

立法會
Legislative Council

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LC Paper No. CB(2)2774/11-12
(These minutes have been seen
by the Administration)

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

**Minutes of the third meeting
held on Saturday, 17 March 2012, at 9:00 am
in Conference Room 1 of the Legislative Council Complex**

- Members present** :
- Hon TAM Yiu-chung, GBS, JP (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
 - Dr Hon Philip WONG Yu-hong, GBS
 - Hon LAU Kong-wah, JP
 - Hon LAU Wong-fat, GBM, GBS, JP
 - Hon Emily LAU Wai-hing, 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 CHIM Pui-chung
 - Prof Hon Patrick LAU Sau-shing, SBS, JP
 - Hon CHAN Kin-por, JP
 - Dr Hon Priscilla LEUNG Mei-fun, JP
 - Hon IP Wai-ming, MH
 - Hon Mrs Regina IP LAU Suk-ye, GBS, JP
 - Dr Hon PAN Pey-chyou
 - Hon Alan LEONG Kah-kit, SC
 - Hon LEUNG Kwok-hung
 - Hon Albert CHAN Wai-yip
- Member attending** :
- Hon WONG Yuk-man

Members absent : Hon Jeffrey LAM Kin-fung, GBS, JP (Deputy Chairman)
Hon CHEUNG Man-kwong
Hon WONG Yung-kan, SBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun, JP

Public Officers attending : Mr Raymond TAM Chi-yuen
Secretary for Constitutional and Mainland Affairs

Miss Adeline WONG
Under Secretary for Constitutional and Mainland Affairs

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

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

Attendance by invitation

Session One
: Federation of Hong Kong Industries

Mr Bernie TING
General Committee Member

Yat Tung Community Network Association

Mr KWOK Chung-man

The Professional Commons

Mr LEUNG Siu-cheong
Member, Strategy Committee

Mr CHAN Tin-chu, Francis

Hong Kong Youth Development Network

Mr Stanley LUI
Chief Executive

The Composers and Authors Society of Hong Kong

Professor CHAN Wing-wah
Chairman

The Association of Chinese Culture of Hong Kong

Miss Sylvia LAM
Chief Executive

Hong Kong Southern District Alliance

Mr CHAN Sze-chung
Chairman

Fong Chung Social Service Centre

Mr LUI Hung-pan

Mr CHUI Kwan-siu

Hong Kong Political, Economic and Cultural Society

Mr TSE Wai-mo

Hong Kong Starfire Network Association

Mr CHEUNG Yu-fan, Frankie

Tuen Mun Stay Goal

Mr MO Shing-fung

Mr TSANG Hing-lung

Mr LEUNG Yui

Mr LAM Pok

Mr FU Hing-cheong

Federation of New Territories Youth

Mr LI Sai-wing
Vice Secretary-General

Think Tank of New Territories Youth

Mr WONG Yuen-sang
Vice Chairperson

Mr LAU Kin-shing

Civil Human Rights Front

Mr LAI Yan-ho
Convenor

Mr MAK Ip-sing
Member of Yuen Long District Council

Civic Party

Mr Dennis KWOK
Chairman, Constitution and Governance Policy Branch

Session Two

Hong Kong Christian Institute

Mr SHUM Wai-nam, Andrew
Programme Secretary (Social Concern)

Hong Kong Human Rights Monitor

Mr KWOK Hiu-chung
Officer

Mr CHU Wai-kei
Barrister-at-Law

Mr LAM Hong-ching

捍衛黃毓民辭職補選大聯盟

Mr WONG Yeung-tat
Chairman

Mr SO Ho

Mr MUI Yik-hei

The Y Elites Association

Mr HUNG Wai-man
Chairman

Mr KWOK Chun

Mr CHAN Ka-lun

Mr CHEUNG Yiu-pan

Mr Tony CHENG

Mr PANG Wing-seng, Victor

Hong Kong Motion Picture Industry Association

Mr CHUNG Wai-hung
Chief Executive

Miss HOO Yuk-wai

Young Democratic Alliance for Betterment of Hong
Kong

Mr CHOW Ho-ding
Chairman

Mr LEE Tat-yi

Mr CHAN Kwok-shik

Mr KWOK Wai-keung
Member of Eastern District Council

Mr MOK Kin-wing
Member of Wong Tai Sin District Council

Mr LUK Chung-hung
Member of Yuen Long District Council

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

Action

I. Meeting with deputations and the Administration
[LC Paper No. CB(2)402/11-12]

The Bills Committee received views from a total of 45 individuals and organizations (index of proceedings attached at **Annex**).

