

**ASSEMBLY BILL**

**No. 952**

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**Introduced by Assembly Member Cristina Garcia**

February 26, 2015

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An act to amend Section 5091 of the Education Code, and to amend Sections 1780 and 36512 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 952, as introduced, Cristina Garcia. Local government: cities: special districts: governing boards: vacancies.

Existing law requires a school district or community college district governing board, whenever a vacancy occurs or a resignation containing a deferred effective date has been filed with the county superintendent of schools, to either order an election or make a provisional appointment. Existing law requires a person appointed to fill a vacancy to hold office only until the next regularly scheduled election for district governing board members that is scheduled 130 or more days after the effective date of the vacancy, at which time an election is required to be held to fill the vacancy for the remainder of the unexpired term.

This bill would require the provisional appointee to serve on the board until the next regularly scheduled election. This bill would eliminate the requirement that an election be held 130 or more days after the effective date of the vacancy.

Existing law requires a person elected to fill a vacancy in an elective office on the governing board of a special district, or a person appointed to fill a vacancy in an appointed office or an elective office in a general law city, to fill the vacancy for the balance of the unexpired term of office or the unexpired term of the former incumbent, as applicable.

This bill would instead require those persons to fill the vacancy until the next regularly scheduled election.

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 5091 of the Education Code is amended  
 2 to read:  
 3 5091. (a) (1) If a vacancy occurs, or if a resignation has been  
 4 filed with the county superintendent of schools containing a  
 5 deferred effective date, the school district or community college  
 6 district governing board shall, within 60 days of the vacancy or  
 7 the filing of the deferred resignation, either order an election or  
 8 make a provisional appointment to fill the vacancy. A governing  
 9 board member may not defer the effective date of his or her  
 10 resignation for more than 60 days after he or she files the  
 11 resignation with the county superintendent of schools. *A*  
 12 *provisional appointee shall serve on the board until the next*  
 13 *regularly scheduled election.*  
 14 (2) In the event that a governing board fails to make a  
 15 provisional appointment or order an election within the prescribed  
 16 60-day period as required by this section, the county superintendent  
 17 of schools shall order an election to fill the vacancy.  
 18 (b) When an election is ordered, it shall be held on the next  
 19 established election date provided pursuant to Chapter 1  
 20 (commencing with Section 1000) of Division 1 of the Elections  
 21 Code not less than 130 days after the order of the election.  
 22 (c) (1) If a provisional appointment is made within the 60-day  
 23 period, the registered voters of the district may, within 30 days  
 24 from the date of the appointment, petition for the conduct of a  
 25 special election to fill the vacancy. A petition shall be deemed to  
 26 bear a sufficient number of signatures if signed by at least the  
 27 number of registered voters of the district equal to 1 ½ percent of  
 28 the number of registered voters of the district at the time of the  
 29 last regular election for governing board members, or 25 registered  
 30 voters, whichever is greater. However, in districts with less than  
 31 2,000 registered voters, a petition shall be deemed to bear a  
 32 sufficient number of signatures if signed by at least 5 percent of

1 the number of registered voters of the district at the time of the  
2 last regular election for governing board members.

3 (2) The petition shall be submitted to the county superintendent  
4 of schools having jurisdiction who shall have 30 days to verify the  
5 signatures. If the petition is determined to be legally sufficient by  
6 the county superintendent of schools, the provisional appointment  
7 is terminated, and the county superintendent of schools shall order  
8 a special election to be conducted no later than the 130th day after  
9 the determination. However, if an established election date, as  
10 defined in Section 1000 of the Elections Code, occurs between the  
11 130th day and the 150th day following the order of the election,  
12 the county superintendent of schools may order the special election  
13 to be conducted on the established election date.

14 (3) For purposes of this section, “registered voters” means the  
15 following:

16 (A) If the district uses the at-large method of election, as defined  
17 in subdivision (a) of Section 14026 of the Elections Code,  
18 registered voters of the entire school district or community college  
19 district.

20 (B) If the district uses district-based elections, as defined in  
21 subdivision (b) of Section 14026 of the Elections Code, registered  
22 voters of the election district.

23 (d) A provisional appointment made pursuant to subdivision  
24 (a) confers all powers and duties of a governing board member  
25 upon the appointee immediately following his or her appointment.

26 (e) A person appointed to fill a vacancy shall hold office only  
27 until the next regularly scheduled ~~election for district governing~~  
28 ~~board members that is scheduled 130 or more days after the~~  
29 ~~effective date of the vacancy, whereupon an election shall be held~~  
30 ~~to fill the vacancy for the remainder of the unexpired term.~~ *election.*

31 A person elected at an election to fill the vacancy shall hold office  
32 for the remainder of the term in which the vacancy occurs or will  
33 occur.

