December 9, 2016

To: California Association of Clerks and Election Officials

From: Matt Siverling, Legislative Advocate

Re: Final 2016 Legislative Report

**INTRODUCTION**

The Legislature adjourned shortly after midnight on the last day of Session on August 31, 2016 and is scheduled to convene the 2017 Regular Legislative Session on January 3, 2017. Under the Constitution, the Governor had until September 30, 2016 to sign or veto bills passed by the Legislature in the regular session. 2016 was the second year of the two-year Legislative Session. This means that all actions of the Legislature and Governor are now final and there is no further opportunity for bills to move. When the Legislature returns for business in January, 2017, they will begin with a fresh slate and brand new bills and 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 2016 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 sponsored six proposals for introduction in the 2016 Legislative Session.

**Assembly Bill 2882 (Committee on Judiciary) Family Code/Marriage Cleanup**

The County Clerk Vision Committee took the time to review the various outdated, unnecessary, confusing and duplicative provisions of the California Family Code Sections related to marriage (Sections 300-536). The Vision committee is made up of several counties and the Department of Public Health. The majority of the recommended changes are deemed non-substantive and non-controversial.

CACEO chose to submit the draft language to the Assembly Judiciary Committee, who introduces and manages an annual Omnibus bill related to Family law.

This measure has been amended to house many of the CACEO proposed amendments that were submitted to the Committee for consideration. There are several lingering amendments yet to be taken into the bill that CACEO will continue to work on as the measure moves along.

The bill was signed by the Governor.

***Status: Chaptered #474, ‘16***

**Assembly Bill 2128 (Achadjian) “Conflict or War” Deletion**

Once this language was determined to be too substantive for the Omnibus bill, we began shopping it to members on the judiciary committee and also sharing the issue with members of the Veterans Committees.

Reaction to the suggestion has been somewhat split. One consultant of the committee opined that the deletion of the language was unnecessary and that “if it was important, and you weren’t at war, you should find a way to get home for your wedding.”

On the other end of the spectrum was a lobbyist who represents over a dozen military clients who read the proposal and deemed it a “much needed change.”

CACEO learned of an Assemblymember who was searching for a “veteran’s bill” and had caught wind of our proposal. Assemblyman Katcho Achadjian (R, San Luis Obispo) has offered to carry the bill.

Since the measure now has a champion, we have been working with the affected Committees to determine how to proceed. Both the Judiciary and Veterans Committees are hesitant to completely remove the “conflict or War” language because they don’t want to make it “easier” to have a marriage by proxy. They feel that this process should be reserved for the most necessary cases.

We ended up negotiating a “middle ground” with the Judiciary and Veteran’s committee staff that has since been amended into the bill. Ultimately, all parties involved determined that the issue (for clerks) was a discomfort with making decisions or recommendations to applicants based on where the service member is located. Thus, we amended the bill to state that the act of completing, signing (under penalty of perjury) and submitting the power of attorney form to the clerk shall be the “sole determinant” as to whether it will be accepted by the county and the State Registrar. This makes the process purely clerical and removes discretion on the eligibility based on the location and whether it qualifies as an area of “conflict or war.” This was also supported by the military, who like the approach because it removes the uncertainty that their marriage may be nullified days or weeks after the submission due to a rejection by the State.

The measure passed the Legislative Process and was sent to the Governor for his signature. He has already decided to sign it into law.

***Status: Chaptered #130, ‘16***

**Senate Bill 974: Expansion of Certified Mail Requirement for Notaries**

This measure would have expanded the options for notaries to use from “certified” mail to *any other means of physical delivery that provides a receipt.* After some debating and wrangling, the Committee and the Association agreed to amend the language to read *an independent courier service using its tracking service that provides documentation of receipt and delivery*. It was submitted as a potential candidate for the Senate Governance and Finance Committee Omnibus bill. Unfortunately, the subject matter of the proposal straddled several jurisdictions across the Capitol. CACEO needed to get signoff from the Assembly Judiciary Committee AND the Senate Business and Professions Committee prior to the Governance and Finance Committee taking it for consideration in their bill. Their process involves a mass email that goes out to all local government lobbyists for review. If there are any concerns or opposition, the item comes out.

We received word from the affected committees that they are all “ok” with the suggested language.

The language was included in the Omnibus bill and is moving through the process. It has already passed through the Senate and Assembly without a “no” vote. It was sent to the Governor who signed it into law.

***Status: Chaptered #366, ‘16***

**Senate Bill 974: Notary ID Requirement**

This bill allows the County Clerk to require identification from a notary public when the County Clerk administers the oath of office.

The current code does not have a statutory requirement for the County Clerk to require identification from the notary public when administering the oath of office.

CACEO contends this will help the County Clerk adequately determine the identity of the notary public when administering the oath of office.

