

立法會
Legislative Council

LC Paper No. CB(2)361/98-99

(These minutes have been
seen by the Administration)

Ref : CB2/BC/16/98

**Legislative Council Bills Committee on
Legislative Council (Amendment) Bill 1999**

**Minutes of 23 rd meeting
held on Monday, 28 June 1999 at 8:30 am
in the Chamber of the Legislative Council Building**

Members Present : Hon Ronald ARCULLI, JP (Chairman)
Dr Hon Raymond HO Chung-tai, JP
Hon LEE Kai-ming, JP
Hon LEE Wing-tat
Hon NG Leung-sing
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon Bernard CHAN
Hon CHAN Wing-chan
Hon CHAN Kam-lam
Hon LEUNG Yiu-chung
Hon Gary CHENG Kai-nam
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Hon WONG Yung-kan
Hon YEUNG Sum
Hon Mrs Miriam LAU Kin-ye, JP
Hon TAM Yiu-chung, JP

Members Absent : Hon Cyd HO Sau-lan
Prof Hon NG Ching-fai
Hon Mrs Selina CHOW, JP
Hon MA Fung-kwok
Hon Christine LOH
Dr Hon LEONG Che-hung, JP
Hon YEUNG Yiu-chung

Hon LAU Kong-wah
Hon LAU Wong-fat, GBS, JP
Hon Ambrose LAU Hon-chuen, JP
Hon Emily LAU Wai-hing, JP
Dr Hon TANG Siu-tong, JP
Hon Howard YOUNG, JP
Hon CHOY So-yuk

Public Officers : Mr Robin IP
Attending Deputy Secretary for Constitutional Affairs

Miss Shirley YUNG
Principal Assistant Secretary for Constitutional Affairs (4)

Mr Bassanio SO
Principal Assistant Secretary for Constitutional Affairs (5)

Ms Phyllis KO
Acting Deputy Principal Government Counsel (Elections)

Clerk in : Mrs Percy MA
Attendance Chief Assistant Secretary (2) 3

Staff in : Mr Jimmy MA, JP
Attendance Legal Adviser

Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Eleanor CHOW
Senior Assistant Secretary (2) 7

Action
Column

Mr NG Leung-sing was elected to chair the meeting during the temporary absence of the Chairman.

I. Text of Administration's proposed amendments to the Bill
(LC Paper No. CB(2) 2353/98-99(01))

2. Members noted that the Bills Committee had discussed at the last meeting the principles of the amendments proposed by the Administration. Deputy Secretary for Constitutional Affairs (DS for CA) took members through the text of the proposed amendments as set out in Annex II to the paper. The discussion was summarized below.

The Chief Executive (CE) to specify dates - clauses 3 and 5, new clause 5A, clause 8, new clause 27A and clause 43

3. DS for CA said that in response to comments made by the Legal Adviser (LA) concerning the expression "by notice in the Gazette", the CSAs sought to make it clear that in specifying a date for holding an ordinary election, the CE must "give notice of that date in the Gazette". The style of drafting was consistent with similar provisions of the District Councils Ordinance.

Textiles and Garment functional constituency (FC) - clause 13(c)

4. Pointing out that the Hong Kong General Chamber of Textiles Limited consisted of both corporate and individual members, Mrs Miriam LAU asked about their eligibility to be registered in the Textiles and Garment FC. DS for CA responded that the Administration was considering the matter.

(Mr Ronald ARCULLI, Chairman, took over the meeting at this juncture.)

Ex-officio membership of the Election Committee (EC) - clause 31

5. LA asked that in the event of a change of membership of the LegCo and the Hong Kong Deputies to the National People's Congress (NPC), whether the new member of the EC had a right to choose between voting in the FC or EC in a by-election.

6. Principal Secretary for Constitutional Affairs (4) (PAS for CA(4)) replied that for the purpose of the 2000 LegCo general election, ex-officio members of the EC who were registered FC electors would be allowed to vote in either the FC or EC. Once they had made their choice, they would vote in the EC or FC according to their choice if there were any by-elections in the future. If there were subsequent changes in ex-officio membership, the newly elected members would not have a choice.

