November 13, 2017

To: California Association of Clerks and Election Officials

From: Matt Siverling, Legislative Advocate

Re: Legislative Report

I submit the following report on legislative activity.

The Legislature adjourned shortly after midnight on the last day of Session on September 15, 2017 and is scheduled to convene the 2018 Regular Legislative Session on January 3, 2018. Under the Constitution, the Governor had until October 15, 2017 to sign or veto bills passed by the Legislature in the regular session. 2017 was the first year of a two-year Legislative Session. This means that bills that failed to move to the Governor will have a window of opportunity to move next year. When the Legislature returns for business in January, 2018, they will address unfinished business as well several thousand new bills that will be introduced into the process.

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 2017 Legislative Session. These bills have either been held in the Legislature, vetoed, or signed into law by the Governor.

**Sponsored Bills**

The CACEO Legislative Committee opted to sponsor two proposals for introduction in the 2017 Legislative Session.

**Senate Bill 800 (Business and Professions) Cleanup**

CACEO has opted to update an outdated term that was located in Business and Professions Code 22352 (b), which specifies the fees paid to the county clerk for registering as a process server in California.

The Section currently references a fee to cover the actual costs of processing “fingerprint cards”. For a number of years, “fingerprint cards” have been phased out and replaced with “request for Live Scan” data.

This proposal would simply delete the incorrect term and replace it with the correct “Live Scan” verbiage.

We are included in the Senate Business and Professions Committee Omnibus bill, **Section 34 of SB 800.**

***Final Status: Chaptered, #573, ‘17***

**Assembly Bill 660 (Rubio) Fictitious Business Name Publication Solicitation**

This issue was brought to the Legislative Committee as a result of numerous (and growing) issues with aggressive solicitors in adjacent parking lots and outside the doors of county offices. These individuals have been reported to be hostile and combative in some cases. In other cases, they have been disingenuous and have attempted to mislead filers into paying more than is required.

For a reminder, the measure now amends **Penal Code Section 602.1 (b),** which states that “any person who intentionally interferes with any lawful business carried on by the employees of a public agency open to the public by ***obstructing or intimidating*** those attempting to carry on business, or those persons there to transact business with the public agency, and who refuses to leave the premises of the public agency after being requested to leave by the office manager or a supervisor of the public agency, or by a peace officer acting at the request of the office manager or a supervisor of the public agency, is guilty of a misdemeanor, punishable by imprisonment in a county jail for up to 90 days, or by a fine of up to four hundred dollars ($400), or by both that imprisonment and fine.

AB 660 adds “*by* *making a material misrepresentation of the law to those persons there to transact business with the public agency” to “obstructing or intimidating”* constituents. This important expansion would address the troublesome activity of intentionally misleading the public into believing that a paid agent is required to fulfill the activity of filing for an FBN.

The mandate to publish and the market to compete for publishing business will remain, but the method of inappropriately approaching, confronting or misleading the public at county offices in an effort to secure payment for their business will be prohibited.

***Final Status: Chaptered, #381, ‘17***

**Other Legislation of Interest**

**Assembly Bill 82 (Medina) Diacritical Marks**

AB 82 is a reintroduction of AB 2528 (Skinner, ’14) which was held in the Assembly Appropriations Committee. These bills require that all vital records, including marriage licenses include diacritical marks, including but not limited to accents, tildes, graves, umlats and cedillas. County Clerks have 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.

After the last fight and after reviewing numerous op-eds on the bill, CACEO understands the intent of the measure but also must communicate the potential challenges of complying with this State mandate. Individual counties each may encounter unique issues in attempting to comply with this proposal depending on the vendor and technology employed to issue licenses and maintain indexes.

Further, we will need to explain to the author and sponsors the issues with creating vital records with diacritical marks without corresponding changes to the State and Federal documents needed to process local vital records. CACEO “opposes unless amended” to make these requested changes to accept and include diacritical marks at the State level first to provide local counties with the ability to confirm identity with the marks included. Without diacritical marks included on government issued identification, there is no resource available to counties to use to add these marks.

This measure was heard in the Senate Health Committee and passed unanimously, again, despite CACEO and CRAC opposition. The members echoed our concerns, about “consistency” and “uniformity” but made it clear that they “did not have an issue with the goal of the bill.

The Senate Appropriations analysis, again, noted significant State and local costs, but they opted to move the measure out of Committee and to the Floor. Once again, all conversations with the Floor consultants were familiar…they understood our concerns but did not feel comfortable recommending a “no” vote (even the Republicans!). They felt that it was easier to simply vote “yes” for the “idea” of the bill which indicates “inclusion” and “diversity” in lieu of addressing administrative concerns.

We scheduled a meeting with the Governor’s staff, who indicated to me that they are not sure where the Governor will land on this bill. They completely understood the dynamic of the measure and the unwillingness to vote “no” on it; but also acknowledged that the Governor has a different job than to appease a constituency with a “vote” and that his signature changes the law. They’ve heard from their State Department of Public Health and have compiled all of our arguments into a folder for him to review. He has until October 15th to decide how to proceed.

***Final Status: Vetoed!***

**Assembly Bill 430 (Irwin) Marriage Solemnization: Judges**

Last year, CACEO tracked AB 2761 (Low), which authorizes former Members of the Legislature and constitutional officers of this state, former Members of Congress of the United States who represented a district within this state, and current and former elected officials of a city, county, or city and county, to solemnize a marriage. This bill removes the requirement that county supervisors, city clerks, and elected mayors obtain and review all available instructions for marriage solemnization before first solemnizing a marriage.

