

**立法會**  
**Legislative Council**

Ref : CB2/BC/4/11

LC Paper No. CB(2)2514/11-12  
(These minutes have been seen by  
the Administration)

**Bills Committee on  
Legislative Council (Amendment) Bill 2012**

**Minutes of the fifth meeting  
held on Friday, 30 March 2012, at 10:45 am  
in Conference Room 3 of the Legislative Council Complex**

- Members present** :
- Hon TAM Yiu-chung, GBS, JP (Chairman)
  - Hon Jeffrey LAM Kin-fung, GBS, JP (Deputy Chairman)
  - Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
  - Dr Hon Margaret NG
  - Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
  - Hon LAU Kong-wah, JP
  - Hon LAU Wong-fat, GBM, GBS, JP
  - Hon Miriam LAU Kin-ye, GBS, JP
  - Hon Abraham SHEK Lai-him, SBS, JP
  - Hon LI Fung-ying, SBS, JP
  - Hon Audrey EU Yuet-mee, SC, JP
  - Hon WONG Kwok-hing, MH
  - Hon CHEUNG Hok-ming, GBS, JP
  - Hon WONG Ting-kwong, BBS, JP
  - Hon Ronny TONG Ka-wah, SC
  - Hon CHIM Pui-chung
  - Prof Hon Patrick LAU Sau-shing, SBS, JP
  - Hon CHAN Kin-por, JP
  - Dr Hon Priscilla LEUNG Mei-fun, JP
  - Hon WONG Kwok-kin, BBS
  - Hon IP Kwok-him, GBS, JP
  - Hon Mrs Regina IP LAU Suk-ye, GBS, JP
  - Hon Alan LEONG Kah-kit, SC
  - Hon LEUNG Kwok-hung
  - Hon Albert CHAN Wai-yip
- Members absent** :
- Hon CHEUNG Man-kwong
  - Dr Hon Philip WONG Yu-hong, GBS

Hon WONG Yung-kan, SBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Timothy FOK Tsun-ting, GBS, JP  
Hon Vincent FANG Kang, SBS, JP  
Hon Cyd HO Sau-lan  
Hon IP Wai-ming, MH  
Dr Hon PAN Pey-chyou  
Hon Paul TSE Wai-chun, JP

**Public Officers :**     Constitutional and Mainland Affairs Bureau  
**attending**

Ms Adeline WONG Ching-man  
Under Secretary for Constitutional and Mainland Affairs

Mr Arthur HO Kin-wah  
Deputy Secretary for Constitutional and Mainland Affairs

Mr Gordon LEUNG  
Deputy Secretary for Constitutional and Mainland Affairs  
(Designate)

Ms Anne TENG Yu-yan  
Principal Assistant Secretary (Constitutional and Mainland  
Affairs)

Department of Justice

Ms Roxana CHENG  
Deputy Solicitor General (Constitutional)

Mr Gilbert MO  
Deputy Law Draftsman  
(Bilingual Drafting & Administration)

**Clerk in**             :  
**attendance**             Miss Flora TAI  
                                  Chief Council Secretary (2)3

**Staff in**             :  
**attendance**             Mr Arthur CHEUNG  
                                  Senior Assistant Legal Adviser 2

Ms Catherina YU  
Senior Council Secretary (2)6

Mrs Fanny TSANG  
Legislative Assistant (2)3

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Action

**I. Meeting with the Administration**

[LC Paper Nos. CB(3)402/11-12, CB(2)1125/11-12(01)  
CB(2)1555/11-12(01) and (02)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Bills Committee supported the resumption of the Second Reading debate on the Bill but requested the Administration to -

- (a) review the drafting of the proposed new sections 39(2A)(a)(i) and (ii) with a view to better reflecting the legislative intent;
- (b) consider replacing "a by-election" by "any by-election" in the proposed new section 39(2A); and
- (c) advise in writing its intention on the date for the Bill to resume its Second Reading debate.

