

立法會
Legislative Council

LC Paper No. CB(2)525/99-00

(These minutes have been
seen by the Administration)

Ref : CB2/BC/11/98

Bills Committee on District Councils Bill

Minutes of Meeting
held on Thursday, 11 February 1999 at 8:30 am
in the Chamber of the Legislative Council Building

Members Present : Hon Ambrose LAU Hon-chuen, JP (Chairman)
Hon David CHU Yu-lin
Hon Lee Kai-ming, JP
Hon Ronald ARCULLI, JP
Hon MA Fung-kwok
Hon CHAN Kam-lam
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Hon WONG Yung-kan
Hon YEUNG Yiu-chung
Hon LAU Wong-fat, GBS, JP
Hon Emily LAU Wai-hing, JP
Dr Hon TANG Siu-tong, JP
Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, JP

Members Absent : Hon James TIEN Pei-chun, JP
Hon Cyd HO Sau-lan
Dr Hon Raymond HO Chung-tai, JP
Hon LEE Wing-tat
Hon Fred LI Wah-ming
Hon CHEUNG Man-kwong
Hon Ambrose CHEUNG Wing-sum, JP
Hon Christine LOH
Hon CHAN Wing-chan
Dr Hon LEONG Che-hung, JP
Hon Jasper TSANG Yok-sing, JP

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Hon Howard YOUNG, JP
Hon SZETO Wah

- Public Officers :** Mr Robin IP
Attending Deputy Secretary for Constitutional Affairs 2
- Mrs Maureen CHAN
Deputy Secretary for Constitutional Affairs 3
- Mr Paul WONG
Principal Assistant Secretary for Constitutional Affairs
- Mr James O' NEIL
Principal Government Counsel (Elections)
- Mr Vidy CHEUNG
Senior Assistant Law Draftsman
- Clerk in :** Mrs Constance LI
Attendance Chief Assistant Secretary (2) 2
- Staff in :** Mr Jimmy MA
Attendance Legal Adviser
- Mr Arthur CHEUNG
Assistant Legal Adviser 5
- Miss Flora TAI
Senior Assistant Secretary (2) 2
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I. Committee stage amendments to be moved by the Administration
[Paper No. CB(2)1299/98-99(01)]

Members noted that as discussed at the last meeting on 9 February 1999, the Administration had revised some of its Committee stage amendments (CSAs). The supplementary CSAs proposed by the Administration were tabled at the meeting and subsequently issued to members vide Paper No. CB(2)1299/98-99.

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Absence from meetings of District Councils as a disqualification provision

2. Deputy Secretary for Constitutional Affairs 2 (DS(CA)2) explained that the Administration had accepted members' suggestion at the last meeting that the disqualification provision for absence from District Council (DC) meetings should include reference to the number of meetings absent in addition to the disqualification period. The Administration had therefore revised the CSAs to clauses 14, 19 and 24.

3. Mr Ronald ARCULLI commented that the revised CSAs had not reflected the Administration's policy on the attendance requirements of DC members. He said that if DC meetings were to be held bi-monthly, a DC member would only need to attend a few meetings in order to retain his/her membership under these provisions. DS(CA)2 responded that the Administration did not want to impose a policy on attendance of DC members. The relevant provisions only sought to disqualify a DC member if he/she failed to attend a prescribed number of meetings without the DC's consent. He said that similar provisions had been made in the previous District Boards Ordinance. DS(CA)2 stressed that the Administration did not encourage absence from DC meetings; indeed District Boards members had a record of high attendance rate.

4. Ms Emily LAU expressed concern that the drafting of these clauses might lead to ambiguity in application. Legal Adviser (LA) responded that it would be difficult to provide for all circumstances in these clauses, especially when the Bill did not prescribe the frequency of DC meetings. However, as far as drafting was concerned, the clauses concerned were in order. Ms LAU then asked whether the frequency of DC meetings should be specified in the Bill. DS(CA)2 advised that clause 66 had provided for a DC to make its own standing orders for the times and places of its meetings. The Administration considered that a DC should be given discretion to determine its procedures and meeting frequency.

5. In response to Ms Emily LAU, DS(CA)2 confirmed that prior consent of a DC would be required for absence from DC meeting exceeding the "disqualifying" period specified in the Bill.

Directions by Chief Executive to a District Council

6. Members noted that the Administration had accepted the suggestion of deleting the words "appears to the Chief Executive to" from clause 83(1).

Other revisions to the Administration's CSAs

7. Responding to the Chairman, LA informed members that the Legal Service Division was discussing with the Administration the Chinese version of

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"ordinary election". LA confirmed that other than this minor issue, the drafting of the Administration's CSAs were in order.

II. Matters arising from previous meetings

[Paper No. CB(2)1299/98-99(02)]

8. Members noted that the Administration had tabled its written responses to concerns raised at the meetings on 28 January and 9 February 1999. The Administration's paper was subsequently issued to members vide LC Paper No CB(2)1299/9-99(02).

