

**ASSEMBLY BILL**

**No. 1795**

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**Introduced by Assembly Member Alejo**

February 18, 2014

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An act to amend Sections 1770 and 36512 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1795, as introduced, Alejo. Cities: city council: vacancy.

Existing law provides that an office becomes vacant upon the happening of, among other things, the resignation of the person from office before the expiration of the term.

This bill would provide that, in the case of the office of city council member, the office becomes vacant upon the delivery of a letter of resignation by the reigning council member to the city clerk.

Existing law requires a city council, within 60 days of a vacancy in an elective office, to fill that vacancy by appointment or call a special election to fill the vacancy, as specified.

This bill would authorize a resigning city council member to cast a vote on the appointment of his or her successor if the resignation will go into effect upon the appointment of the successor, where the vacancy occurs on the city council of a city that elects city council members by or from districts and the city council has elected to fill the vacancy by appointment.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

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

1 SECTION 1. Section 1770 of the Government Code is amended  
2 to read:

3 1770. An office becomes vacant on the happening of any of  
4 the following events before the expiration of the term:

5 (a) The death of the incumbent.

6 (b) An adjudication pursuant to a quo warranto proceeding  
7 declaring that the incumbent is physically or mentally incapacitated  
8 due to disease, illness, or accident and that there is reasonable  
9 cause to believe that the incumbent will not be able to perform the  
10 duties of his or her office for the remainder of his or her term. This  
11 subdivision shall not apply to offices created by the California  
12 Constitution nor to federal or state legislators.

13 (c) (1) His or her resignation, *except as provided in paragraph*  
14 *(2).*

15 (2) *In the case of the office of city council member, upon the*  
16 *delivery of a letter of resignation by the resigning council member*  
17 *to the city clerk.*

18 (d) His or her removal from office.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (C) "Federal law" includes, but is not limited to, federal  
36 regulations adopted pursuant to Section 2455 of Public Law  
37 103-355 (108 Stat. 3327), Executive Order No. 11738, Executive  
38 Order No. 12549, and Executive Order No. 12689.

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

1 SEC. 2. Section 36512 of the Government Code is amended  
2 to read:

3 36512. (a) If a vacancy occurs in an appointive office provided  
4 for in this chapter, the council shall fill the vacancy by  
5 appointment. A person appointed to fill a vacancy holds office for  
6 the unexpired term of the former incumbent.

7 (b) If a vacancy occurs in an elective office provided for in this  
8 chapter, the council shall, within 60 days from the commencement  
9 of the vacancy, either fill the vacancy by appointment or call a  
10 special election to fill the vacancy. The special election shall be  
11 held on the next regularly established election date not less than  
12 114 days from the call of the special election. A person appointed  
13 or elected to fill a vacancy holds office for the unexpired term of  
14 the former incumbent.

15 (c) Notwithstanding subdivision (b) and Section 34902, a city  
16 may enact an ordinance that does any of the following:

17 (1) Requires that a special election be called immediately to fill  
18 every city council vacancy and the office of mayor designated  
19 pursuant to Section 34902. The ordinance shall provide that the  
20 special election shall be held on the next regularly established  
21 election date not less than 114 days from the call of the special  
22 election.

23 (2) Requires that a special election be held to fill a city council  
24 vacancy and the office of mayor designated pursuant to Section  
25 34902 when petitions bearing a specified number of verified  
26 signatures are filed. The ordinance shall provide that the special  
27 election shall be held on the next regularly established election  
28 date not less than 114 days from the filing of the petition. A  
29 governing body that has enacted such an ordinance may also call  
30 a special election pursuant to subdivision (b) without waiting for  
31 the filing of a petition.

32 (3) Provides that a person appointed to fill a vacancy on the city  
33 council holds office only until the date of a special election which  
34 shall immediately be called to fill the remainder of the term. The  
35 special election may be held on the date of the next regularly  
36 established election or regularly scheduled municipal election to  
37 be held throughout the city not less than 114 days from the call of  
38 the special election.

39 (d) (1) Notwithstanding subdivision (b) and Section 34902, an  
40 appointment shall not be made to fill a vacancy on a city council

1 if the appointment would result in a majority of the members  
2 serving on the council having been appointed. The vacancy shall  
3 be filled in the manner provided by this subdivision.

4 (2) The city council may call an election to fill the vacancy, to  
5 be held on the next regularly established election date not less than  
6 114 days after the call.

7 (3) If the city council does not call an election pursuant to  
8 paragraph (2), the vacancy shall be filled at the next regularly  
9 established election date.

10 *(e) If the city council of a city that elects city council members*  
11 *by or from districts elects to fill a vacancy on the city council as*  
12 *a result of a city council member resigning from office by*  
13 *appointment, the resigning city council member may cast a vote*  
14 *on the appointment if the resignation will go into effect upon the*  
15 *appointment of a successor.*