October 28, 2021

To: CACEO County Clerks Legislative Committee

From: Matt Siverling, Legislative Advocate

Re: End of Year Report

The 2021 Legislative Session came to an official end on October 10th, which was the last day for the Governor to sign or veto bills in his possession. When the dust settled, the Senate and Assembly had sent him 836 total proposed measures, of which he signed 770 into law. He vetoed only 66 bills that he received; or only about 8% of the Legislature’s bills. This more than doubled the output of last year’s process, which was severely hampered by the COVID lockdown.

Since this is the first of a two-year Session, we will see many of the familiar measures that stalled this year have a brief opportunity to move in 2022. These bills will be joined by several thousand additional/new bills that can be introduced when the Session begins shortly after New Year’s Day.

**SPONSORED BILLS**

CACEO County Clerks Legislative Committee opted to sponsor one bill this year.

**ASSEMBLY BILL 583 (Chiu) Remote Marriage and Electronic Issuance of Licenses**

In response to the pandemic and subsequent “stay at home” order issued by the State, we pursued an Executive Order in 2020 to allow for the waiving of select Family Code provisions to allow for the remote/electronic issuance of marriage licenses and solemnization of ceremonies.

As 2021 began, we determined that, although the Executive Order is still in effect for the foreseeable future, it would be advisable to move forward with permanent changes to law to allow for the continuation of the service. Many counties have received positive feedback from constituents about the convenience and ease of the new process, and recommended that it become an option going forward; even after the COVID-19 pandemic is in the rear view mirror.

We received late notice from the Author’s office that they were contacted by CDPH with some requested amendments that we eventually took into the bill. Here is the amend:

CDPH has determined that the previously amendment removing “from the same physical location” from FC 560 is no longer needed. However, CDPH is requesting an additional amendment of FC 554(b) to include clarification that the county clerk is not required to be in the same physical location within California when solemnizing or witnessing the marriage using remote technology. The suggested amendment is included below with the new addition in red.

**554.** (a) Each member of the couple shall be physically located in the State of California while using remote technology to obtain a marriage license pursuant to this part.

(b) Each member of the couple, **person solemnizing, and any necessary witnesses, excluding the county clerk** shall be in the same physical location in the State of California while using remote technology to solemnize their marriage pursuant to this part.

(c) The county clerk may require a couple to complete an affidavit, in a form provided by the county clerk, affirming that they and each individual participating in a marriage solemnization using remote technology are physically present within the State of California in compliance with this part.

Eventually, the measure was taken up on the Senate Floor and approved. It was then sent to the Assembly for a concurrence vote, which was also unopposed and approved with a unanimous vote.

The measure was then presented to the Governor for his signature on 9/13. We submitted a letter bringing attention to the fact that the existing authorization to perform remote marriages through the Executive Order expired on 9/30. For unknown reasons, the process in the Governor’s office dragged past the deadline.

He eventually DID sign the bill on October 7th. Since the measure carried a 2/3 Urgency clause, the measure became law immediately upon signature and does not need to wait until January 1, 2022 like almost every other measure.

***Final Outcome: Chaptered***

**Other bills**

**Assembly Bill 218 (Ward)**

AB 218 was introduced as a follow-up to last year’s SB 741 (Galgiani), which was eventually vetoed by the Governor with a list of stated concerns. Both bills had the same fundamental goal, which was to add 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 sponsors, 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 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.

