



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3444

by Rep. Anthony DeLuca

SYNOPSIS AS INTRODUCED:

65 ILCS 5/3.1-10-5
65 ILCS 5/3.1-10-50

from Ch. 24, par. 3.1-10-5

Amends the Illinois Municipal Code. Eliminates a provision preventing a person from holding municipal office if that person, at any time during the term of office, owes any payment to the municipality or has been convicted of a felony in any court located in the United States. Further provides that in municipalities with a population under 500,000, a vacancy in a municipal office occurs when an official fails to pay a debt owing to the municipality in which he or she is elected after being provided notice. Effective immediately.

LRB099 11144 AWJ 31613 b

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Municipal Code is amended by
5 changing Sections 3.1-10-5 and 3.1-10-50 as follows:

6 (65 ILCS 5/3.1-10-5) (from Ch. 24, par. 3.1-10-5)

7 Sec. 3.1-10-5. Qualifications; elective office.

8 (a) A person is not eligible for an elective municipal
9 office unless that person is a qualified elector of the
10 municipality and has resided in the municipality at least one
11 year next preceding the election or appointment, except as
12 provided in Section 3.1-20-25, subsection (b) of Section
13 3.1-25-75, Section 5-2-2, or Section 5-2-11.

14 (b) A person is not eligible to take the oath of office for
15 a municipal office if that person is, at the time required for
16 taking the oath of office, in arrears in the payment of a tax
17 or other indebtedness due to the municipality or has been
18 convicted in any court located in the United States of any
19 infamous crime, bribery, perjury, or other felony.

20 (b-5) (Blank) ~~A person is not eligible to hold a municipal~~
21 ~~office, if that person is, at any time during the term of~~
22 ~~office, in arrears in the payment of a tax or other~~
23 ~~indebtedness due to the municipality or has been convicted in~~

1 ~~any court located in the United States of any infamous crime,~~
2 ~~bribery, perjury, or other felony.~~

3 (c) A person is not eligible for the office of alderman of
4 a ward unless that person has resided in the ward that the
5 person seeks to represent, and a person is not eligible for the
6 office of trustee of a district unless that person has resided
7 in the municipality, at least one year next preceding the
8 election or appointment, except as provided in Section
9 3.1-20-25, subsection (b) of Section 3.1-25-75, Section 5-2-2,
10 or Section 5-2-11.

11 (d) If a person (i) is a resident of a municipality
12 immediately prior to the active duty military service of that
13 person or that person's spouse, (ii) resides anywhere outside
14 of the municipality during that active duty military service,
15 and (iii) immediately upon completion of that active duty
16 military service is again a resident of the municipality, then
17 the time during which the person resides outside the
18 municipality during the active duty military service is deemed
19 to be time during which the person is a resident of the
20 municipality for purposes of determining the residency
21 requirement under subsection (a).

22 (Source: P.A. 97-1091, eff. 8-24-12; 98-115, eff. 7-29-13.)

23 (65 ILCS 5/3.1-10-50)

24 Sec. 3.1-10-50. Events upon which an elective office
25 becomes vacant in municipality with population under 500,000.

1 (a) Vacancy by resignation. A resignation is not effective
2 unless it is in writing, signed by the person holding the
3 elective office, and notarized.

4 (1) Unconditional resignation. An unconditional
5 resignation by a person holding the elective office may
6 specify a future date, not later than 60 days after the
7 date the resignation is received by the officer authorized
8 to fill the vacancy, at which time it becomes operative,
9 but the resignation may not be withdrawn after it is
10 received by the officer authorized to fill the vacancy. The
11 effective date of a resignation that does not specify a
12 future date at which it becomes operative is the date the
13 resignation is received by the officer authorized to fill
14 the vacancy. The effective date of a resignation that has a
15 specified future effective date is that specified future
16 date or the date the resignation is received by the officer
17 authorized to fill the vacancy, whichever date occurs
18 later.

19 (2) Conditional resignation. A resignation that does
20 not become effective unless a specified event occurs can be
21 withdrawn at any time prior to the occurrence of the
22 specified event, but if not withdrawn, the effective date
23 of the resignation is the date of the occurrence of the
24 specified event or the date the resignation is received by
25 the officer authorized to fill the vacancy, whichever date
26 occurs later.

1 (3) Vacancy upon the effective date. For the purpose of
2 determining the time period that would require an election
3 to fill the vacancy by resignation or the commencement of
4 the 60-day time period referred to in subsection (e), the
5 resignation of an elected officer is deemed to have created
6 a vacancy as of the effective date of the resignation.

7 (4) Duty of the clerk. If a resignation is delivered to
8 the clerk of the municipality, the clerk shall forward a
9 certified copy of the written resignation to the official
10 who is authorized to fill the vacancy within 7 business
11 days after receipt of the resignation.