Importantly, this bill also **prohibits any of the elected persons from accepting compensation for solemnizing a marriage** and prohibits those individuals from solemnizing a marriage if they have been removed from office due to committing an offense or have been convicted of a crime that involves moral turpitude, dishonesty, or fraud.

This nuance of the legislation was likely overlooked by a group that typically benefited from solemnizing marriages for compensation, California judges.

AB 430 was quickly introduced to allow judges special privileges to receive compensation for this service. All other designated elected offices that are permitted to solemnize marriages will continue to be prohibited from collecting compensation.

This measure was introduced as an “urgency” measure, which required a 2/3 vote of the Legislature and will be enacted immediately upon signature by the Governor.

 ***Final Status: Chaptered, #42, ’17***

**Senate Bill 80 (Wieckowski) California Environmental Quality Act: notices**

This bill expands California Environmental Quality Act (CEQA) notice requirements by requiring electronic posting of specified notices by lead agencies and county clerks, as well as requiring filing of a notice for every categorical exemption claimed under the CEQA Guidelines.

SB 80 requires a lead agency to post specified notices on its Internet Web site, if any, and offer to email notices to persons upon request; and also requires notices for EIRs and negative declarations, currently required to be posted for 30 days in the office of the county clerk for each county in which the project will be located, to also be posted for 30 days on the county's Internet Web site, if any.

This measure also requires a local agency, if it approves a project following a determination that the project is not subject to CEQA pursuant to a categorical exemption, to file a notice of that determination with the county clerk for each county in which the project will be located.

During the last few days of Session, it was brought to the attention of the Legislature and the Author that the measure may contain a conflict. Under existing Government Code Section 6254.21, local agencies are prohibited from posting the personal address or phone number of an a elected official on the internet. Since the measure requires that the CEQA notices be posted online, the question was raised whether a notice containing the personal address of an elected official may violate the law and place a local agency at risk of liability.

The issue was brought before the Author, Local Government Committee and the Environmental Quality Committee, who came to the conclusion that since the Government Code Section requires that the information is “knowingly” placed on the internet ***and*** with intent to cause great bodily harm to the elected official, simple compliance with SB 80 posting requirements wouldn’t qualify for the liability (misdemeanor) contained in GC 6254.21. The remainder of the Section details recourse for the elected official to have their information removed and a timeframe for response that dictates when the local agency must remove information, if requested.

If a local agency is contacted by an elected official, in writing, and notified that the official wants their information removed, the local agency must remove the information within 48 hours of receipt. Otherwise, there is no liability associated with posting the notices.

***Final Status: Vetoed***

**Senate Bill 273 (Hill) Marriage: Minors**

Existing law authorizes an unmarried person who is under 18 years of age to marry upon obtaining a court order granting permission and the written consent of at least one parent of each party to the marriage, as specified.

The Senator indicated that he introduced the bill in response to a constituent who informed him that she was pushed into an arranged marriage at the age of 12 to a 28 year old man.

This bill would have *prohibited a marriage license from being issued to a person who is under 18 years of age.*

The bill was met with strong opposition from the ACLU, who felt that the bill was too heavy handed. He has since amended the bill to require more rigorous ***judicial screening*** of under-18 brides and grooms.

Late amendments to the bill, which were shared with the Association, add in a process to facilitate data gathering at the State level to attempt to determine how many underage marriages are taking place in the State during the year. The amendments would require that the officiant of the marriage remit the court documents acquired prior to the issuance of the marriage license with the completed and signed license that is presented to the county recorder. Under the new language, when the county recorder receives a license with the court documents attached, they’d sort any additional licenses containing court documents into a batch and indicate their inclusion to the California Department of Public Health. This would allow CDPH to create a running spreadsheet/tally of how many they are receiving from the 58 counties throughout the year and collate the information into a document that could be requested through a Public Records Request.

***It has been placed on the inactive file and is now a two-year bill.***

**Senate Bill 771 (De Leon) CEQA Local Training Requirement**

This bill creates a continuing education requirement for employees of public agencies who have responsibility for overseeing compliance with the California Environmental Quality Act (CEQA).

The measure was brought to my attention after our meeting last month. It arguably impacts county clerks, who could be subject to the annual continuing education requirement. The current language of the bill requires 2 hours per year.

We immediately reached out to the Author’s staff and began working on clarifying the bill to ensure that the clerks would not be mandated to complete this CEQA training. The amendments we submitted, along with CSAC, CSDA and the League, were to specify “one of more employees who have primary responsibility for CEQA compliance” to complete the annual training. We also suggested that the training be completed every two years and that an online option be provided so the training could be completed at home.

The author indicated that the amends look acceptable and has amended it to ease local agency concerns.

***The measure was placed on the inactive file late in the Session.***

**STATISTICS**

Brown signed 859 bills in 2017 and vetoed just 118. That veto rate — 12% — is lower than the 15% of proposed laws he rejected in 2016.

Republican governors hold the record for the most bills vetoed. Former Gov. George Deukmejian rejected 436 bills in 1990, according to a report compiled last year by the state Senate Office of Research. Former Gov. Arnold Schwarzenegger was a close second in 2008, vetoing 414 bills. On a percentage basis, though, Schwarzenegger's actions that year come out on top. He vetoed 35% of the bills sent to him by the Democratic-controlled Legislature.

Brown's rate of rejecting bills has grown since his first stint as governor. The Senate report concludes that he holds the record for fewest vetoes, refusing to sign only 1.8% of the bills that crossed his desk in 1982 — the final year of his second term.

No one, however, has reviewed or acted on as many bills as Brown, the longest-serving governor in California history. With one year remaining in his final term, the Democratic politician has reviewed more than 18,000 proposed laws over his four terms in office. Fewer than 8% of those were vetoed.