June 25, 2020

To: California Association of Clerks and Election Officials

From: Matt Siverling, Legislative Advocate

Re: Legislative Update

The Assembly wrapped up its House of Origin deadline last week and has adjourned for Summer Recess, per the updated calendar. However, we have recently learned that they will be returning this week to address several loose ends on the Budget and a few remaining unresolved legislative issues. The Senate finished their fiscal “Suspense file” last week, and will now focus on moving the remainder of their measures through the Floor. They plan to adjourn prior to the July 4th holiday and return at the same time as the Assembly (July 13th).

The overwhelming focus of the attention on COVID-19 issues and State fiscal health was deviated over the past couple of weeks by the civil unrest spurred by the National call for police reform and policy related to affirmative action and civil rights. There was a flurry of “gut and amends” in both the Assembly and Senate to house language on chokeholds, rubber bullets, tear gas, qualified immunity for peace officers, and crowd/protest response. This issue shows no sign of slowing down.

As for the pandemic and the health of the State budget, the Governor has succumbed to pressure to open more businesses and retail, but just yesterday deviated from urging caution to requiring it—in the form of a statewide requirement on facial masks in any public setting. The reported numbers of positive tests, hospitalizations and deaths have spiked in certain areas, leading the administration to issue the directive.

The Session Calendars still point to the 2020 Session adjourning “on time” on the evening of August 28th. This will be contingent on the property, sales and income tax revenue collected in July and how it affects the Budget.

**State Budget**

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 Houses submitted a “balanced” Budget to the Governor on Monday, June 15th, which was the Constitutional deadline to do so. As reported, the Budget plan was 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 Legislature did make a very public push to restore much of the cuts to social programs that were contained in the Governor’s budget, and hinged much of the confidence on funding their plan on the receiving of Federal funds to assist with the shortfall. The Governor signaled that he was not as comfortable depending on the funds; and will likely be using his “blue pencil” to address some of the restored items.

However, just earlier this week, the Speaker, President Pro Tem and Governor issued a joint press release that the entities had come to agreement on a Budget plan for 2020-21. After reviewing details, the Governor moved considerably more than the Legislature and restored a significant amount of the proposed cuts to social services and education in anticipation of an influx of Federal relief monies.

CACEO has repeatedly signaled to the Governor that the Executive Order on remote/video license issuance and ceremonies is set to expire at the end of this month. As recently as yesterday, staff at the Administration indicated that they are aware of the request and are reporting that it is being “viewed favorably” for extension, but, again as of yesterday, “no official decision has been made by the Governor”.

We have also identified an Assemblymember who is willing to “gut and amend” one of his bills that is currently in the Senate for our use to statutorily and permanently extend the remote/video option for counties to use for marriages. The Assembly bills that are housed in the Senate will be taken up when the Legislature returns from Summer Recess in mid-July. If the measure contains an “urgency” clause, the law would be enacted immediately, as soon as August.

The one question I have received from several offices I’ve spoke with about this measure is whether we anticipate opposition from religious groups or “marriage purists”. One Republican member was considering carrying the bill for CACEO, but was hesitant to do so in an election year if it was going to draw conservative opposition or negative reactions from a portion of his base. Thoughts?

**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 on consent. It will be heard in Senate Judiciary Committee in mid-July when the Summer Recess concludes.***

**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 July 31st.***

**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.***

**Assembly Bill 609 (Levine) CEQA Electronic Filing**

CEQA requires a lead agency to prepare, or cause to be prepared, and certify the completion of an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. The act requires the lead agency to mail certain notices to persons who have filed a written request for notices.

***This bill would require the lead agency and the project applicant to post those notices on their internet website.***

CEQA requires a lead agency to submit to the State Clearinghouse in sufficient number of copies, in either hard-copy or electronic form, a draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration for projects in which a state agency is the lead agency, a responsible agency, or a trustee agency; a state agency otherwise has jurisdiction with respect to the project; or the project is of sufficient statewide, regional, or areawide environmental significance.

***This bill would instead require a lead agency to submit to the State Clearinghouse, in electronic form, the above-described environmental review documents for all projects and would require the lead agency and project applicant to post those documents on their internet website.***

CEQA requires a state agency, if it determines to carry out or approve a project that is subject to CEQA, to file a notice of determination with the Office of Planning and Research. CEQA authorizes a state agency, if it determines that a project is not subject to CEQA, to file a notice of exemption with the Office of Planning and Research.

***This bill would require the notice of determination or the notice of exemption to be filed electronically by the state agency.***

CEQA requires a local agency, if it determines to carry out or approve a project that is subject to CEQA, to file a notice of determination with the county clerk of a county in which the project will be located. CEQA authorizes a local agency, if it determines that a project is not subject to CEQA, to file a notice of exemption with the county clerk of a county in which the project will be located.

***This bill would require the notice of determination or notice of exemption to be filed electronically by the local agency if that option is offered by the county clerk.***

Would these requirements pose issues for counties and county clerks?