II. Any other business

2. Members noted that the next meeting would be held on Friday, 23 March 2012 at 10:45 am.

3. There being no other business, the meeting ended at 12:35 pm.

Council Business Division 2
Legislative Council Secretariat
13 September 2012

**Proceedings of the third meeting of the
Bills Committee on Legislative Council (Amendment) Bill 2012
held on Saturday, 17 March 2012, at 9:00 am
in Conference Room 1 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
Session One (9:00 am - 10:45 am)			
000722 - 001222	Chairman	Opening remarks Meeting with deputations to receive views on the Legislative Council (Amendment) Bill 2012.	
001223 - 001449	Chairman Federation of Hong Kong Industries	Presentation of views [LC Paper No. CB(2)1415/11-12(01)]	
001450 - 001736	Chairman Yat Tung Community Network Association	Presentation of views [LC Paper No. CB(2)1439/11-12(01)]	
001737 - 002047	Chairman The Professional Commons	Presentation of views [LC Paper No. CB(2)1618/11-12(01)]	
002048 - 002358	Chairman Mr CHAN Tin-chu, Francis	Presentation of views [LC Paper No. CB(2)1439/11-12(02)]	
002359 - 002700	Chairman Hong Kong Youth Development Network	Presentation of views [LC Paper No. CB(2)1390/11-12(01)]	
002701 - 002958	Chairman The Composers and Authors Society of Hong Kong	The Composers and Authors Society of Hong Kong's expression of support for the Bill and its suggestion that a 12-month restriction period should be imposed on a resigning Member to participate in any by-election.	
002959 - 003232	Chairman The Association of Chinese Culture of Hong Kong	Presentation of views [LC Paper No. CB(2)1390/11-12(02)]	
003233 - 003659	Chairman Hong Kong Southern District Alliance	Presentation of views [LC Paper No. CB(2)1439/11-12(03)]	
003600 - 003743	Chairman Fong Chung Social Service Centre	Presentation of views [LC Paper No. CB(2)1439/11-12(04)]	

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003744 - 004121	Chairman Hong Kong Political, Economic and Cultural Society	Presentation of views [LC Paper No. CB(2)1390/11-12(03)]	
004122 - 004335	Chairman Hong Kong Starfire Network Association	Presentation of views [LC Paper No. CB(2)1390/11-12(04)]	
004336 - 004601	Chairman Tuen Mun Stay Goal	Presentation of views [LC Paper No. CB(2)1439/11-12(05)]	
004602 - 004831	Chairman Mr TSANG Hing-lung	Presentation of views and expression of support for the Bill by Mr TSANG Hing-lung.	
004832 - 005054	Chairman Mr LEUNG Yui	Presentation of views and expression of support for the Bill by Mr LEUNG Yui.	
005055 - 005248	Chairman Mr LAM Pok	Presentation of views and expression of support for the Bill by Mr LAM Pok.	
005249 - 005459	Chairman Mr FU Hing-cheong	Presentation of views and expression of support for the Bill by Mr FU Hing-cheong.	
005500 - 005701	Chairman Federation of New Territories Youth	Presentation of views and expression of support for the Bill by Federation of New Territories Youth.	
005702 - 010026	Chairman Think Tank of New Territories Youth	Presentation of views and expression of support for the Bill by Think Tank of New Territories Youth.	
010027 - 010339	Chairman Mr LAU Kin-shing	Presentation of views and expression of support for the Bill by Mr LAU Kin-shing.	
010340 - 010645	Chairman Civil Human Rights Front	Civil Human Rights Front's views that – (a) it strongly opposed the Bill as it would deprive of the electors' right to vote as well as the resigning Members' right to stand for election; (b) the Administration had ignored the public's call for maintaining the existing arrangement for filling vacancies in the Legislative Council ("LegCo"); and (c) the Administration should withdraw the Bill.	

