October 24, 2019

To: California Association of Clerks and Election Officials

County Clerk Legislative Committee

From: Matt Siverling, Legislative Advocate

Re: Legislative Update

The 2019 Legislative Session has officially concluded with the Governor taking his final actions.

Governor Newsom considered 1,042 bills that were able to successfully clear the Legislative process and reach his Desk. He signed 870 of them into law. He vetoed 172 of those bills, giving him a 16.51% veto rate. For perspective, the highest rate that Governor Jerry Brown achieved in his tenure as Governor was in his last year (2018), at 16.52%.

Of note in this report, the Governor vetoed SB 5 (Beall) which would have planted the seeds for a reintroduction of RDA's, and vetoed SB 598 (Moorlach) which would have tasked the CA State Treasurer with running a task force to explore machine readable CAFR reports. He did sign AB 857 (Chau) to establish a process for launching "public banks"; but the bill was amended significantly to limit the number of applicants and sense the program after 7 years. It is yet to be determined which, if any, local agencies explore this option.

The action will commence on January 6, 2020. At this time, the bulk of 2-year bills will again become eligible and can be amended or heard in Committee.

***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 cleared both Houses and was quickly signed into law by the Governor. It will become part of the Codes on January 1, 2020.

**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 was signed into law by the Governor.

**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 bill was not acted on this year and will become eligible in January. .

**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’m 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. We remain engaged on discussions related to access to systems and software.

The measure was amended late in the process to specify that the method of reproduction cannot make physical contact with the document; moving the bill closer to the stated intent of allowing for photographs. Language was also added to bolster the clerk’s ability to reject the activity if the reproduction is disruptive or onerous; and also to protect the historical, fragile documents from damage. With these amendments, the Association went “neutral”. The Governor opted to sign this bill into law.

**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.

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.