During the other discussions regarding the Senate Governance and Finance Committee bill, the consultant took this item under submission and agreed to circulate with the other potential amendments.

The language was included in the Omnibus bill and has now been signed into law.

***Status: Chaptered #366, ‘16***

**Senate Bill 974: County Clerk/Clerk of the Court Cleanup**

Lastly, CACEO has located another reference to “county clerk” that needs to be amended to accurately identify the “clerk of the court.” The Sections are Revenue and Taxation 19201 and 19202.

The language was included in the Omnibus bill and has already been signed into law.

***Status: Chaptered, 366, ‘16***

**Assembly Bill 2033 (Wilk) California Code of Regulations**

The California Association of Clerks and Election Officials (CACEO) was the sponsor of Assembly Bill 2033 (Wilk) which would have provided clear and accurate information in the law related to State and local public records.

This measure directed copies of California Administrative Code to be provided to the appropriate entities. Current law directs the copies of the Code and supplements of the Code to be retained by the county clerk in each county. The code also needs to be made available to the public for viewing. In a poll of counties statewide, it was discovered that the copies of the code were actually housed in the county law library, rather than the county clerk’s office. This would have amended the code to match the practice.

This measure would amend the Government Code to reflect actual practice so that when members of the public want to view a copy of the document, they are directed to the correct place. Existing law and actual practice are currently not in line. This measure would not change the current practice or procedure for the handling of the California Administrative Code, but rather it will communicate a uniform and consistent location to those seeking the documents.

Although the Legislative staff did not disagree with our concerns and need for the bill; they were uncomfortable with the approach we suggested and felt that the language needed more work. Specifically, the committee was concerned that since some counties use libraries and some use “law libraries” for this purpose, there would be inconsistency and confusion by the public to find the Code depending on which county they are in. Even though we argued that the code currently doesn’t accurately direct the public to the correct location (at the clerks office), the staff still wanted to make sure that a clean up bill would be as accurate as possible.

Assemblymember (now Senator) Wilk has offered to continue to work on this with CACEO, if we are interested in pursuing it.

***(Final Status: Dropped)***

**Assembly Bill 1646 (Gallagher) Legal Document Assistants**

CACEO discovered a problem with recently enacted Code from last year due to Assembly Bill 285 (Gallagher).

The problem was discovered earlier this month during the crafting of new registration forms for LDA's and UDA's. AB 285, which was sponsored by the LDA's (CALDA) proactively placed a requirement on LDA's to complete ongoing education hours/credits during the course of their service for eligibility to renew their registration. Unfortunately, the way the bill was drafted inadvertently extended this "legal education requirement" upon registration for all professional registrations in the Chapter, which includes UDA's. UDA's currently have no prerequisite education requirements (like LDA's) and it doesn't make any sense to impose a "continuing education" on them as a basis for renewal. As the Code appears now, clerks are needing to interpret the law for UDA registrations to indicate that UDA's need to complete legal courses and include it on their registration forms. We know that this was not the intent of the bill and the error was an oversight.

The main issue is found in BPC 6402.2. If we amended BPC Section 6402.2 to be specific about renewal as a "legal document assistant", we believe the issue would be solved.

CACEO reached out to the Assembly Judiciary Committee to request the fix to be contained within the Committee bill, but they rejected it as “too substantive.” The Association then reached out to the author of the former bill, AB 285 (Gallagher) for help in cleaning up the collateral issue. The problem to overcome was the deadline for amending spot bills, which had passed. He decided to “roll the dice” and hope that the amendments would be returned in time.

The language was amended into AB 1646 and referred to the Assembly Judiciary Committee. At first, the Committee was amenable to the “fix” and ready to move it along. However, prior to the hearing, the Committee suddenly changed course and opined that the “education requirement” ***should*** apply to UDA’s as well as LDA’s. They felt that UDA’s and the public would benefit from “education” of this profession and it would help with ethics and the weeding out of bad apples.

We, and the Author, argued that the “intent” of AB 285 was never to affect UDA’s. The sponsor of AB 285, CALDA, also wrote a letter to Judiciary explaining that UDA’s weren’t in the crosshairs of the education requirement of AB 285, as well. Despite this, Judiciary dug in and decided that the only option we’d have with the bill would be to amend it to clarify that the UDA’s also need to go through the initial education requirement, as well!!

Based on the roadblock, the Author decided to drop the bill. In the meantime, I have reached out to CALDA and the Assembly Judiciary Committee to acquire resources to educate our counties on where to refer people who are coming in to register as UDA’s. Many of these resources are online and available 24/7. It may also be prudent to attempt to reach out via email to active UDA’s to inform them of this new requirement, or to at least post the issue on our websites to make sure that we reduce surprises.