**II. Any other business**

3. There being no other business, the meeting ended at 12:00 noon.

Council Business Division 2  
Legislative Council Secretariat  
3 July 2012

**Proceedings of the fifth meeting of the  
Bills Committee on Legislative Council (Amendment) Bill 2012  
held on Friday, 30 March 2012, at 10:45 am  
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
000615 - 000657	Chairman	Opening remarks	
000658 - 000828	Chairman Administration	Briefing by the Administration on the electoral system in Japan [LC Paper No. CB(2)1555/11-12(01)].	
000829 - 001633	Chairman Mr LAU Kong-wah Administration SALA2	<p><u>Section 39(2)(2A)</u> <u>[LC Paper Nos. CB(3)402/11-12 and CB(2)1125/11-12(01)]</u></p> <p>Mr LAU Kong-wah's suggestion for the Administration to consider improving the drafting of the Chinese text of the proposed new section 39(2A)(a)(i) to avoid any misinterpretation of the end date of the restriction period for a resigning Member to stand in a by-election.</p> <p>The Administration's proposal to replace "於在該補選當日結束" by "在截至該補選當日為止" under the proposed new sections 39(2A)(a)(i) and (ii).</p> <p>The Chairman's request for the Administration to discuss with SALA2 on further improvement to the drafting of the proposed new sections 39(2A)(a)(i) and (ii) with a view to better reflecting the legislative intent.</p>	Admin (paragraph 2 of the minutes refers)
001634 - 002553	Chairman Mr Albert CHAN Mr LAU Kong-wah Mr Jeffrey LAM	<p>Draft Committee Stage amendments ("CSA") proposed by Mr Albert CHAN [LC Paper No. CB(2)1555/11-12(02)] along the following lines –</p> <p>(a) to specify in the proposed new section 39(2A) that the proposed restriction in the Bill would apply only when a specified number of geographical constituencies Members had resigned;</p> <p>(b) to amend the proposed new section 39(2A)(a)(i) and (ii) to shorten the six-month period of restriction to five, four or three months;</p>	

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		<p>(c) to amend the proposed new section 39(2A)(b) to specify that the proposed restriction in the Bill would apply only if no general election would be held within one, two or three years of the Member's resignation;</p> <p>(d) to add a new provision to section 39 to allow a resigning Member to stand in a by-election within six months of his resignation if (i) he had been forced to resign after being wrongfully imprisoned for a long time without trial in other jurisdictions; (ii) he had resigned after being diagnosed wrongly as having a serious or mental illness; or (iii) he was willing to pay a specified percentage of the expenditure incurred for holding the resulting by-election; and</p> <p>(e) to add a sunset provision to the Bill, for example, by specifying that the proposed new section 39(2A) would cease to have effect on 2 October 2013.</p> <p>Mr Albert CHAN's indication of his intention to move around 200 CSAs.</p> <p>Mr Jeffery LAM's view that it would be a waste of taxpayers' money to propose an excessive number of CSAs unnecessarily.</p> <p>Mr Albert CHAN's comments that the collusion between Government and the business sector and the failure of some Members to discharge their duties were wasteful of public funds.</p>	
002554 - 002807	Chairman Administration	<p>The Administration's response to the CSA's proposed by Mr Albert CHAN that –</p> <p>(a) steps should be taken to plug any loophole in the electoral system regardless of the number of Members resigning;</p> <p>(b) the six-month restriction period was appropriate in order to have a deterrent effect;</p> <p>(c) under section 36(2) of the Legislative Council ("LegCo") Ordinance ("LCO") (Cap. 542), a by-election to fill a vacancy arising in the</p>	

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		<p>membership of LegCo was not to be held within the four months preceding the end of that Council's current term of office;</p> <p>(d) Members who could not discharge their duties due to special reasons such as health problems did not have to resign and the situation could be dealt with under Article 79 of the Basic Law;</p> <p>(e) any suggestion for allowing resigning Members to stand in subsequent by-elections simply because they were willing to bear the expenditure incurred might not be supported by the general public; and</p> <p>(f) inclusion of a sunset provision would not serve any useful purpose unless it was certain that mischief of Members resigning at will would not occur.</p>	
002808 - 003234	Chairman Dr Margaret NG Administration	Dr Margaret NG's enquiry and the Administration's response that in the case of any election petition or judicial review after enactment of the Bill, the by-election should be held unless the judicial review could be concluded before the completion of the by-election. If the restriction on a resigning Member had been ruled by the court as unconstitutional, the relevant provision would be struck down and the by-election would be regarded as having a material irregularity since an eligible person had been prevented from standing in the election. The by-election would be determined as invalid and another by-election would need to be held to fill the vacancy.	
003235 - 004044	Chairman Mr LAU Kong-wah Administration	<p>Mr LAU Kong-wah's suggestion to replace "a by-election" by "any by-election" in the proposed new section 39(2A).</p> <p>The Administration's response that given by-election had already been defined, using either the word "a" or "any" would have the same legal effect.</p> <p>Mr LAU Kong-wah's concern that the proposed new section 39(2A)(a) as drafted did not adequately reflect the policy intent.</p>	

