year bills, and begin to introduce measures for consideration in 2020. Any bill that is introduced in January will need to remain in print for 30 days prior to hearing or amendments.

***Sponsored Bills***

**Assembly Bill 716 (Chen) Fictitious Business Name Electronic Acknowledgement**

Existing law requires a person who regularly transacts business in the state for profit under a fictitious business name to file a fictitious business name statement in accordance with prescribed requirements and to file a new statement after a change in the facts set forth in the statement. Existing law requires that these statements be filed with county clerks. Existing law authorizes a county to require a registrant that mails a fictitious business name statement to a county clerk’s office for filing to submit a completed and notarized affidavit of identity. Existing law also authorizes a county clerk to require an agent acting for a person filing a fictitious business statement, generally referred to as a registrant, to submit a notarized statement signed by the registrant declaring the registrant has authorized the agent to submit the filing on behalf of the registrant.

This bill would authorize a county clerk to accept an **electronic acknowledgment** verifying the identity of the registrant using a remote identity proofing process ensuring the registrant’s identification, for purposes of filing fictitious business name statements.

AB 716 has already cleared the process and has been signed into law by the Governor. On January 1, 2020, the counties will be able to offer an electronic filing process for FBNs.

**Senate Bill 30 (Lara) Domestic partnership: persons under 62 years of age.**

Existing law defines domestic partnership as two adults who have chosen to share one another’s lives in an intimate and committed relationship of mutual caring. Existing law specifies requirements for entering into a domestic partnership, including that the domestic partners be either of the same sex or of the opposite sex and over 62 years of age.

This bill would remove the requirement that persons be of the same sex or of the opposite sex and over 62 years of age in order to enter into a domestic partnership.

The bill will be shepherded through the process by Senator Scott Wiener, who agreed to include the CACEO sponsored amendment to remove the requirement that the Secretary of State provide counties with forms related to State registration for domestic partnerships.

This measure has already been signed into law by the Governor and will be effective January 1st.

**Other Bills of Interest**

**Assembly Bill 199 (Calderon) Online Notaries**

This measure was a reintroduction of a bill from last year (Assembly Bill 2368, Calderon). That measure ended up not moving forward.

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

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

We have contacted the Author and his staff and asked to be included in all discussions on this issue throughout the year. They agreed to give CACEO a seat at the table to communicate concerns on the retention issues.

This is a 2-year bill. We will stay engaged as stakeholder meetings continue.

**Assembly Bill 1819 (Committee on Judiciary)**

This bill would grant a requester the right to use the requester’s equipment, without being charged any fees or costs, to photograph or otherwise copy or reproduce any record upon inspection, unless the means of copy or reproduction would damage the record.

I was told that the bill was introduced as an effort to allow media/reporters to submit a request for a record and then take a quick photograph of the document. Apparently in some jurisdictions this has been disallowed or prohibited.

The language clearly read much more broadly than the intent…

The Committee offered amendments to allow for more clear discretion on the part of the clerk to determine if the request was reasonable and to preserve historical documents. And also to clarify what kind of “equipment” was allowable. We’d asked that the language specify “camera” since that was the impetus for the bill.

Coming out of Appropriations Suspense File, the measure was amended to remove CACEO and CSAC opposition. The bill now states that the method of duplication/reproduction cannot make contact with the document.

With no opposition, the measure moved through the remaining hurdles and was presented to the Governor for his signature. He has yet to act on it as of today.

**Senate Bill 741 (Galgiani) Change of Gender**

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.

The numerous stakeholders, including CACEO, participated in a lengthy conference call to outline our many concerns. We were joined by the Judicial Council representatives as well as Committee staff, who shared with CACEO concerns as well as harboring many of their own. By the end of the call, it was clear that the issues that were being raised, while they may have solutions, would not be resolved in the timeframe we had available to address them. As it stood at the time, the measure was set for hearing within days of the call.

The Assembly Health Committee made the decision to table the bill for this year to give the parties more time to discuss. It is now a 2-year bill.

We are continuing to stay engaged in this discussion, which is ongoing and constant. The stakeholders have been consistently reaching out expressing interest in continuing meetings to hash out language.