Lists of electorates - clause 42

7. DS for CA said that the lists of electorates were proposed to be re-arranged

according to alphabetical order in both the English and Chinese texts. In response to the Chairman, DS for CA said that where an organization did not have an equivalent English name, it would be listed at the end of the electorate list according to the number of strokes of the Chinese character.

8. Mrs Miriam LAU said that at the last meeting, she had asked the Administration about the criteria for accepting and rejecting an organization to be included as a corporate elector of the Transport FC. Since the Administration did not give a definite reply to her question, she was consulting the relevant organizations and would consider proposing Committee Stage amendments (CSAs) to expand the electorate of the Transport FC.

**II. Administration's response to points raised by the Bills Committee on
17 June 1999
(LC Paper No. CB(2) 2389/98-99(01))**

Item 1 - "No canvassing day"

9. DS for CA reiterated that the Administration was of the view that it was not necessary to designate the election day as a "no canvassing day" in Hong Kong. Given the time constraint, the Administration was only able to gather information from Japan and France which adopted the "no canvassing day". The reasons for the two countries to adopt the arrangement were set out in the paper.

10. Dr YEUNG Sum pointed out that both Japan and France which adopted "no canvassing day" were signatories to the International Covenant of Civil and Political Rights (ICCPR). He cautioned the Administration not to use non conformity with the ICCPR as an excuse for not implementing the "no canvassing day" proposal. The Chairman clarified that the Administration had not used it as an excuse, it had only expressed concern that adopting such an arrangement might contravene the ICCPR.

Item 2 - Nomination methods of the religious subsector of the EC

11. Members noted the reply.

Item 3 - Catholic Diocese of Hong Kong (CDHK)

12. DS for CA said that the CDHK had indicated support to the proposed amendment, i.e. if a designated body of the religious subsector nominated more persons than the assigned number but failed to assign preference to its nominees, the Returning Officer should determine, by drawing lots, who among the nominees should become members of the EC. (A copy of the letter from the CDHK was circulated to members vide LC Paper No. CB(2) 2415/98-99(01))

III. Amendments proposed by Members

Amendments proposed by Mr CHEUNG Man-kwong on reimbursement of election expenses

(LC Paper No. CB(2) 2408/98-99(01))

13. Mr CHEUNG Man-kwong said that he would propose an amendment to the Bill to the effect that the CE in Council might make regulation to provide for the reimbursement of election expenses to a candidate or a list of candidates if the candidate or the list of candidates obtained a prescribed proportion of the votes cast at the election. Details of the proposed amendments, reimbursement practices in other countries and the projected expenses to be incurred under the proposal were set out in paper. He said that electioneering activities incurred huge expenses which were a significant burden on individual candidates and political parties. In fact, some candidates were in debt after an election. Providing more subsidies to candidates would encourage potential politicians to participate in elections and would ensure a level playing field for all candidates. On the assumption that a candidate would be reimbursed with \$5 for each vote cast in his favour and based on the vote count in the 1998 LegCo election, the amount of reimbursement expenditure was only \$7.4 million under the proposal.

14. DS for CA reiterated that the Government had provided considerable subsidy in kind to candidates running in the LegCo election, such as two rounds of free mailing service, publicity programmes on TV and radio, forums for debate on topical issues and leaflets introducing candidates. The Administration did not consider that there was a need to further subsidize candidates in their campaigning activities with additional public funds.

15. Responding to Mr TAM Yiu-chung's query, DS for CA said that no candidates had withdrawn from the 1998 LegCo election due to financial difficulty. The Administration had not received any complaints from candidates of the last election in respect of their difficulty in paying off debts. Mr CHEUNG Man-kwong responded that no candidate would lodge such a complaint to the Administration.

16. Mr LEE Wing-tat said that he had incurred over \$2 million for electioneering activities in the 1998 LegCo election and had yet to pay off his debt. He said that subsidizing election expenses was one of the means to ensure clean election.