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		<p>The Administration's response that the existing drafting of the proposed new section 39(2A)(a) complemented other provisions under section 39, which had also stipulated situations under which a person was disqualified from being nominated as a candidate at an election and from being elected as a Member. The period during which a person was disqualified from being nominated as a candidate at a by-election had already been clearly spelt out in the proposed new section 39(2A)(a).</p>	
004045 - 004151	<p>Chairman Mr LAU Kong-wah Administration</p>	<p>Mr LAU Kong-wah's enquiry and the Administration's response that when the resulting by-election was held after the six-month restriction period under some exceptional circumstances, the resigning Member could participate in that by-election. The Administration re-iterated that it was the policy intent to impose a six-month restriction period and not longer on a resigning Member to stand in any by-election to be held in any geographical constituency or functional constituency.</p>	
004152 - 004309	<p>Chairman Dr Margaret NG</p>	<p>Dr Margaret NG's view that it was necessary for the Administration to clarify the policy as it would have an impact on the legal effect. Her request for the Administration to explain the policy clearly during the resumption of the Second Reading debate on the Bill.</p>	
004310 - 004415	<p>Chairman Mr IP Kwok-him</p>	<p>Mr IP Kwok-him's enquiry and the Administration's response that the resigning Member could not participate in any by-election held within six months following his resignation.</p>	
004416 - 005022	<p>Chairman Mr LEUNG Kwok-hung Administration</p>	<p>Mr LEUNG Kwok-hung's views that –</p> <ul style="list-style-type: none"> <li>(a) Members who resigned by reason of serious illness should be eligible for being nominated as a candidate at a by-election;</li> <li>(b) the Administration's proposal could not prevent resigning Members from participating in any by-election if they chose to resign in consecutive months; and</li> <li>(c) the sole political aim of the Administration's proposal was to prevent the holding of any de facto referendum and depriving the right of</li> </ul>	

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		<p>resigning Members to stand for subsequent by-election would be subject to judicial review.</p> <p>The Administration's response that the community generally considered it necessary to impose restrictions on resigning Members and by-election should be held to fill a vacancy. The latest proposal in the Bill could address these concerns.</p>	
005023 - 005145	<p>Chairman Dr Priscilla LEUNG SALA2 Administration</p>	<p>Dr Priscilla LEUNG's view that it would be better to use "any by-election" than "a by-election" in the proposed new section 39(2A).</p> <p>SALA2's view that it was only a matter of emphasis.</p> <p>The Administration undertook to review the wording having regard to members' view.</p>	<p>Admin (paragraph 2 of the minutes refers)</p>
005146 - 010126	<p>Chairman Mr WONG Ting-kwong SALA2 Mr LEUNG Kwok-hung Administration</p>	<p>Mr WONG Ting-kwong's enquiry and SALA2's explanation on Article 79 of the Basic Law which dealt with involuntary vacation of office.</p> <p>Mr LEUNG Kwok-hung's view that Members who had voluntarily resigned by reason of illness and wished to participate in an by-election should be exempted from the restriction period so that electors could express their support for these Members by exercising their right to vote in the by-election.</p> <p>The Administration's explanation that the proposed restriction would not apply to cases under Article 79 of the Basic Law. The restriction would only apply to Members who resigned under section 13(3) or section 14 of LCO.</p>	
010127 - 010310	<p>Chairman Mr IP Kwok-him Administration</p>	<p>Mr IP Kwok-him's view that whether to resign from the office should be a Member's cautious decision and should not be taken lightly.</p> <p>Mr IP's enquiry and the Administration's response that under the existing LCO, Members could resign by any reason.</p>	

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
		Mr IP's expression of support for the Administration's proposal in the Bill.	
010311 - 010506	Chairman Administration Clerk	The Administration was requested to advise in writing its intention on the date of resumption of Second Reading debate on the Bill.	Admin (paragraph 2 of the minutes refers)
010507 - 010828	Chairman SALA2 Administration Dr Priscilla LEUNG Mr LEUNG Kwok-hung	The issue of whether the CSAs to be proposed by Mr Albert CHAN were relevant to the subject matter of the Bill and whether they had any charging effect.	
010829 - 010958	Chairman Mrs Regina IP Administration	Mrs Regina IP's enquiry and the Administration's explanation on the electoral system in Germany.	
010959 - 011258	Chairman Dr Priscilla LEUNG SALA2	Dr Priscilla LEUNG's enquiries and SALAs'2 explanation on the court ruling in respect of the requirements under Article 74 of the Basic Law in respect of the introduction of a Private Member's bill, and on the application of Article 79 of the Basic Law in a precedent case.	
011259 - 011613	Chairman Mr LEUNG Kwok-hung	Mr LEUNG Kwok-hung's view that while the President of LegCo could declare that a Member was no longer qualified for the office when he was censured for misbehaviour or breach of oath by a vote of two-thirds of the Members present under Article 79 of the Basic Law, the acts constituting misbehaviour or breach of oath was not clearly defined in the provision.  Mr LEUNG criticized the Administration for proposing a blanket restriction in the Bill on resigning Members without giving consideration to the fact that a Member might resign for health reasons.	
011614 - 011647	Chairman	Closing remarks	