34 (f) (1) If a petition calling for a special election is circulated,  
35 the petition shall meet all of the following requirements:

36 (A) The petition shall contain the estimate of the elections  
37 official of the cost of conducting the special election.

38 (B) The name and residence address of at least one, but not  
39 more than five, of the proponents of the petition shall appear on

1 the petition, each of which proponents shall be a registered voter  
2 of the school district or community college district, as applicable.

3 (C) None of the text or other language of the petition shall  
4 appear in less than six-point type.

5 (D) The petition shall be prepared and circulated in conformity  
6 with Sections 100 and 104 of the Elections Code.

7 (2) If any of the requirements of this subdivision are not met as  
8 to any petition calling for a special election, the county  
9 superintendent of schools shall not verify the signatures, nor shall  
10 any further action be taken with respect to the petition.

11 (3) No person shall permit the list of names on petitions  
12 prescribed by this section to be used for any purpose other than  
13 qualification of the petition for the purpose of holding an election  
14 pursuant to this section.

15 (4) The petition filed with the county superintendent of schools  
16 shall be subject to the restrictions in Section 6253.5 of the  
17 Government Code.

18 (g) Elections held pursuant to subdivisions (b) and (c) shall be  
19 conducted in as nearly the same manner as practicable as other  
20 governing board member elections.

21 SEC. 2. Section 1780 of the Government Code is amended to  
22 read:

23 1780. (a) Notwithstanding any other provision of law, a  
24 vacancy in any elective office on the governing board of a special  
25 district, other than those specified in Section 1781, shall be filled  
26 pursuant to this section.

27 (b) The district shall notify the county elections official of the  
28 vacancy no later than 15 days after either the date on which the  
29 district board is notified of the vacancy or the effective date of the  
30 vacancy, whichever is later.

31 (c) The remaining members of the district board may fill the  
32 vacancy either by appointment pursuant to subdivision (d) or by  
33 calling an election pursuant to subdivision (e).

34 (d) (1) The remaining members of the district board shall make  
35 the appointment pursuant to this subdivision within 60 days after  
36 either the date on which the district board is notified of the vacancy  
37 or the effective date of the vacancy, whichever is later. The district  
38 shall post a notice of the vacancy in three or more conspicuous  
39 places in the district at least 15 days before the district board makes  
40 the appointment. The district shall notify the county elections

1 official of the appointment no later than 15 days after the  
2 appointment.

3 (2) If the vacancy occurs in the first half of a term of office and  
4 at least 130 days prior to the next general district election, the  
5 person appointed to fill the vacancy shall hold office until the next  
6 general district election that is scheduled 130 or more days after  
7 the date the district board is notified of the vacancy, and thereafter  
8 until the person who is elected at that election to fill the vacancy  
9 has been qualified. The person elected to fill the vacancy shall  
10 hold office ~~for the unexpired balance of the term of office.~~ *until*  
11 *the next regularly scheduled election.*

12 (3) If the vacancy occurs in the first half of a term of office, but  
13 less than 130 days prior to the next general district election, or if  
14 the vacancy occurs in the second half of a term of office, the person  
15 appointed to fill the vacancy shall ~~fill the balance of the unexpired~~  
16 ~~term of office.~~ *serve until the next regularly scheduled election.*

17 (e) (1) In lieu of making an appointment the remaining members  
18 of the board may within 60 days of the date the district board is  
19 notified of the vacancy or the effective date of the vacancy,  
20 whichever is later, call an election to fill the vacancy.

21 (2) The election called pursuant to this subdivision shall be held  
22 on the next established election date provided in Chapter 1  
23 (commencing with Section 1000) of Division 1 of the Elections  
24 Code that is 130 or more days after the date the district board calls  
25 the election.

26 (f) (1) If the vacancy is not filled by the district board by  
27 appointment, or if the district board has not called for an election  
28 within 60 days of the date the district board is notified of the  
29 vacancy or the effective date of the vacancy, whichever is later,  
30 then the city council of the city in which the district is wholly  
31 located, or if the district is not wholly located within a city, the  
32 board of supervisors of the county representing the larger portion  
33 of the district area in which the election to fill the vacancy will be  
34 held, may appoint a person to fill the vacancy within 90 days of  
35 the date the district board is notified of the vacancy or the effective  
36 date of the vacancy, whichever is later, or the city council or board  
37 of supervisors may order the district to call an election to fill the  
38 vacancy.

39 (2) The election called pursuant to this subdivision shall be held  
40 on the next established election date provided in Chapter 1

1 (commencing with Section 1000) of Division 1 of the Elections  
2 Code that is 130 or more days after the date the city council or  
3 board of supervisors calls the election.

