April 25, 2019

To: California Association of Clerks and Election Officials

 County Clerk Legislative Committee

From: Matt Siverling, Legislative Advocate

Re: Legislative Update

This week has been absolutely packed with Committee hearings and controversial bills seeking to continue moving in 2019. Tomorrow is the deadline to hear a bill in policy committee for fiscal bills (April 26th). If the measure does not have any fiscal impacts, the deadline is a week later, May 3rd. This has resulted in hundreds of bills being set for hearing, and in some cases, hundreds of witnesses traveling to Sacramento to make their voices heard in these important issues. If a bill is unable to clear this deadline because it lacks the votes in Committee or the Author elects to pull it from calendar, it will become a 2-year bill. This means that next January, when the Legislature returns from Interim Recess, the bills will have about 30 days to have one more chance to clear the House of Origin. In these cases, the bills will need to clear policy, fiscal and Floor votes in about 4 weeks.

The next stop for bills that are through the policy deadline is typically Appropriations Committee. This fiscal hurdle will determine if the measures have a significant impact on the State General Fund, and if so, places those that meet a threshold to the “Suspense File” that is considered all at once in mid-May. The Suspense File allows the Committee to gather all fiscal bills under a single umbrella to determine total cost. The bills are announced as passed, passed as amended, or held. Most bills are amended to reduce or eliminate cost if they are not high priority.

Once the Appropriations Committee concludes its review, the Assembly and Senate have two weeks to work all the remaining successful bills through the Floor. Senate has 40 members, Assembly 80. Most bills require simple majority votes to move forward; Democrats in the Senate hold 29 seats and the Assembly Democrats command a 61 member majority. Those Democrats who are considered “moderate” determine the fate of all controversial bills.

By midnight on May 31st, any bill that has not cleared the Floor of the House in which it was introduced will not be allowed to move forward and will become a 2-year bill.

***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.

The bill was successful in clearing the first hurdle and is now awaiting a hearing in the Assembly Privacy and Consumer Protection Committee next week, since the bill is non-fiscal. We have been asked to consider amendments to the bill:

Assembly Privacy Committee suggested an amendment to clarify that the identity proofing process shall follow federal guidelines for security and privacy at an authentication level 3 or higher of the National Institute of Standards and Technology.

The Consultant does not like the part in 17913 (f)(2) that includes a dynamic knowledge-based authentication because he believes there are a lot of flaws in using a dynamic knowledge-based authentication.

We should discuss or refer to subject matter experts to determine if this is an acceptable amendment.

**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.

The bill was heard in Judiciary Committee where is passed 8-0. It was subsequently waived through Appropriations Committee due to minimal or no cost. It is currently sitting on the Senate Floor awaiting a vote.

**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.

Just this week, the measure was set for hearing and pulled at the last minute by the Author, making it a 2-year bill. We will stay engaged as stakeholder meetings continue.

**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.

**Senate Bill 741 (Galgiani) Change of Gende**

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.