***Final Status: Held in Assembly Judiciary***

**Other Legislation of Interest**

**Assembly Bill 1546 (Olsen) Vital Records/Intaglio Print**

CRAC and CACEO were presented with a unique issue last year when it was discovered that the provider of special paper that is required for birth, death and marriage licenses was a sole source; and that the company who had been providing the paper to all the distributers had suddenly closed shop without warning. This discovery led to a frantic exercise of identifying alternative sources while debating whether to change the law to open up the market to other vendors.

The unique quality of the paper that is required by law is the use of “intaglio” print, which is a specialized method of printing in which the paper is indented and then filled with metallic foils to create a raised lettering. This method is nearly impossible to re-create or forge, giving it a leg-up on other security measures; but, as mentioned before, there was only one company in the United States who was supplying the required “intaglio” printing for all states who required it by law on vital records.

We decided to introduce a bill to act as a discussion piece in the upcoming year. This bill was eligible for hearing in January. It was heard by the Assembly Health Committee, who approved it 19-0. It was also approved by the Assembly Appropriations Committee and will now need to get of the Assembly Floor by the end of this week. The measure contains language requiring a study of the current options and whether we are appropriately protecting this information with the best technology available or if other avenues should be explored.

The measure has cleared the process and has been signed into law.

***Status: Chaptered#255, ‘16***

**Assembly Bill 1238/2636 (Linder) Electronic Signatures/Notaries**

CACEO actively supported Assembly Bill 1238 (Linder) and the second effort to accomplish the same goal, Assembly Bill 2636. These bills increased public access to vital records utilizing an electronic identification process.

The Association supports greater access to public records. In addition, allowing electronic identification will make the online request process more efficient and reduce the additional costs associated with obtaining a notarized affidavit of identity. This bill will benefit persons who may not have ready access to notary services such as members of the military who are deployed overseas or out at sea, civilians residing overseas, and indigent or homeless constituents for whom the cost of additional notary fees or lack of physical identification may be prohibitive.

Current California statute allows for electronic notarization, but there are no notaries in California who are offering this service. Other online technologies/services offer methods to establish and verify a person’s identity electronically. Such technologies have allowed a number of industries to revolutionize their business processes and services to the benefit of their customers including the banking, insurance and healthcare industries.

AB 2636 was eventually successful in clearing the process and was signed into law by the Governor.

***Status: Chaptered #527, ‘16***

**Assembly Bill 1707 (Linder) Public Records**

The California Public Records Act requires state and local agencies to make public records available for inspection, unless an exemption from disclosure applies. The act requires a response to a written request for public records that includes a denial of the request, in whole or in part, to be in writing.

AB 1707 will require agencies subject to this act to include in their responses to requests for public records the name of documents withheld, and the exemptions that apply to each document. This change became necessary due to concerns that some agencies’ responses are too vague for applicants to understand why requests were rejected or if exempt documents even exist.

Local government associations are taking a close look at this measure to determine what, if any, impact it may have on the public records process. We have reached out to Assemblymember Linder to determine how his proposal syncs with existing process. ***Many counties we have polled are already using electronic systems that issue “written” responses to requestors.***

CSAC, the League of Cities, California Special Districts Association and others have weighed in expressing opposition to this measure. Specifically, the Associations are extremely concerned about the workload generated by the provision of the bill that would require a “privilege log” of all records by subject, title and reason withheld. In some requests, this log may stretch to thousands of records, depending on the size of the request.

The author and committee have been working extensively on this bill and have whittled its provisions down to a nearly palatable level. The bill would now only require a written response to a written request, and would not require any “lists” of withheld documents to be created, but would require that you describe each type of exemption relied upon in withholding a record or records specific to the request, as opposed to specific to the records affected. In other words, if there is a document that is not provided in response to a public records request, the county would need to cite why (code sections).

Despite all of the concessions taken by the Author and the opposition, we were still locked at an impasse over “intent language” that the Author had agreed to insert into the bill to clarify that the measure would not result in the creation of a “privilege log”. As the opposition and the sponsors (California Newspaper Publishers Association) fought back and forth over the wording of the intent language, the author decided to drop the bill for the year.

***Final Status: Held in Assembly***

**Assembly Bill 2761 (Low) Marriage**

This bill 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.

This bill was also recently amended to **prohibit 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 measure has cleared both Floors and was signed into law. Since it was signed after SB 875, it will supersede the language in that bill.

***Status: Chaptered #528, ‘16***

**Senate Bill 875 (Gaines) Marriage**

This bill authorizes a county sheriff to solemnize a marriage while in office.

Assembly Amendments removed the requirement thatcounty supervisors, city clerks, and elected mayors obtain and review all available instructions for marriage solemnization before first solemnizing a marriage.

There was an arrangement between the Authors and the Governor to ensure that there weren’t “Chaptering out” issues with this bill and AB 2761.

***Status: Chaptered #211, ‘16***