The veto message focused on the State Registrar and CDPH; and committed to assisting next year in drafting a tighter bill that would accomplish the goals of the bill, which he communicated he was in favor of. Here is his message:

*“I am returning Senate Bill 741 without my signature. This bill would allow a person, as part of a judgment recognizing a change of name and gender, to also seek an order to revise a California marriage certificate of the petitioner and/or the California birth certificates of the petitioner's children. Upon court order, this bill requires the California Department of Public Health (CDPH) or the applicable County Registrar to replace the vital record certificates with one that does not reveal that the petitioner obtained a name and gender change. I strongly support the overall policy of changing vital records to accurately reflect gender identity. Unfortunately, this bill fails to give the State Registrar, which is within CDPH, clear authority to issue a new marriage certificate. As a result, CDPH would only be able to amend the marriage certificates under other applicable amendment statutes, resulting in the original gender, and the fact that there was a change to the listed gender, visible and open to the public. I am concerned that this would shine a spotlight on any individual who has changed their gender and I believe that this runs contrary to the intent of this legislation. This is an important policy and I am committed to working with the Legislature and sponsors during the next legislative session to protect individual privacy. Sincerely, Gavin Newsom”*

The Author and sponsors worked in good faith to address the issues identified by the Governor and worked the bill back through the process. It was eventually approved and subsequently signed into law by the Governor. It remains to be seen how often this process will be used.

***Final Outcome: Chaptered***

**Assembly Bill 819 (Levine) CEQA Notices**

As it is currently written the bill would require that all County Clerks post the EIRs on our websites within 24 hours. This is due to an amendment that was taken in April that created a mandate.

The concern that was communicated to the Author and staff was that the counties would not be ensured to be in compliance with GC 6254.21, which states that no state or local agency shall post the home address or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of that individual. There is a threshold of “knowingly” attached to the posting; but there is still concern that wholesale posting of notices could result in conflicts with this Section.

We have discussed proposing that, rather than posting individual notices; a link to the county index be posted on the website. We have also proposed directing those in search of an electronic version of CEQA documents to the copy posted by the “lead agency”; who would also be mandated by AB 819 to post documents online.

We conducted a conference call with the Author’s staff, the Association, and Marin and Sonoma Counties to ensure that the concerns are clear and the Author is aware of the pitfalls. We are awaiting a response to our request to assist counties with a workaround to make certain the privacy concerns and the posting of public officials’ home address information. Otherwise, they may choose to move the bill “as is” and send it to the Governor.

Since our last meeting, unfortunately, our concerns fell on deaf ears and the Author pushed the bill off the Floor, and the Governor signed the bill into law. It will become effective January 1, 2022 since it is a majority vote bill. We need to determine if clean up legislation is required next year, either in the posting requirement Section or in the Section that prohibits the posting of public official’s personal information to a “knowingly” standard.

***Final Outcome: Chaptered***

**Assembly Bill 1093 (Jones Sawyer) Remote Online Notaries**

This measure was a reintroduction of a reintroduction of a bill from last year

(Assembly Bill 2368, AB 199, AB 2424 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.

This measure took a step back from prescriptive language and only required the SOS to move forward with simply adopting the requisite rules for the program. Regardless, the bill is not moving and is a two-year bill.

***Outcome: Two Year Bill, House of Origin Deadline 1/31/22***

**Assembly 1286 (Petrie Norris) Minor Marriages**

This bill requires an annual report produced by the State Registrar, regarding the number of marriage certificates issued in which one or both of the parties were minors, to be provided the Legislature, and requires a local registrar to submit the data related to such marriages to the state registrar ***four*** times a year.

According to the author, the COVID-19 crisis has exacerbated child marriage across the world, as children are confined to their homes and have fewer opportunities to explore careers and education. The author states that even as Californians, our children are not an exception to the abuse of forced child marriage. ***The author argues counties do not comply with mandated reporting requirements related to child marriage, withholding vital statistical information about the scope of this practice.*** This bill is intended to strengthen existing law to ensure accurate data is collected. Human rights groups supporting this bill note it increases transparency and provides valuable information to groups advocating for the legal rights of children and girls.

We understand that the impetus of this measure is the fact that many counties were receiving “zero” minor marriage applications and, rather than reporting “zero” were not reporting, at all. It is advised that this is clarified with the Author and sponsors to avoid a misconception.

***Outcome: Two Year Bill, Held in Appropriations***