17. Mr TAM Yiu-chung cautioned that the use of additional public money for campaigning activities should be given careful consideration. He was not convinced that there was a need to do so. He said that some candidates had been very successful in raising funds at the last election. If a candidate suspected that accepting a donation would subject him to influence of the donor, then he should refuse it. Mr NG Leung-sing supported his view. On the rationale put forward by the Democratic Party that

running an election would put some candidates at financial risk, he said that reimbursing election expenses would in fact attract more candidates to contest in an election, thus having the adverse effect of putting more candidates in debt.

18. Mr Andrew WONG opined that the proposal was worth considering. He asked whether a candidate who wished to use only one round of free postal service instead of two could use the money saved for other electioneering activities.

19. In response to the Chairman, DS for CA said that the Administration had not consulted the public on the proposal to use additional public money for the purpose of reimbursing election expenses to candidates. The Chairman expressed concern that under the circumstances, the public would not have sufficient time to consider the issue.

Amendments proposed by Mr LEE Wing-tat on "no canvassing day"
(LC Paper No. CB(2)2420/98-99(01))

20. Mr LEE Wing-tat said that he would propose an amendment to the Bill to specify the polling day as a "no canvassing day". A person carrying out canvassing activities on the polling day would be subject to fines once convicted. He pointed out that many countries were implementing "no canvassing day", a list of which was attached to the paper.

21. Mr CHENG Kai-nam pointed out that those countries on the list were developing countries which had a short history of direct election. After reading the list and acknowledging the fact that advanced countries such as USA, UK and Canada did not impose such a restriction, he would conclude that the existing arrangement for Hong Kong was appropriate. Mr LEE Wing-tat responded that advanced countries such as France and Japan also prohibited canvassing activities on the polling day. He did not agree to the conclusion drawn by Mr CHENG.

22. Mr TAM Yiu-chung expressed concern over the operational details of the proposal. Mr LEE Wing-tat responded that canvassing involving personal contact with electors and display of promotional materials could be easily detected, but telephone canvassing was more difficult to monitor.

23. Mr NG Leung-sing said that he had reservation about the proposal. He expressed concern over the practical difficulties in deciding whether a person had carried out any canvassing activities and the mechanism for arbitrating disputes. Mr CHAN Wing-chan said that canvassing activities would create a better atmosphere on the election day. He said that the Hong Kong Federation of Trade Unions was against the proposal.

24. In response to the Chairman, Mr LEE WING-tat said that there would not be any no canvassing zone once the "no canvassing day" proposal was implemented. He clarified that activities carried out by the Administration to promote election would not be regarded as canvassing activities. The Chairman said that while the Liberal Party supported the concept of "no canvassing day", he opined that terms such as "canvassing activities", "promotional activities" and "a person" should be more clearly defined in the CSA proposed by Mr LEE.

25. DS for CA reiterated that the Administration was against the proposal. The Administration was of the view that candidates should be allowed to choose, according to their own needs, whether and if so, when and how to carry out canvassing activities, provided that such activities would not undermine the fairness of the election and cause undue disturbance to the electors. Experience of the past elections showed that canvassing activities were generally carried out in an orderly and controlled manner. The Administration did not agree that all other candidates should be banned from carrying out canvassing activities simply because some candidates did not wish to carry out their own electioneering activities.

26. Mr LEE Wing-tat pointed out that many complaints concerning conduct of canvassing activities were lodged on the polling day and there were also scuffles among candidates' agents in the past elections, albeit they were not serious. The implementation of "no canvassing day" would avoid any dire consequences.

27. DS for CA did not agree to the remarks made by Mr LEE. He clarified that only a few complaints were received on the polling day in the past elections. These complaints were handled in an efficient manner. The review conducted by the Electoral Affairs Commission on the 1998 LegCo election concluded that canvassing activities were generally carried out in an orderly and controlled manner. He reiterated that the Administration did not see the need to ban canvassing activities on the polling day.

Conclusion

28. The Chairman advised members that the Bills Committee would report to the House Committee on 2 July 1999 and recommend that the Second Reading debate on the Bill be resumed on 14 July 1999. The deadline for giving notice of CSAs was 5 July 1999.

29. The meeting ended at 10:15 am.

Legislative Council Secretariat

10 November 1999