March 25, 2020

To: California Association of Clerks and Election Officials

From: Matt Siverling, Legislative Advocate

Re: Legislative Update

As you have likely heard, much like everything else in the country, the Legislature has taken drastic action and extreme precautions to slow the spread of the coronavirus, COVID-19.  On Monday, March 16th, the Assembly and Senate held a lengthy Floor Session to take action to release $1.1 billion in State aid to schools, local governments and hospitals, among other eligible uses, to immediately take action to address critical needs.  Shortly after the unanimous votes on both Floors, the Speaker of the Assembly and President Pro Tem of the Senate announced that the 2020 Session would be immediately suspended with a target date to return of April13th (the conclusion of Spring Recess).  They were clear that the suspension of Session could be shortened or lengthened at any time.

The Governor has been very active on the State and National stage with frequent updates and announcements regarding California’s expectation from its residents.  These have been stacked with stronger sanctions in areas more acutely affected by the virus--especially in the Bay area counties.  The Governor has asked all Californians 65 years of age and older to “home isolate” and avoid interaction with the public.  (This immediately placed the Legislature in a bind since 25 of the 120 elected officials are over the age of 65).  He has also ordered the immediate closure of all bars, gyms, theaters, wineries and “non-essential” places of business; and has ordered restaurants to close their doors to any dine-in patrons, but allow take-out orders.   Lastly, he issued a directive to limit all social gatherings to less than 10 people, and ideally limited to people in your frequent inner circle of family, close friends and roommates.  On a side note, the Governor was quoted opining that schools will not open in “a few weeks” or possibly even a few months.  Some have already taken action to extend the current closure until May 1st. If this is indicative of a return to “business as usual” for the other critical functions of the State, we may be only in the beginning of this journey.

Also, in a historic action, the Joint Rules Committee has closed the State Capitol building, and the adjacent Legislative Office Building, to the public for the foreseeable future.  Entrance to the facilities is only permitted with staff credentials.

That being said, it remains unclear what, if any, activity outside of the State Budget and critical emergency actions the Legislature and Governor will devote time, energy and resources to pursuing when and if they return to lawmaking this year.  It has become abundantly clear over the past week that there are pressing needs that can be addressed through Executive Order of the Governor’s Office, but other matters may require urgent legislative action to take effect this year.  As far as the other “non COVID-19” legislative issues, the calendar and priorities change by the day, and often the hour. We will learn more in the coming days and weeks.

For now, I am proceeding as if the Legislature will return on April 13th, and begin to work through the House of Origin measures that will be subject to a policy committee deadline.  The current House of Origin policy deadline for fiscal bills, adopted at the beginning of the year by the Rules Committee, is April 24th.

**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.

We asked the Judiciary Committee to sponsor this bill to create uniformity in the law with respect to confidential and public marriage licenses.

**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.

We had a scheduled conference call with the Assemblymember last week that was postponed due to the global pandemic.

**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 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 (again) 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.

**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.

**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 will be her last run at a “pamphlet” for educating those who are about to get married.

**Other issues/Questions**

*Emergency Marriages/License Issuance*

Have any counties created a process for issuance of licenses remotely, virtually or through non-contact methods? We heard some potential need for expedient marriages for health insurance/financial/pension purposes.

*Federal Action to Assist Locals*

There was a flurry of activity late last week to request recorders/clerks to bring attention to funding shortfalls for essential services through clerk-recorder offices. The emails predated the declaration of a Federal Disaster; which unlocked a larger sum of available funding to flow from the feds to the State. Is this still a pressing issue that needs to be elevated to the attention of the Legislature?

*Any other issues??*