December 9, 2014

To: California Association of Clerks and Election Officials

From: Matt Siverling, Legislative Advocate

Re: Clerk of the Board 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 Clerk of the Board Legislative Committee did ***not*** opt to sponsor legislation for introduction in the 2013 Legislative Session.

1. **Other Bills of Interest**

**Assembly Bill 194 (Campos) Open meetings: criticism: penalties Pos: Oppose**

In 2013, CACEO opposed AB 194, which would have provided that if a member of a legislative body, while acting as the chairperson of the body, prohibits public criticism of the policies, procedures, programs, or services of the agency or of the acts or omissions of the legislative body, that individual shall be guilty of a misdemeanor.

CACEO believed the bill may encourage members of the public who might object to reasonable time limits to public comment time limits to initiate court actions against the chairperson of a board of supervisors.  The Association felt that creating a new criminal misdemeanor would be unreasonable and represent legislative overkill.  The line between legitimate, protected criticism of a legislative body and personal abuse is a very gray one.  If AB 194 were to be enacted, when a member of the public became abusive, a chairperson would be very reluctant to cut off that public comment when time had expired no matter how abusive or offensive. Thus, the bill would also be an invitation for people to verbally and personally abuse the members of the body, which would not only be offensive, it would waste large amounts of the Board’s time. The bill also presented an obstacle to persuading citizen volunteers who serve on county commissions and committees to serve as chair of their respective legislative bodies once they become aware that they could, through some innocent error on their part, become the subject of criminal prosecution.  Without a chairperson, these legislative bodies could not function.

After several weeks of discussion on this issue, the Author opted to hold the bill in Committee. She indicated that she’d like to revisit the issue in 2014.

Early this year, the Member activated AB 194 but opted to amend the bill to contain language that would “null and void” any action taken by a public body if they were found to be in violation of the proposed law in the bill. In addition to the “public criticism” provisions, the measure contained new language to specify that if the public was not provided with an opportunity to speak on an agenda item, the action would be declared “null and void.”

CACEO opposed this version of AB 194, as well, and worked diligently to attempt to stop the measure. Eventually, through the pressure of a local government coalition, the bill was further amended to provide opportunity for the public to address an item either before OR during the item, and to state that “failure to sign a sign in sheet” is not grounds for preventing public comment. Both of these amendments were also deemed problematic by clerks.

CACEO continued to oppose the measure and communicated concerns to the Governor’s office once the bill was able to clear the Legislature. Thankfully, the Governor agreed with the Association and opted to veto the bill. In his veto message, the Governor stated:

*“This bill amends the Ralph M. Brown Act to allow individuals who attend local agency meetings to speak before and during an agenda item, a common practice. The bill restates that local agencies shall not prohibit public criticism at meetings. Finally, the bill prescribes how time should be allotted to each speaker. California has robust policies and longstanding laws in place that promote an open and transparent government and guarantee public decision making. This bill adds certain procedures to the Brown Act, which at best will elongate but in no way enhance the quality of debate at the local level.”*

***(Final Status: Vetoed)***

**Assembly Bill 634 (Gomez) Pos: Amend**

This measure authorizes the recognized collective bargaining representative of an elected or appointed official who is a peace officer, a District Attorney, or a Deputy District Attorney to make a demand that certain information not be disclosed under a Public Records Act request.

CACEO requested an amendment to the bill and gave the Author two options. Option 1 would require that a request filed on behalf of a public official by ANY agent described in 6254.21(c)(4) must provide the name or names of the affected officials.

Option 2 would limit the requirement to name the affected officials to only the recognized bargaining representative.

This would have expedited compliance and would have been very helpful to custodians of records, especially in light of the fact that compliance is required within 48 hours of receipt of the request.

Unfortunately, the Author and sponsors were not interested in amending the bill to be different than the current process for redaction. We may wish to revisit this process if problems are identified with this new process.

