

Assembly Bill No. 309

Passed the Assembly April 14, 2011

Chief Clerk of the Assembly

Passed the Senate August 30, 2011

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 1770 and 1771 of the Government Code, relating to public officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 309, Cook. Public officers: removal from office.

Under existing law, an office becomes vacant on the occurrence of certain events. Existing law specifies that when a public officer is removed, declared insane, or convicted of a felony or offense involving a violation of his or her official duty, or when his or her election or appointment is declared void, the body or person before whom the proceedings are had is required to give notice thereof to the officer empowered to fill the vacancy.

This bill would provide that an appointed or ex officio office becomes vacant where the appointed or ex officio individual has been debarred, suspended, disqualified, or otherwise excluded from participating in federal "covered transactions," as prescribed under federal law.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to require an individual to vacate any appointed or ex officio office that individual holds on the governing body of any local agency that is, or may reasonably be expected to be, a participant or principal in a federally covered transaction, when that individual is debarred, suspended, disqualified, or otherwise excluded from participating in a federally covered transaction, pursuant to federal law. It is not the intent of the Legislature to eliminate any office, seat, or position that becomes vacant pursuant to the provisions of this act.

SEC. 2. Section 1770 of the Government Code is amended to read:

1770. An office becomes vacant on the happening of any of the following events before the expiration of the term:

- (a) The death of the incumbent.
- (b) An adjudication pursuant to a quo warranto proceeding declaring that the incumbent is physically or mentally incapacitated

due to disease, illness, or accident and that there is reasonable cause to believe that the incumbent will not be able to perform the duties of his or her office for the remainder of his or her term. This subdivision shall not apply to offices created by the California Constitution nor to federal or state legislators.

(c) His or her resignation.

(d) His or her removal from office.

(e) His or her ceasing to be an inhabitant of the state, or if the office be local and one for which local residence is required by law, of the district, county, or city for which the officer was chosen or appointed, or within which the duties of his or her office are required to be discharged.

(f) His or her absence from the state without the permission required by law beyond the period allowed by law.

(g) His or her ceasing to discharge the duties of his or her office for the period of three consecutive months, except when prevented by sickness, or when absent from the state with the permission required by law.

(h) His or her conviction of a felony or of any offense involving a violation of his or her official duties. An officer shall be deemed to have been convicted under this subdivision when trial court judgment is entered. For purposes of this subdivision, “trial court judgment” means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict, or finding.

(i) His or her refusal or neglect to file his or her required oath or bond within the time prescribed.

(j) The decision of a competent tribunal declaring void his or her election or appointment.

(k) The making of an order vacating his or her office or declaring the office vacant when the officer fails to furnish an additional or supplemental bond.

(l) His or her commitment to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, dipsomaniac, inebriate, or stimulant addict; but in that event the office shall not be deemed vacant until the order of commitment has become final.

(m) (1) The incumbent is listed in the Excluded Parties List System and all of the following subparagraphs apply:

(A) The office is one that the incumbent holds ex officio, by virtue of holding another office, or as an appointee.

(B) The appointed or ex officio office is on the governing board of a local agency that is, or may reasonably be expected to be, a participant or principal in a covered transaction, pursuant to federal law.

(C) A federal agency head or designee has not granted the incumbent an exception, in writing, permitting the incumbent to participate in a particular covered transaction in which the local agency is, or may reasonably be expected to be, a participant or principal.

(2) For purposes of this subdivision, the following terms have the following meanings:

(A) “Excluded Parties List System” means the list maintained and disseminated by the federal General Services Administration containing names of, and other information about, persons who are debarred, suspended, disqualified, or otherwise excluded from participating in a covered transaction, pursuant to federal law.

(B) “Local agency” includes, but is not limited to, a county, whether general law or chartered, city, whether general law or chartered, city and county, school district, municipal corporation, district, political subdivision, or any board, commission, or agency of one of these entities.

(C) “Federal law” includes, but is not limited to, federal regulations adopted pursuant to Section 2455 of Public Law 103-355 (108 Stat. 3327), Executive Order No. 11738, Executive Order No. 12549, and Executive Order No. 12689.

(3) This subdivision shall not apply to an elective office.

SEC. 3. Section 1771 of the Government Code is amended to read:

1771. (a) When an officer is removed, declared insane, or convicted of a felony or offense involving a violation of his or her official duty, or when his or her election or appointment is declared void, the body or person before whom the proceedings are had shall give notice thereof to the officer or body empowered to fill the vacancy.

(b) When an office becomes vacant pursuant to subdivision (m) of Section 1770, the local agency on which the vacancy occurs shall give notice of that vacancy to the officer or body authorized to fill the vacancy.

Approved _____, 2011

Governor