Functions of a DC

9. Members noted that the Administration did not agree to Hon Andrew WONG's proposed CSAs which provided DCs with additional functions. DS(CA)2 said that the proposed functions concerning local public works and environmental improvements in the District were already covered by clause 59(b)(i) of the Bill. As regards the proposal for DCs to take over the planning, construction, maintenance and day-to-day management of existing leisure, cultural and sport facilities, DS(CA)2 said that these were not the existing functions of a district council and funds would not be made available to DCs for carrying out such activities.

10. Mr Andrew WONG clarified that the purpose of his CSAs was to enlarge the functions of a DC to include some existing functions of the municipal councils. Moreover, he considered that if a DC could propose and advise the Government on local public works for which funds were to be allocated by the Director of Home Affairs, a DC should also be empowered to decide on the priorities of these district projects. DS(CA)2 reiterated that the Administration could not agree to Mr WONG's proposal as clause 59(b)(i) had already provided funds for a DC to undertake environmental improvements. In view of the Administration's comments, Mr WONG said that he might consider changing his sub-clause 59(a)(iv) to sub-clause 59(b)(i), to give the effect that a DC could undertake local public works and community activities when funds were made available.

Term of office of an appointed member

11. Members noted that the Administration had agreed to delete sub-clauses 11(3) and 16(4) which gave the Chief Executive the discretion to specify a shorter period as the term of office of an appointed member. Mr Ronald ARCULLI expressed concern that sub-clauses 11(2) and 16(3) could still allow the Chief Executive to specify a later date as the commencement date of the tenure of an appointed member. In this connection, the Chairman explained that

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the Administration's CSAs were to address members' previous concern about the Chief Executive's discretion to set an ending date earlier than the normal term of office. He said that Mr ARCULLI's concern was not raised at previous meetings and was therefore not discussed before.

12. Responding to Mr ARCULLI, DS(CA)2 said that sub-clauses 11(2) and 16(3) were necessary to enable the Chief Executive to specify a commencement date for the appointment of a DC member, with regard to circumstances such as the date the office would become vacant.

Provision of appointed membership in District Councils

13. Members noted the Administration's view that provision of appointed membership in DCs was not in contravention of Article 25 of International Covenant on Civil and Political Rights (ICCPR), since the right to vote under Article 25 applied to legislative organs. The Administration had confirmed that the provision of appointed membership was in compliance with Article 39 of Basic Law.

14. Ms Emily LAU disagreed with the Administration's view that the United Nations Human Rights Committee's criticisms on the electoral system in Hong Kong were limited to elections to the Legislative Council (LegCo) only. She drew members' attention to paragraph 25 of the Concluding Observations of the Human Rights Committee issued in November 1995 which clearly recommended that immediate steps be taken to ensure that the electoral system be put in conformity with Articles 21, 22 and 25 of ICCPR.

15. Ms Emily LAU also referred members to the written submission of the Hong Kong Human Rights Monitor [Paper No. CB(2)1124/98-99(04)] which held the view that provision of appointed members in the Bill was inconsistent with the ICCPR and was contrary to the Basic Law. Ms LAU asked whether a court ruling could be sought in this respect. LA replied that a party could only bring the case to the court for ruling if that party could prove that his interest had been impinged. At Ms LAU's request, LA undertook to provide written comments on whether an appointed element in the composition of the proposed DCs was compatible with Article 25 of the ICCPR. In this connection, Mr Ronald ARCULLI remarked that he had reservation on whether LA, as the Counsel to LegCo, should give his legal opinion on the matter which might become the subject of a lawsuit.

LA

(Post-meeting note : The Legal Service Division's written comments were issued to members vide LC Paper No. CB(2)1389/98-99.)

16. Ms Emily LAU also expressed considerable concern about the possibility of vote planting or exchanges of votes. She was of the view that since the Chief

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Executive could appoint DC members who would return their representatives to the Selection Committee for the election of the next Chief Executive, there would be a significant conflict of interest in the situation. She therefore asked whether the Administration would consider adding a clause to prohibit appointed DC members from becoming members of the Selection Committee.

Adm

17. DS(CA)2 responded that the object of the Bill was to provide for the setting up of DCs, and separate legislation would be proposed for the election of the Chief Executive. He suggested to address Ms LAU's concern when the relevant legislative proposal was submitted to the Legislative Council for scrutiny. LA also advised that the election of Chief Executive fell outside the ambit of the DC Bill. Nevertheless, DS(CA)2 took note of Ms LAU's concern on the issue.

III. Legislative timetable

Adm

Clerk

18. The Chairman informed members that the Bills Committee would report to the House Committee on 26 February 1999. As the Administration would resume Second Reading debate of the Bill on 10 March 1999, the Chairman reminded members and the Administration that the deadline for notice of CSAs would be 1 March 1999. In order to facilitate Members to consider the CSAs to be moved by the Administration and Members, DS(CA)2 agreed to provide the final version of the Administration's CSAs before the Chinese New Year. The Chairman also asked the Clerk to issue a circular reminding Members to submit their proposed CSAs as early as possible for circulation to other Members.

19. The Chairman thanked members and the Administration for their effort in the scrutiny of the Bill.

20. There being no other business, the meeting ended at 9:55 am.

Legislative Council Secretariat

1 December 1999