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

**Assembly Bill 1442 (Gatto) Pos: Oppose**

The introduced version of AB 1442 would have simply added “local agencies” to the provisions of the existing “Information Practices Act” that is currently enforced on State bodies. However, it contained no direction on how to synch the provisions of the IPA with the Public Records Act.

As it was eventually proposed to be amended, the bill would have amended Government Code Section 1798.14 to state that, notwithstanding the exception specified in paragraph (4) of subdivision (b) of Section 1798.3, local government agencies would be required to destroy personal information when the agency determines the personal information is no longer relevant and necessary to accomplish the purpose for which it was intended.

It was communicated to the Author that this would present Clerks of the Board with a very difficult and costly problem. And, if complied with by Clerks of the Board, it would do irreparable harm to the historical records of local legislative bodies, including boards of supervisors.

For more than 160 years, correspondence and other documents directly relating to matters coming before a board of supervisors become a part of the permanent, archived record of the board. Oftentimes, these records contain information defined as “personal information” by the Information Practices Act. They may contain a person’s name and address on an item of correspondence, personal information that is part of a contract approved by the board, contact information contained in a speaker request form, etc. Under the California Public Records Act these records are considered public and disclosable. And they comprise the permanent, historical record of actions taken by boards of supervisors. To selectively edit these records might well be nearly impossible and certainly would be extremely costly. And to do so would alter, in fact damage, the historical record of governing bodies throughout the state, past and future.To complicate matters further, under regulations adopted by the Secretary of State, when public agencies in California convert hard copy records, they must use trusted systems and other measures contained in the regulations to ensure that the archived records contain “trustworthy electronic documents”. That is, they must be “true and accurate cop[ies]” of the “official document or record . . .” (Section 22620.7 of Chapter 15 of Division 7 of Title 2 of the California Code of Regulations). Many Clerks of the Board in California already have been working for several years to convert hard copy and permanent records stored in other media to electronic records following the Secretary of State’s regulations. Making the Information Practices Act apply to these local governments would be costly and difficult to do, and it might render their records to no longer be considered trustworthy, in the legal sense.

Furthermore, the retention and destruction requirements of the Information Practices Act that would be imposed on local government agencies conflict with, not only the California Public Records Act, but numerous other statutes. For example, an application for changed assessment (assessment appeal) contains personal information of the applicant. Under the CPRA, the application is a disclosable public record. Under the Revenue and Taxation Code, a county may only destroy the application seven years after final action has been taken on the application. With litigation, this may be a period of many years beyond the normal retention period. When the appeal is resolved, the Clerk has no need to contact the applicant, so the personal information has no *predictable* purpose. However, there may be a need to access the information later on that no one in the office can predict. If all of the personal information in the record has been destroyed, given the nature of that record, the record is totally useless and the record of the action taken by the appeals board is lost.

The California Public Records Act exempts from disclosure specific items of personal information and numerous types of records that contain personal information (Government Code Section 6254 through 6254.30). We believe that these safeguards are adequate to protect most citizens’ personal information.

It was eventually determined that this measure was introduced in response to a school district that had hired a “data mining firm” to track social networking activity of its students in order to address bullying. Once the intent was identified, the local government coalition was able to convince the Author to narrow the scope of his bill to remove cities and counties from the provisions and apply the policy to schools, alone.

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

**Assembly Bill 2040 (Garcia) Pos: Watch**

The measure requires local agencies to report to the State Controller “specified information” about the compensation of local public officials. In the introduced version of the bill, “Compensation” meant the salary, per diem, fees, reimbursement for expenses, and employment benefits paid with public funds. “Salary” means any and all payments made by a local agency as consideration for a public official’s services to the local agency, and include, but are not limited to, wages, health benefits, pension benefits, insurance coverage, compensated vacation and leave time, free or discounted transportation, payment or indemnification of legal defense costs, and any other item of value received by the public official from the local agency. The new language only directs the State Controller to “consult” with local agencies to determine the content of the report. Further, the local agencies can comply with the mandate by posting a link to the Controller’s report.

