

立法會
Legislative Council

LC Paper No. LS 72/10-11

Paper for the House Committee Meeting on 10 June 2011

**Legal Service Division Report on
Legislative Council (Amendment) Bill 2011**

I. SUMMARY

- 1. Objects of the Bill**

To make changes to the way vacancies in the geographical constituency and District Council (second) functional constituency membership of LegCo are filled.
- 2. Comments**

At present, a by-election has to be held whenever a vacancy in the LegCo membership is required to be filled. The Bill proposes to set up precedence lists of unelected candidates compiled from lists of candidates for the geographical constituencies and District Council (second) functional constituency from the Fifth LegCo general election onwards. They will be made eligible for filling any vacancy in their respective constituency in accordance with a priority based on the number of remainder votes their lists obtained in the general election concerned. Only if the arrangement fails to return a candidate to fill the vacancy concerned will a by-election be held.

Subject to the candidate who ranks highest in the precedence list being found to be indeed eligible for LegCo membership and his acceptance of office, the Returning Officer will declare that he becomes a LegCo Member.

The scope of election petitions will be extended to enable proceedings to be instituted to question the validity of a precedence list and the eligibility of persons so listed to become a LegCo Member.
- 3. Public Consultation**

The Administration announced the proposed changes on 17 May 2011.
- 4. Consultation with LegCo Panel**

The Panel on Constitutional Affairs was briefed at a special meeting on 24 May 2011 on the Administration's proposals. Members expressed divergent views.
- 5. Conclusion**

As the proposed changes have attracted divergent views from Members, they may wish to form a Bills Committee to examine the details of the proposed policies and replacement arrangements.

II. REPORT

Objects of the Bill

To make changes to the way vacancies in the geographical constituency and District Council (second) functional constituency membership of LegCo are filled.

LegCo Brief Reference

2. CMAB C1/30/5 issued by the Constitutional and Mainland Affairs Bureau on 31 May 2011.

Date of First Reading

3. 8 June 2011.

Comments

4. The Legislative Council Ordinance (Cap. 542) now provides that any vacancy arising in the LegCo membership during its term of office, except where it occurs within the four months preceding the end of a term, has to be filled by holding a by-election.

5. The Bill proposes to introduce a new arrangement whereby, as from the Fifth LegCo, any vacancy in membership arising during a LegCo term (except within four months of its end) for whatever reason in respect of a geographical constituency or the District Council (second) functional constituency will be filled as far as possible by a candidate from the last general election to be determined by a precedence list for the constituency concerned.

6. The precedence list is to be compiled by the Returning Officer for the respective constituency as soon as practicable after the completion of the counting of votes in the general election as follows -

- (a) the first candidate not returned at the preceding general election in each list of candidates which has remainder votes will be included;

- (b) among the candidates included, the one from the list of candidates with the largest number of remainder votes will be placed first in the precedence list, the one from that with the second largest number placed second and so on; and
- (c) if two or more lists of candidates in the same constituency get the same number of remainder votes, lots will be drawn right after the vote-counting so as to determine their order in the precedence list.

7. When a vacancy in the constituency concerned occurs, it will be filled by the first candidate in the precedence list of that constituency, subject to confirmation of his eligibility to become a Member and his acceptance of office. A declaration to that effect will be made by the Returning Officer and must be gazetted. The other candidates will have the opportunity to fill any vacancy by turn according to their order in the precedence list. Only when a precedence list fails to return a replacement will a by-election be held.

8. In its submission (CB(2)1787/10-11(01)) to the special meeting of the Panel on Constitutional Affairs held on 24 May 2011, the Administration believes its proposal suits Hong Kong. It will be consistent with the proportional representation electoral system. The proposed mechanism can reflect the overall will of the electorate expressed during the general election.

9. The validity of a precedence list and the eligibility of a candidate so returned as a Member may also be questioned in court by a election petition, the scope of which will be extended accordingly.

Public Consultation

10. There was no mention of public consultation in the LegCo Brief, apart from consultation with LegCo Panel.

Consultation with LegCo Panel

11. The Panel on Constitutional Affairs was briefed at a special meeting on 24 May 2011. Some Members welcomed the proposed replacement arrangement, which they considered would remove the risk of abuse. With the creation of the District Council (second) functional constituency, there could be a greater risk of abuse of the by-election arrangement by means of resignation. They were also supportive of the proposal of not filling a vacancy with a candidate from the same list as that would avoid a Member handing over his seat to a successor of the same affiliation.

12. Some other Members expressed strong objection to the Administration's proposal. They were concerned that the proposed arrangements would distort the will of the electorate and deprive electors of the right to vote for replacements to vacated seats. There was a view that it was illogical not to allow the highest placed un-elected candidate in the same list as that of the Member vacating his seat to succeed to the vacated membership. There was dissatisfaction with the lack of public consultation and a call to conduct a comprehensive public consultation.

Conclusion

13. As the proposed changes have attracted divergent views from Members, they may wish to form a Bills Committee to examine the details of the proposed policies and arrangements.

Prepared by

CHEUNG Ping-kam, Arthur
Senior Assistant Legal Adviser
Legislative Council Secretariat
3 June 2011