December 9, 2014

To: California Association of Clerks and Election Officials

From: Matt Siverling, Legislative Advocate

Re: County Clerk Final Legislative Report

This is the final Legislative Activity Report for the 2014 Legislative Session on Association legislative matters of interest.

**INTRODUCTION**

This is the Legislative Activity Report on Association legislative matters of interest.

The Legislature adjourned to end the Session in the early morning hours of August 30, 2014 and is scheduled to reset and begin the 2015 Regular Legislative Session on December 1, 2014. Under the Constitution, the Governor had until September 30, 2014 to sign or veto bills passed by the Legislature in the regular session. 2014 was the second and final year of the two-year Legislative Session. This means that all action on legislation has concluded, and the cycle will begin with brand new bill numbers.

During this meeting, the Association will be presented with background materials on all measures of interest that were discussed or acted upon by the Legislative Committee in the 2014 Legislative Session. These bills have been held in the Legislature, vetoed, or signed into law by the Governor.

1. **Sponsored Bills**

The County Clerk’s Legislative Committee opted to sponsor three proposals for introduction in the 2014 Legislative Session.

**1. Senate Bill 1467**

**Business and Professions Code/Fictitious Business Name Cleanup Legislation**

In 2012, CACEO “opposed unless amended” Assembly Bill 1325 (Lara), which was eventually amended and signed into law. With the amendments that were taken into the bill, the Association removed opposition and officially went neutral.

AB 1325 made wholesale amendments to the Business and Professions Code related to the fictitious business name form and application process. It was introduced in reaction to a constituent complaint in Los Angeles County who felt that they had been the victim of identity theft through the FBN application process. The bill added a “safeguard” by allowing the county clerk to request identification or a certificate of ID to ensure that a paper trail was created during the process.

In preparing for the enactment date of January 1, 2014 for the new laws contained in AB 1325, the counties began to identify several issues that would need to be fixed moving forward. Current law did not provide an appropriate process for “unincorporated associations” to complete the fictitious business name registration. The current law also requires a higher level of scrutiny than clerks felt was needed to identify corporations and LLC’s, which creates a more expensive and time-consuming process than is necessary to carry out the intent of the original bill, AB 1325 (Lara, ’12).

The bill clarifies who should be listed as the "registrant" when business is being conducted by an "**Unincorporated Association**."  Currently, as set up by AB 1325 (Lara, '12) those signing up as "unincorporated associations" do not have a set of rules/guidelines that fit their needs.  They differ from "partnerships" since they have no "partners" and differ from "corporations" because corporations are treated as stand-alone entities.  The bill would add a process for designating the appropriate person to sign the FBN.

Second, the current law requires an "original certificate of status" from the Secretary of State when registering for an FBN as a corporation, LLC, and limited liability partnership.  This proposal allows alternative forms of "evidence or proof" to indicate the current existence and good standing of the company.   This suggestion will streamline the process for this population of registrant and would save time and money for those applicants who could satisfy the requirement through other means.   For example, until the law went into effect on January 1, 2014, Los Angeles County was allowing a screen print of the Business Entity Detail report that populates the Secretary of State's web form. The current "original certificate of status" would carry a cost and also, according to courier services and recent applicants, slow the process by weeks.

The measure, although innocuous and technical, did attract a fair amount of concern from the Republican Caucus in the Assembly. Luckily, their concerns were determined to be rooted in the existence of the option to register as an “unincorporated association” in the first place. It was carefully explained to the consultants that CACEO was only attempting to work out the problems in current law related to “unincorporated associations” that was created by AB 1325, a bill that CACEO opposed.

Once the Republicans understood that clerks were being asked to enforce a faulty law we opposed, they removed their concerns and allowed the bill to sail through unopposed. The measure was eventually approved and signed into law.

 ***(Final Status: Chaptered)***

**2. Senate Bill 1467**

**Professional Photocopier Registration Legislation**

This Committee bill also specifies that a person registering as a professional photocopier with the county is made aware that their notary commission must remain current throughout the duration of their registration period.

Current law only requires that a person registering as a professional photocopier with the county clerk only possess a “current commission to act as a notary from the Secretary of State.” Because the commission may expire after four (4) years, there is a possibility that a lapse may occur during the course of the registration with the county, which lasts two (2) years.

This bill will ensure that a person is aware that they are required to carry a commission to act as a notary that is active throughout the registration with the county, and if it expires in the middle of the county registration, they must notify the clerk that the issue has been addressed. This bill will provide a higher likelihood that professional photocopiers are current with necessary requirements throughout the duration of their registration, not just at the time they register.