Time Marker	Speaker(s)	Subject(s)	Action required
010646 - 010928	Chairman Mr MAK Ip-sing	Mr MAK Ip-sing's views that – (a) the Bill had contravened the Basic Law and the International Human Rights Treaties; (b) the Bill would deprive of the electors' right to vote as well as the right of resigning Members to stand for election; (c) the Bill was unconstitutional and future legislation to be passed by LegCo might be subject to challenge should the Bill be passed; and (d) he strongly opposed to the proposal in the Bill and requested the Administration to withdraw the Bill.	
010929 - 011235	Chairman Civic Party	Presentation of views [LC Paper No. CB(2)1439/11-12(06)]	
011236 - 011539	Chairman Mr CHUI Kwan-siu	Presentation of views and expression of support for the Bill by Mr CHUI Kwan-siu.	
011540 - 012047	Chairman Dr Margaret NG Hong Kong Political, Economic and Cultural Society	Dr Margaret NG's recapitulation of the views of the Hong Kong Bar Association that the proposal in the Bill was unjustified and had affected the right to vote and the right to stand for election. Dr NG's remarks that the resigning Members did not resign at will but wished to convey a message to the public that the functional constituency ("FC") seats should be abolished as Members returned by FC failed to represent public views. Dr NG sought the deputations' views on the constitutionality of the Bill. Hong Kong Political, Economic and Cultural Society's views that the term of office of LegCo under the Basic Law should be four years. Members should complete their four-year term of office. Hence the Bill was constitutional.	
012048 - 012603	Chairman Ms Emily LAU The Composers and Authors Society of Hong Kong	The Composers and Authors Society of Hong Kong's response to Ms Emily LAU's that – (a) the course of action of the resigning Members did not help improve the livelihood of the public. Some Members had wasted time on arguing	

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		<p>matters unrelated to the livelihood of the general public instead of discharging their important public functions; and</p> <p>(b) the resigning Members not only had abused the electors' votes but also deprived of the electors' freedom to vote.</p>	
012604 - 013137	Chairman Mr Albert CHAN	<p>Mr Albert CHAN's views that –</p> <p>(a) the right of resigning members standing in by-elections was part of the democratic electoral system and the representative government system;</p> <p>(b) it was up to the electors to decide whether they would vote for resigning Members who sought to be re-elected and the electors' right to vote should be upheld; and</p> <p>(c) the resigning Members had given serious consideration before deciding to resign and their solemn intention should not be distorted.</p>	
013138 - 013721	Chairman Mr LAU Kong-wah Hong Kong Southern District Alliance	<p>Mr LAU Kong-wah's views that –</p> <p>(a) the Bill would not deprive the resigning Members of their right to stand for election. The Basic Law had provided for the right and responsibilities of Members including the right to stand for LegCo election every four years; and</p> <p>(b) the assumption of the office of a Member was a solemn public commitment. It was a Member's responsibility to complete his term of office.</p> <p>Hong Kong Southern District Alliance's views that FC had its merits and the resignation for the purpose of instigating a de facto referendum through a by-election was groundless.</p>	
013722 - 014234	Chairman Ms Audrey EU	<p>Ms Audrey EU's remarks that –</p> <p>(a) the resigning Members had made a pledge to fight for dual universal suffrage and their course of action was a fulfillment of the pledge;</p> <p>(b) under a fair and open election, whether a resigning Member would be re-elected was entirely the choice of electors;</p>	

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		<p>(c) the legal professional bodies in Hong Kong had in fact queried the constitutionality of the Bill; and</p> <p>(d) the deficiency of having Members returned by FC in LegCo could only be rectified by way of implementing universal suffrage.</p>	
014235 - 14859	Chairman Administration	<p>The Administration's response to the views of deputations that –</p> <p>(a) the proposal in the Bill had been drawn up having regard to the view that legislative amendments should be introduced to plug the loophole in the existing electoral system and a by-election should continue to be held so that electors could exercise their right to vote when a mid-term vacancy arose;</p> <p>(b) the proposal in the Bill was a targeted and proportionate solution and avoid drastic changes to the existing arrangement for filling vacancies in LegCo;</p> <p>(c) the Department of Justice had examined comprehensively the legality and constitutionality of the Bill. Independent legal advice on the constitutionality of the Bill had also been sought. The legality and constitutionality of the Bill was confirmed;</p> <p>(d) the proposal in the Bill was not administrative measures but legislative amendments which were subject to the scrutiny of LegCo; and</p> <p>(e) the Bill neither eroded the right to vote nor the right to stand for election. Although the Bill had imposed restriction on the resigning Member to stand in any by-elections within six months of his resignation, it did not restrict the resigning Member's right to stand in any subsequent general election, even if it was held within six months of his resignation. Nor would the resigning Member be prevented from standing in any subsequent by-election held in the next LegCo term.</p>	
Session Two (10:45 am - 12:35 pm)			
015450 - 015738	Chairman	Opening remarks	

