

Date of Hearing: May 13, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Sebastian Ridley-Thomas, Chair

AB 952 (Cristina Garcia) – As Amended April 20, 2015

SUBJECT: Local government: vacancies.

SUMMARY: Requires, if a city council fills a vacancy in an elective city office by appointment and that vacancy occurs before a specified time during the first half of the term of office, that a special election be held to fill the remainder of the term. Specifically, **this bill:**

- 1) Provides that if a city council fills a vacancy in an elective city office by appointment, and the vacancy occurs in the first half of the term of office and at least 130 days prior to the next general municipal election, that a special election shall be held at that general municipal election for the unexpired term of the former incumbent.
- 2) Provides that the person who was appointed to fill the vacancy shall hold office until the person who is elected to fill the vacancy has been qualified.

EXISTING LAW:

- 1) Requires a city council, within 60 days of a vacancy in an elective city office, to fill that vacancy by appointment or by calling a special election to fill the vacancy.
 - a) Requires, if the council calls a special election, that the special election be held on the next regularly established election date that is not less than 114 days from the call of the special election.
 - b) Provides that a person who is elected or appointed to fill a vacancy holds office for the unexpired term of the former incumbent.
- 2) Permits a city to enact an ordinance to require one of the following procedures to govern the filling of vacancies in elective city offices:
 - a) Requires a special election to be called immediately to fill every city council vacancy and the office of mayor. Requires the special election to be held on the next regularly established election date not less than 114 days from the call of the special election.
 - b) Requires a special election be held to fill a city council vacancy and the office of mayor when petitions bearing a specified number of verified signatures are filed. Requires the special election to be held on the next regularly established election date not less than 114 days from the filing of the petition. Permits a city council in a city that has adopted this procedure to call a special election to fill the vacancy without waiting for the filing of a petition.
 - c) Provides that a person appointed to fill a vacancy on the city council shall hold office only until the date of a special election which shall immediately be called to fill the

remainder of the term. Permits the special election to be held on the date of the next regularly established election or regularly scheduled municipal election to be held throughout the city not less than 114 days from the call of the special election.

- 3) Permits a city to provide for its own governance through the adoption of a charter by a majority vote of its electors voting on the question.
- 4) Permits a city charter to provide for the conduct of city elections. Grants plenary authority, subject to limited restrictions, for a city's charter to provide for the manner in which and the method by which municipal officers are elected.

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

- 1) **Purpose of the Bill:** According to the author:

When a vacancy is created at a city council they have two options: 1) to call a special election to fill the vacancy or 2) fill the vacancy by appointment. The problem lies in that sometimes calling a special election is cost prohibitive, and in those situations appointments are made, it deprives the voters of the ability to choose their representative. The appointees may not face an election for years and by then, they have already gained the advantage of being an “incumbent”.

AB 952 would allow local governments the ability to hold an election, allowing voters to participate in the process, at the next regularly scheduled election. The appointee, if they wish to continue in their position would be placed on the ballot, to be essentially confirmed by voters to complete the remainder of their term

- 2) **Filling of Vacancies in Local Government Bodies:** State law contains different procedures for filling vacancies on local governmental bodies depending on the type of local government in question. For example, vacancies on the boards of supervisors of general law counties are filled by gubernatorial appointment, while vacancies at other levels of local government (including for cities, school districts, and special districts) typically can be filled by appointment or by a special election, at the discretion of the remaining members of the governing body on which there is a vacancy. Charter counties and charter cities are able to establish their own rules for filling vacancies on their governing bodies, and employ a range of different procedures for doing so.

In most cases where state law allows a vacancy on the governing body of a local government to be filled by appointment, that appointment is temporary in situations where the vacancy occurs early in the term of office. For example, when the Governor appoints a person to fill a vacancy on a county board of supervisors, that person holds office only until the next statewide general election unless the term for the vacant office is scheduled to expire shortly after the next statewide general election. Similarly, laws allowing for appointments to fill vacancies on the governing boards of school districts and special districts generally provide that those appointments are temporary, and last only until the next general district election, in

situations where the vacancy occurs early in the term of office. (Generally, those laws apply when the vacancy occurs prior to the half-way point of the term of office, and sufficiently in advance of the next general district election such that there is time to add the special vacancy election to the ballot at that general district election.) By allowing vacancies to be filled on a temporary basis by appointment, these laws allow local governments to avoid the costs of a standalone special election while allowing vacancies to be filled by the electorate at the next election where voters in that jurisdiction are otherwise scheduled to vote on matters relating to that jurisdiction.

When a vacancy in an elective city office is filled by appointment, however, existing law permits the appointee to remain in office for the remainder of the term, regardless of how much time remains in the term for that vacant office. For example, if a city council member resigned in the first month of a 4-year term, existing law could allow the remaining members of the city council to appoint someone to serve the 3 years and 11 months remaining on the term, without the need for a special election at the next general municipal election. General law cities can choose to adopt an ordinance requiring a special election to be held in those circumstances, but they are not required to do so.

This bill would adopt a procedure for filling vacancies in elective city offices that is similar to the procedure that applies for filling vacancies on the governing boards of most special districts. Under that procedure, if a vacancy in office occurs during the first half of a term of office, and at least 130 days prior to the next general district election, the district has the option of appointing someone to fill the vacancy, but that appointment is temporary, and a special election is held at the same time as the next general district election to fill the remainder of the term. This bill would not affect the ability that city councils have under existing law, however, to adopt an alternative procedure, as detailed above, that governs the filling of vacancies in elective city office.

- 3) **Charter Cities and General Law Cities:** As noted above, the California Constitution gives cities the ability to adopt charters, which give those jurisdictions greater autonomy over local affairs. Of California's 482 cities, 121 are charter cities. The state's 361 general law cities are subject to the general laws passed by the Legislature.

The Constitution gives a great deal of autonomy to charter cities over the rules governing the election of municipal officers, granting "plenary authority," subject to limited restrictions, for a city charter to provide "the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees... shall be elected or appointed." The Constitution further provides that properly adopted city charters "shall supersede all laws inconsistent" with the charter.

The provisions of this bill would apply to all general law cities (unless they adopt an alternative ordinance as outlined above) and to any charter city that does not stipulate in its charter the procedure for filling vacancies on the city council.

- 4) **Previous Legislation:** AB 1668 (Knight), Chapter 38, Statutes of 2010, extended, from 30 to 60 days, the time for a city council to fill a vacancy by either appointing a replacement or calling a special election.

- 5) **Double-Referral:** On April 15, 2015, this bill was heard and approved by the Assembly Committee on Local Government on an 8-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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