This measure was luckily uncontroversial and was approved without much concern.

***(Final Status: Chaptered)***

**3. Assembly Bill 2747**

**Confidential Marriage License/Marriage Ceremony Location Bill**

This measure was adopted for sponsorship by the Association due to reports from numerous counties of members of the public inadvertently violating current law related to confidential marriage licenses. Current law mandates that the marriage ceremony must take place within the county that issued the license. If and when couples do not follow this law, the license is invalid and the couple must seek legal recourse to repair the problem.

In researching the history of the Code Section, Family Code 504, it was determined that the language to mandate that the same county issue the license and host the marriage was added in 1983 by…the California County Clerks Association. In the analysis which was provided to then-Governor Deukmejian, the sponsor indicated that the amendment would address the numerous instances where couples were unaware of which county their license was located. Mandating them to register and then hold their ceremony within the same county would correct this problem.

CACEO’s portion of the bill did not receive any pushback from interest groups. The bill did have other provisions that attracted Republican “no” votes, but not enough to slow or stop the measure. It was approved and signed into law by the Governor.

***(Final Status: Chaptered)***

1. **Other Bills of Interest**
2. **Assembly Bill 1525 (Lowenthal) Position: Oppose**

The Committee opted to oppose Assembly Bill 1525, which would add “city clerk” to the list of individuals permitted to solemnize a marriage by virtue of their title. City clerks would be added to clergy, Congress, members of the Senate and Assembly, elected Mayors, and members of the County Board of Supervisors.

The Association argued throughout the process that since county clerks are the statutorily designated “commissioner of marriages” in their respective counties, and function as a political subdivision of the California Department of Public Health, the designation should remain solely with the county to provide this service. Further, one of the principal functions of the county clerk is the issuance and administration of the marriage license, which won’t be offered at the city. Under current law, county clerks also have the ability to “deputize” interested individuals to perform a marriage.

County clerks explained to the Legislature that they are troubled and concerned by AB 1525, which would blur the function between city and county clerks. The existing list of eligible dignitaries and elected officials may occasionally perform marriages for constituents from time to time, which is different than adding “city clerks” to the list; who would confuse the public by granting the authority to an administrative public office which currently does not provide any services related to marriages. Couples would continue to be required to apply for their marriage license at the county office, file their license with the county recorder within 10 days of the ceremony and obtain their certified copies of marriage documents from the county clerk.

The Judiciary Committee forced amendments into the bill to put the language into Family Code Section 400.1, which also contains the authorization for mayors and county supervisors. The Section also requires the “training” requirement that is imposed on the other designations. Finally, the bill was amended to specify that ***only*** the city clerk and not their staff would be eligible to solemnize marriages.

Despite the Association’s opposition, the measure was approved by the Legislature and signed into law by the Governor. The Governor’s staff expressed mild concerns about a “need for this bill.” They eventually concluded, unfortunately, that the small amount of benefit that this could provide to the public through “convenience” would outweigh the concerns raised by the Association.

***(Final Status: Chaptered)***

**2. Assembly Bill 2275 (Ridley Thomas)** **Position: Support**

CACEO opted to support AB 2275, which will increase Californians access to vital records utilizing an electronic identification process for notaries.

The Association generally supports greater access to public records. In addition, allowing electronic identification will make the online request process more efficient and reduce the additional costs associated with obtaining a notarized affidavit of identity.  This bill will benefit persons who may not have ready access to notary services such as members of the military who are deployed overseas or out at sea, civilians residing overseas, and indigent or homeless constituents for whom the cost of additional notary fees or lack of physical identification may be prohibitive.

Current California statute allows for electronic notarization, but there are no notaries in California who are offering this service. Other online technologies/services offer methods to establish and verify a person’s identity electronically.  Such technologies have allowed a number of industries to revolutionize their business processes and services to the benefit of their customers including the banking, insurance and healthcare industries.

The Senate Judiciary Committee issued a scathing analysis claiming that the risks outweigh the benefits of this option. Among the reasons for opposing were increased identity theft concerns, fear of fraud, and a lack of security measures. The measure was lobbied hard by the ACLU and the Privacy Rights Clearinghouse.

There was a last effort by the Author and the sponsors to amend the bill into a three region pilot project, but the effort fell short on votes. The measure was effectively dead for the year.