Time Marker	Speaker(s)	Subject(s)	Action required
015739 - 020046	Chairman Hong Kong Christian Institute	Hong Kong Christian Institute's views that – (a) a Member's choice of triggering a by-election by way of resignation and the electors' choice of their favourite candidate should not be curtailed; and (b) electors would express their support or otherwise for the resigning Members in their vote and the Administration should not attempt to shortlist candidates running for a by-election by imposing restrictions on resigning Members.	
020047 - 020253	Chairman Hong Kong Human Rights Monitor	Hong Kong Human Rights Monitor's views that – (a) the proposal in the Bill did not comply with the principles relating to the right to vote, the right to stand for an election and the right to be elected under the International Covenant on Civil and Political Rights; and (b) it was a Member's right to decide whether to resign. Electors would express their support or otherwise for the resigning Member by exercising their right to vote in the by-election. The Administration should not impose any restriction to deter a resigning Member from standing in any by-election.	
020254 - 020603	Chairman Mr CHU Wai-kei	Presentation of views [LC Paper No. CB(2)1390/11-12(05)]	
020604 - 020729	Chairman Mr LAM Hong-ching	Mr LAM Hong-ching's expression of objection to the Bill as it would deprive the resigning Members of their right to stand in by-election.	
020730 - 021052	Chairman 捍衛黃毓民辭職補選大聯盟	捍衛黃毓民辭職補選大聯盟's views that – (a) the Bill had deprived of the electors' right to express their support or otherwise for a candidate in their vote; (b) the Administration had failed to state clearly the loophole that needed to be plugged. Maintaining the status quo should be one of the options to be considered; (c) the biggest loopholes in the current election system were the existence of FC seats in the	

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		<p>membership of LegCo and the absence of universal suffrage;</p> <p>(d) the Administration's proposal had ignored the public's call for universal suffrage and abolition of FC; and</p> <p>(e) the Bill was illegal.</p>	
021053 - 021336	Chairman Mr SO Ho	Mr SO Ho's expression of objection to the Bill and his view that the Administration should withdraw the Bill.	
021337 - 021618	Chairman Mr MUI Yik-hei	<p>Mr MUI Yik-hei's views that –</p> <p>(a) the Bill was constitutional and legal. It struck a right balance among the diverse views in the community and could deter the abuse of the electoral process by Members who resigned in order to trigger a by-election in which they intended to stand and seek to be re-elected; and</p> <p>(b) the by-election triggered by the resignation of the five LegCo Members had resulted in unnecessary drain on public money and impaired the operation of LegCo. The irresponsible act of the resigning Members had also damaged the solemnity of elections and LegCo.</p>	
021619 - 021918	Chairman The Y Elites Association	Presentation of views [LC Paper No. CB(2)1390/11-12(06)]	
021919 - 022150	Chairman Mr KWOK Chun	Presentation of views [LC Paper No. CB(2)1459/11-12(01)]	
022151 - 022323	Chairman Mr CHAN Ka-lun	Presentation of views [LC Paper No. CB(2)1459/11-12(02)]	
022324 - 022444	Chairman Mr CHEUNG Yiu-pan	Presentation of views [LC Paper No. CB(2)1439/11-12(07)]	
022445 - 022557	Chairman Mr Tony CHENG	Presentation of views [LC Paper No. CB(2)1390/11-12(08)]	
022558 - 022856	Chairman Mr PANG Wing-seng, Victor	Presentation of views [LC Paper No. CB(2)1390/11-12(09)]	
022857 - 023101	Chairman Hong Kong Motion Picture Industry Association	Presentation of views [LC Paper No. CB(2)1618/11-12(02)]	