CACEO was heavily involved in similar bills in the past that would have triggered much more onerous duties for clerks through the use of the Form 700 as a conduit for the compensation information (Senate Bill 46, Correa). This measure took a different approach, and was successful in accomplishing their goal without adding workload to locals.

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

**Assembly Bill 2415 (Ting) Pos: Support**

CACEO supported AB 2415, which would have established a registration process for tax agents to be administered at the State level. This was another attempt to accomplish the registration program, which was formerly contained in AB 1151.

Current law provides that a taxpayer is authorized to file an application for reduction in an assessment with the county’s assessment appeals board. Existing law also states that an authorized agent is permitted to represent a taxpayer in an assessment appeal proceeding. Existing law does not require the authorized agent to register with any jurisdiction, and does not regulate the profession in any way.

This measure would have caused “tax agents” to register with the Secretary of State and pay a fee for the registration that is sufficient to cover the cost of the program. Registration with the State would be a prerequisite to representing a taxpayer before an assessment appeals board or any county official. AB 2415 would have also tasked the Attorney General with pursuing civil fines for failure to comply with the provisions of the law.

County clerks were especially pleased that AB 2415 housed the registration with the State, where it would presumably be a more efficient, convenient and uniform single portal to register tax agents, collect registration fees, and distribute and organize registration numbers. The Association argued that the synergy created by a single system in the State allowed for information sharing and more ease for tax agents to operate across county lines incompliance with the bill.

The measure was able to navigate the process despite strong opposition from the California Chamber of Commerce, the California CPA’s, the Secretary of State, and the California Board of Accountancy. Amendments were taken along the way to appease the affected groups searching for ways to ease the registration process and requirements, and the Secretary of State was eventually placated with language to ease implementation and costs.

Despite all the hard work, the Governor opted to veto the bill and indicated that he was unconvinced of a problem that needed to be solved. For the time being, LA County continues to be the only jurisdiction with a registration requirement for tax agents.

 ***(Status: Vetoed)***

 **Senate Bill 33 (Wolk) Pos: Amend**

Identical to AB 229 and AB 243 of last Session, SB 22 adds to the Government Code a principal act forming Infrastructure and Revitalization Financing Districts. The bill contains several duties for the Clerk of the Board in the district formation process, including mailing copies of the resolution of intention, advertising the public hearing prior to adopting an infrastructure financing plan, Web posting of a district annual report, publishing a resolution to issue bonds, etc.

Based on our request, the bill was amended to include minor amendments to require that a legislative body “cause” a district formation resolution to be mailed to individuals and entities, rather than require the clerk to mail the resolution. Like last year, the Author was willing to accept and add the permissive language***.***

However, the measure was shelved for the year due to a last minute compromise on infrastructure financing districts that surfaced at the end of Session, replacing the need for this bill.

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

**Senate Bill 1337 (DeSaulnier) Pos: Oppose**

As introduced, this bill would have added to the Gov. Code Section 6253.11 to require state and local agencies to provide an electronic copy of a public record when the public record is made available in response to a request.  It also would add Section 6253.12 to require an agency to respond to a request to requests for records from a member of the press within 14 days.  This section would also define “member of the press” for purposes of the section.

The measure was introduced in response to perceived “foot dragging” on public records requests related to the Bay Bridge construction scandal. Members of the press were requesting public records and then experiencing delays that were causing stories to miss print times. Further, the Senator has always been a staunch advocate for increasing electronic records.

The bill was problematic due to the higher standard for press inquiries for public records as well as the ambiguous nature of the intent of the bill and timeframe for locals to “respond” to a request. Eventually, the Author agreed to remove counties and cities from the bill since the target of the measure (Cal Trans) was his primary goal.

**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.