***(Final Status: Held in Committee)***

**3. Assembly Bill 2286 (Wagner) Position: Neutral**

This bill proposed to transfer the registration and oversight of “process servers” from the county clerks to the State Bar. The Author argues that the State Bar is a more appropriate body to oversee the process servers because they share a common link with the courts and the legal process. Further, the Author also views the single “portal” of the State Bar as preferable to 58 individual county registration programs, especially considering that process servers may do business across multiple counties.

The Association has learned that the measure was been dropped for the year by the sponsors, a State Association of Photocopiers and Process Servers. According to their lobbyist, the sponsor was contacted by the State Supreme Court, who was on the verge of opposing the bill. When asked, the Supreme Court indicated that they were frustrated with a separate, incomplete issue that was in the purview of the State Bar. They thought that adding additional responsibilities to the State Bar’s list would exacerbate the current problems.

According to the sponsor, the issue of “who should oversee process servers” was not a problem for the Supreme Court. Their opposition was rooted entirely in alternative, unresolved frustration with the Bar.

Based on this, the Author dropped the bill, which is dead for the year.

***(Final Status: Dropped)***

**3. Assembly Bill 2528 (Skinner) Position: Concern**

AB 2528, as it was amended after introduction, provided that all marriage records include diacritical marks, including but not limited to accents, tildes, graves, umlats and cedillas.  County Clerks expressed concerns that this law would create unintended complications for customers. Historically, all electronic indexes maintained by the County Clerk have only been programmed to use 26 alphabetical characters. The various software systems that are currently in use throughout the state will need to be modified to accept diacritical marks.  Additional staff time processing amendments may be required if the marks are inadvertently left off or improperly included when issuing a marriage license. CACEO is still researching how this bill would affect our customers on the federal level since the marriage license is used as a legal name change document in the State of California. This may cause issues with the issuance of federal passports and interaction with Social Security offices.

CACEO understood the intent of the measure but also communicated the potential challenges of complying with this State mandate. Individual counties each may have encountered unique issues in attempting to comply with this proposal depending on the vendor and technology employed to issue licenses and maintain indexes.

The measure was referred to suspense. The analysis indicated that the measure would cost “millions” (upward of $10 million) at the Secretary of State and likely more at the DMV (if they could comply at all). The analysis also referenced local costs of “easily in the tens of millions.”

The bill was held in Appropriations and effectively killed for the year.

***(Final Status: Held on Suspense)***

**4. Senate Bill 1050 (Monning) Amend/Oppose**

This bill adds a statutory notice to a form certificate of acknowledgment, proof of execution, and jurat that the notarial certification verifies only the identity of the person who signed the document to which the certification is attached, and not the truthfulness, accuracy, or validity of that document.

CACEO had issues with the bill, because the measure required that notice, **in not less than 12-point boldface font type,** to be inserted in a box at the top of the certificate of acknowledgment, proof of execution, or jurat.

CACEO participated in a meeting with the Secretary of State, the notaries and the Recorders to voice concerns about the “12 point font” requirement. Under the bill, the clerks would need to verify whether the notice was legal and following all of the requirements, including the font size.

The measure was amended to remove the font requirement and now reads that the notice needs to be “legible,” which addressed the Association concerns.

***(Final Status: Chaptered)***

**5. Senate Bill 1345 (Committee on Natural Resources) Position: Support**

Last year, CACEO identified an incorrect reference to “county clerk” as the designated officer to “record a lien” within the language of a Chaptered bill, SB 753 (Steinberg). This reference would more appropriately read “county recorder”.

The Committee staff for the Senate Pro Tem was approached and provided with the Code Section of the error. They have agreed to quickly and quietly clean it up this year in this Committee bill.

The bill was unanimously approved by the Legislature and signed into law by the Governor.

***(Final Status: Chaptered)***

**Statistics**

* This year Governor Brown considered 1,074 bills, the most he has considered since beginning his third term and the most bills considered since Schwarzenegger considered 1,177 bills in 2008.
* Governor Brown vetoed his second lowest percentage of bills (13.31%) since returning to office in 2011. His lowest veto percentage was last year (2013) at 10.71%; his highest veto percentage was the first year of his third term (2011) at 14.37%.
* Governor Brown’s average veto rate (12.61%) during his current term (2011–14) is higher than his veto rate during his first two terms (4.63%).
* Governor Deukmejian considered 14,828 bills during his eight years in office; Governor Brown has considered 15,242 during his 12 years in office.