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023102 - 023340	Chairman Miss HOO Yuk-wai	Presentation of views [LC Paper No. CB(2)1390/11-12(10)]	
023341 - 023619	Chairman Young Democratic Alliance for Betterment of Hong Kong	Expression of support for the Bill by Young Democratic Alliance for Betterment of Hong Kong and its view that the Administration should ensure the constitutionality and legality of the Bill.	
023620 - 023752	Chairman Mr LEE Tat-yi	Presentation of views and expression of support for the Bill by Mr LEE Tat-yi.	
023753 - 024101	Chairman Mr CHAN Kwok-shik	Mr CHAN Kwok-shik's views that – (a) he supported the Bill as it could restrain Members who had resigned at will to trigger a by-election and prevent a waste of public money; and (b) the resigning Members should be penalized as their conduct had damaged the solemnity of LegCo.	
024102 - 024414	Chairman Mr KWOK Wai-keung	Expression of support for the Bill by Mr KWOK Wai-keung and his view that it was necessary to plug the loophole in the existing arrangements for filling vacancies in LegCo.	
024415 - 024703	Chairman Mr MOK Kin-wing	Expression of support for the Bill by Mr MOK Kin-wing and his view that the restriction imposed on resigning Members was acceptable.	
024704 - 024952	Chairman Mr LUK Chung-hung	Expression of support for the Bill by Mr LUK Chung-hung and his view that legislative amendments should be made to plug the loophole in the existing electoral process.	
024953 - 025548	Chairman Mr LAU Kong-wah The Y Elites Association	Mr LAU Kong-wah's views that the interest of a political party alone should not override the interest of the public at large. Members of the public were generally of the view that the Administration should introduce legislative amendments to plug the loophole. The resignation of the five Members in January 2010 to trigger a by-election in which they sought re-election had a serious negative impact on the political landscape of Hong Kong.	
025549 - 030120	Chairman Ms Audrey EU	Ms Audrey EU's views that – (a) electors' right to express their support or otherwise for a candidate in their vote should be	

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		<p>respected and hence no changes should be made to the existing arrangements for filling vacancies in LegCo;</p> <p>(b) electors had the right to decide whether to cast their votes; and</p> <p>(c) The Members who triggered a by-election by way of resignation sought to uphold their political beliefs and principles and solve the structural problem of the existing electoral system by eliminating FC.</p>	
030121 - 030720	Chairman Mr WONG Yuk-man	<p>Mr WONG Yuk-man's view that –</p> <p>(a) the solemnity of LegCo was built on electors' votes and referendum was the basic right of the citizens; and</p> <p>(b) triggering a by-election by way of resignation was common in many democratic countries and was the proper way to strive for public's support on controversial issues.</p>	
030721 - 031224	Chairman Mrs Sophie LAU	<p>Mrs Sophie LAU echoed the view that there should be more public education work on Hong Kong's political development in the progress of democracy. The motive of some Members was merely for gaining votes and it was worth to give some thoughts to whether it was the right direction for the society.</p>	
031225 - 031539	Chairman Mr LAU Kong-wah Mr CHAN Kwok-shik Mr KWOK Wai-keung	<p>Mr CHAN Kwok-shik's reiteration of his support for the Bill.</p> <p>Mr KWOK Wai-keung's expression of objection to the "de facto referendum" in the five geographical constituencies.</p>	
031540 - 031859	Chairman Mr WONG Yuk-man	<p>Mr WONG Yuk-man's view that some 500 000 electors had cast their votes in the 2010 LegCo by-election and their opinions should be respected. The local representative government system was crippled.</p>	
031900 - 032544	Chairman Mr LEUNG Kwok-hung Young Democratic Alliance for Betterment of Hong Kong	<p>Mr LEUNG Kwok-hung's view on the local electoral system.</p> <p>Young Democratic Alliance for Betterment of Hong Kong's view on the right to vote.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
032545 - 032900	Chairman Ms Audrey EU	Ms Audrey EU's view that one should not be deprived of the right to stand for election because of his political stance.	
032901 - 033320	Chairman Administration	<p>The Administration's response to the views of deputations that –</p> <p>(a) the proposal in the Bill was rationally connected to legitimate aim(s) and was no more than necessary to achieve those aims. The Bill was constitutional and legal;</p> <p>(b) public views were sought during the public consultation exercise on whether it was necessary to plug the loophole in the current election process and whether the status quo should be maintained. Of the written submissions received during the consultation period, about 30% considered that a Member resigning in order to trigger a by-election which he intended to stand and seek to be re-elected was not a loophole that needed to be plugged. The remaining 70% of the respondents agreed that the Government should put forth measures to plug the loophole; and</p> <p>(c) Mr CHU Wai-kei's view on the right to vote and the right to stand for election contained in paragraph 25 of his submission [LC Paper No. CB(2)1390/11-12(05)] was noteworthy.</p>	
033321 - 033331	Chairman	<p>Date of next meeting</p> <p>Closing remarks</p>	