4 (g) (1) If within 90 days of the date the district board is notified  
5 of the vacancy or the effective date of the vacancy, whichever is  
6 later, the remaining members of the district board or the appropriate  
7 board of supervisors or city council have not filled the vacancy  
8 and no election has been called for, then the district board shall  
9 call an election to fill the vacancy.

10 (2) The election called pursuant to this subdivision shall be held  
11 on the next established election date provided in Chapter 1  
12 (commencing with Section 1000) of Division 1 of the Elections  
13 Code that is 130 or more days after the date the district board calls  
14 the election.

15 (h) (1) Notwithstanding any other provision of this section, if  
16 the number of remaining members of the district board falls below  
17 a quorum, then at the request of the district secretary or a remaining  
18 member of the district board, the appropriate board of supervisors  
19 or the city council shall promptly appoint a person to fill the  
20 vacancy, or may call an election to fill the vacancy.

21 (2) The board of supervisors or the city council shall only fill  
22 enough vacancies by appointment or by election to provide the  
23 district board with a quorum.

24 (3) If the vacancy occurs in the first half of a term of office and  
25 at least 130 days prior to the next general district election, the  
26 person appointed to fill the vacancy shall hold the office until the  
27 next general district election that is scheduled 130 or more days  
28 after the date the district board is notified of the vacancy, and  
29 thereafter until the person who is elected at that election to fill the  
30 vacancy has been qualified. The person elected to fill the vacancy  
31 shall hold office for the unexpired balance of the term of office.

32 (4) If the vacancy occurs in the first half of a term of office, but  
33 less than 130 days prior to the next general district election, or if  
34 the vacancy occurs in the second half of a term of office, the person  
35 appointed to fill the vacancy shall fill the balance of the unexpired  
36 term of office.

37 (5) The election called pursuant to this subdivision shall be held  
38 on the next established election date provided in Chapter 1  
39 (commencing with Section 1000) of Division 1 of the Elections

1 Code that is held 130 or more days after the date the city council  
2 or board of supervisors calls the election.

3 SEC. 3. Section 36512 of the Government Code is amended  
4 to read:

5 36512. (a) If a vacancy occurs in an appointive office provided  
6 for in this chapter, the council shall fill the vacancy by  
7 appointment. A person appointed to fill a vacancy holds office ~~for~~  
8 ~~the unexpired term of the former incumbent.~~ *until the next regularly*  
9 *scheduled election.*

10 (b) If a vacancy occurs in an elective office provided for in this  
11 chapter, the council shall, within 60 days from the commencement  
12 of the vacancy, either fill the vacancy by appointment or call a  
13 special election to fill the vacancy. The special election shall be  
14 held on the next regularly established election date not less than  
15 114 days from the call of the special election. ~~A person appointed~~  
16 ~~or elected to fill a vacancy holds office for the unexpired term of~~  
17 ~~the former incumbent.~~

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

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

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

35 (3) Provides that a person appointed to fill a vacancy on the city  
36 council holds office only until the date of a special election which  
37 shall immediately be called to fill the remainder of the ~~term.~~ *term*  
38 *or until the next regularly scheduled citywide election.* The special  
39 election may be held on the date of the next regularly established  
40 election or regularly scheduled municipal election to be held

1 throughout the city not less than 114 days from the call of the  
2 special election.

3 (d) (1) Notwithstanding subdivision (b) and Section 34902, an  
4 appointment shall not be made to fill a vacancy on a city council  
5 if the appointment would result in a majority of the members  
6 serving on the council having been appointed. The vacancy shall  
7 be filled in the manner provided by this subdivision.

8 (2) The city council may call an election to fill the vacancy, to  
9 be held on the next regularly established election date not less than  
10 114 days after the call.

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

14 (e) (1) If the city council of a city that elects city council  
15 members by or from districts elects to fill a vacancy on the city  
16 council by appointment as a result of a city council member  
17 resigning from office, the resigning city council member may cast  
18 a vote on the appointment if the resignation will go into effect  
19 upon the appointment of a successor. A city council member shall  
20 not cast a vote for a family member or any other person with whom  
21 the city council member has a relationship that may create a  
22 potential conflict of interest.

23 (2) If a city council member elects to cast a vote under this  
24 subdivision, the city council member shall be prohibited from the  
25 following actions for a period of two years after the appointment  
26 of a successor:

27 (A) Advocating on any measure or issue coming before the city  
28 council in which the city council member may have a personal  
29 benefit.

30 (B) Entering into a contract of any kind with the city or a city  
31 vendor.

32 (C) Accepting a position of employment with the city or a city  
33 vendor.

34 (D) Applying for a permit that is subject to the approval of the  
35 city council.

36 (3) This subdivision shall not apply to any city council member  
37 who is resigning from the city council due to charges of, or

- 1 conviction for, corruption or criminal behavior, or who is subject
- 2 to a recall election.

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