

**立法會**  
**Legislative Council**

LC Paper No. LS 27/11-12

**Paper for the House Committee Meeting on 10 February 2012**

**Legal Service Division Report on  
Legislative Council (Amendment) Bill 2012**

**I. SUMMARY**

1. **Objects of the Bill** To impose a restriction on the nomination of candidates at a LegCo by-election.
  
2. **Comments** The Bill proposes to disqualify a resigned LegCo member from being nominated as a candidate at a subsequent by-election held within 6 months of the effective date of the resignation. However, if there is an intervening general election between the resignation and the subsequent by-election, then the disqualification does not apply to that by-election.  
  
For the purpose of the proposed disqualification, non-acceptance of office by a person elected as LegCo Member is taken to have resigned from office as a Member.  
  
The proposal replaces the earlier legislative proposal under the Legislative Council (Amendment) Bill 2011, which proposes that a vacancy in LegCo membership arising from the resignation of a Member is to be filled not by a by-election but by some other means.  
  
The Bill, if enacted, will come into operation on the commencement of the Fifth LegCo.
  
3. **Public Consultation** A public consultation on four options for filling vacancies in LegCo was conducted between July and September 2011. A report on the consultation was published on 20 January 2012.
  
4. **Consultation with LegCo Panel** The Panel on Constitutional Affairs was briefed on 31 January 2012 on the consultation report and legislative proposal. Panel members expressed diverse views on the proposal.
  
5. **Conclusion** In view of the public controversy over the previous proposal that the latest legislative proposal seeks to replace, Members may agree that there is a clear need to set up a Bills Committee.

## **II. REPORT**

### **Objects of the Bill**

To impose a restriction on the nomination of candidates at a LegCo by-election.

### **LegCo Brief Reference**

2. CMAB C1/30/5 issued by the Constitutional and Mainland Affairs Bureau on 1 February 2012.

### **Date of First Reading**

3. 8 February 2012.

### **Comments**

4. The Bill (2012 Bill) proposes to disqualify a resigned LegCo member from being nominated as a candidate at a subsequent by-election held within 6 months of the effective date of the resignation. However, if there is an intervening general election between the resignation and the subsequent by-election, then the disqualification does not apply to that by-election.

5. For the purpose of the proposed disqualification, non-acceptance of office by a person elected as LegCo Member is taken to have resigned from office as a Member.

6. The background to the 2012 Bill is well known to Members as its proposal replaces the earlier legislative proposal under the Legislative Council (Amendment) Bill 2011 (2011 Bill), a Bills Committee for which was set up. The 2011 Bill proposes that a vacancy in LegCo membership arising from the resignation of a Member is to be filled not by a by-election but by some other means.

7. The Bill, if enacted, will come into operation on the commencement of the term of office of the Fifth LegCo in 2012.

## **Public Consultation**

8. The Administration published the Consultation Paper on Arrangements for Filling Vacancies in the Legislative Council on 22 July 2011 following an announcement on 13 July 2011 that it would not resume Second Reading debate on the 2011 Bill. It sets out four options to fill mid-term vacancies in LegCo. Option 1 sets out the arrangement on which the proposal in the 2012 Bill is based.

## **Consultation with LegCo Panel**

9. The Panel on Constitutional Affairs was briefed at its special meeting on 31 January 2012 on the Administration's Consultation Report on Arrangements for Filling Vacancies in the Legislative Council and its latest proposal.

10. Some members supported the latest proposal which they considered had struck a right balance between the need to prevent possible abuse of the existing by-election system and the need to protect the right to vote of the Hong Kong people. These members were of the view that the latest proposal should be able to answer the strong call from the community to plug the loophole which had allowed Members to resign at will in order to trigger a by-election and then to seek re-election. They considered that the proposed mechanism was simple and reasonable, as it only sought to prohibit resigning Members from standing in any by-election within six months of their resignation and would not apply to mid-term vacancies arising from death, serious illness and other involuntary circumstances. These members, however, stressed that the Administration should provide in full the legal advice of Lord Pannick QC about the constitutionality of the latest proposal.

11. Some other members expressed objection to the Administration's latest proposal. They considered that the proposal was susceptible to legal challenge as it would still compromise the right to vote and the right to stand for election as protected under Article 26 of the Basic Law. Furthermore, the proposal could not address the alleged mischief because other members of the same political party of a resigning Member or people who shared their political views could still stand in a by-election. Public expenditure would still need to be incurred for the holding of the by-election. These members were of the view that there was nothing inappropriate for Members to be able to resign in order to trigger a by-election in which they sought to stand, and the electorate should be allowed to express their support or otherwise by exercising the right to vote in the by-election. The existing arrangement for filling a vacancy in LegCo through a by-election should therefore be retained.

## **Conclusion**

12. In view of the public controversy over the previous proposal that the latest legislative proposal seeks to replace, Members may agree that there is a clear need to set up a Bills Committee. In the meantime, scrutiny of the Bill will continue.

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