May 23, 2019

To: California Association of Clerks and Election Officials

 County Clerk Legislative Committee

From: Matt Siverling, Legislative Advocate

Re: Legislative Update

This week the Assembly and Senate will be working to move all viable bills through their respective Floor process in advance of the upcoming Deadline to clear the House of Origin Floor requirement. By midnight on May 31st, all bills that have not garnered the requisite votes to move to the opposite House will be considered 2-year bills and will not be able to be acted on until next year in January. 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.

Last week, the Appropriations Committees concluded their review of fiscal bills. During the three hour, concurrent hearings, the Assembly and Senate Appropriations Committees worked their way through around 1500 bills that were either approved, passed as amended or held in committee. In Appropriations Committees, the act of “holding” a bill effectively kills it indefinitely. This year, the Assembly created a new action of tagging a bill as a “two-year bill” rather than holding it; which results in the same immediate action but indicates that there is consideration of work to be done during the Interim with the intent of finding a way to move these handful of bills in the next Session.

Once the 31st passes, we will begin anew in the opposite House. Several of our bills have already been set for hearing in the first weeks of June. Things move quickly in the second half of the process. For perspective, the first “half” of the process takes 5 full months from introduction to Floor deadline. In the second half, the process only takes 3 ½ months, with an entire month off in July; effectively removing 4 weeks of action from the process!

***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. Assembly Privacy amended 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 bill passed off the Assembly Floor 74-0.

The measure has not been set for hearing, but has been referred to the Senate Business and Professions Committee, who has reached out to me for background information in anticipation of an analysis for their Committee members.

**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 passed off the Senate Floor 30-4 with 4 abstentions. It is now in the Assembly.

It was also referred to the Assembly Judiciary Committee, where it will be heard on June 4th.

**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.

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 reads much more broadly than the intent…

The Committee has amended the bill to allow for more clear discretion on the part of the clerk to determine if the request was reasonable and to preserve historical documents. However, in recent weeks, CACEO has identified other issues that the measure may open up, including providing public access to closed systems that contain electronic records.

The bill is now at the Senate Desk awaiting referral.

**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.