12 (b) Vacancy by death or disability. A vacancy occurs in an
13 office by reason of the death of the incumbent. The date of the
14 death may be established by the date shown on the death
15 certificate. A vacancy occurs in an office by permanent
16 physical or mental disability rendering the person incapable of
17 performing the duties of the office. The corporate authorities
18 have the authority to make the determination whether an officer
19 is incapable of performing the duties of the office because of
20 a permanent physical or mental disability. A finding of mental
21 disability shall not be made prior to the appointment by a
22 court of a guardian ad litem for the officer or until a duly
23 licensed doctor certifies, in writing, that the officer is
24 mentally impaired to the extent that the officer is unable to
25 effectively perform the duties of the office. If the corporate
26 authorities find that an officer is incapable of performing the

1 duties of the office due to permanent physical or mental
2 disability, that person is removed from the office and the
3 vacancy of the office occurs on the date of the determination.

4 (c) Vacancy by other causes.

5 (1) Abandonment and other causes. A vacancy occurs in
6 an office by reason of abandonment of office; removal from
7 office; or failure to qualify; or more than temporary
8 removal of residence from the municipality; or in the case
9 of an alderman of a ward or councilman or trustee of a
10 district, more than temporary removal of residence from the
11 ward or district, as the case may be. The corporate
12 authorities have the authority to determine whether a
13 vacancy under this subsection has occurred. If the
14 corporate authorities determine that a vacancy exists, the
15 office is deemed vacant as of the date of that
16 determination for all purposes including the calculation
17 under subsections (e), (f), and (g).

18 (2) Guilty of a criminal offense. An admission of guilt
19 of a criminal offense that upon conviction would disqualify
20 the municipal officer from holding the office, in the form
21 of a written agreement with State or federal prosecutors to
22 plead guilty to a felony, bribery, perjury, or other
23 infamous crime under State or federal law, constitutes a
24 resignation from that office, effective on the date the
25 plea agreement is made. For purposes of this Section, a
26 conviction for an offense that disqualifies a municipal

1 officer from holding that office occurs on the date of the
2 return of a guilty verdict or, in the case of a trial by
3 the court, on the entry of a finding of guilt.

4 (3) Election declared void. A vacancy occurs on the
5 date of the decision of a competent tribunal declaring the
6 election of the officer void.

7 (4) Owing a debt to the municipality. A vacancy occurs
8 if a municipal official fails to pay a debt to a
9 municipality in which the official has been elected or
10 appointed to an elected position. In order for this
11 paragraph to apply, the municipal official shall have been
12 delivered by certified mail or personal service a notice
13 that (i) the municipal official in arrears of a debt to a
14 municipality, (ii) that the debt must be paid within 30
15 days after receipt of the notice, (iii) that once the debt
16 is paid, proof of payment must be presented to the
17 municipal clerk that the debt was paid in full, and (iv) if
18 proof of payment is not presented to the municipal clerk,
19 the municipal official will be disqualified and his or her
20 office vacated. For purposes of this paragraph, a municipal
21 official is considered in arrears of a debt to a
22 municipality if a debt is more than 60 days overdue from
23 the date the debt was due.

24 (d) Election of an acting mayor or acting president. The
25 election of an acting mayor or acting president pursuant to
26 subsection (f) or (g) does not create a vacancy in the original

1 office of the person on the city council or as a trustee, as
2 the case may be, unless the person resigns from the original
3 office following election as acting mayor or acting president.
4 If the person resigns from the original office following
5 election as acting mayor or acting president, then the original
6 office must be filled pursuant to the terms of this Section and
7 the acting mayor or acting president shall exercise the powers
8 of the mayor or president and shall vote and have veto power in
9 the manner provided by law for a mayor or president. If the
10 person does not resign from the original office following
11 election as acting mayor or acting president, then the acting
12 mayor or acting president shall exercise the powers of the
13 mayor or president but shall be entitled to vote only in the
14 manner provided for as the holder of the original office and
15 shall not have the power to veto. If the person does not resign
16 from the original office following election as acting mayor or
17 acting president, and if that person's original term of office
18 has not expired when a mayor or president is elected and has
19 qualified for office, the acting mayor or acting-president
20 shall return to the original office for the remainder of the
21 term thereof.

22 (e) Appointment to fill alderman or trustee vacancy. An
23 appointment by the mayor or president or acting mayor or acting
24 president, as the case may be, of a qualified person as
25 described in Section 3.1-10-5 of this Code to fill a vacancy in
26 the office of alderman or trustee must be made within 60 days

1 after the vacancy occurs. Once the appointment of the qualified
2 person has been forwarded to the corporate authorities, the
3 corporate authorities shall act upon the appointment within 30
4 days. If the appointment fails to receive the advice and
5 consent of the corporate authorities within 30 days, the mayor
6 or president or acting mayor or acting president shall appoint
7 and forward to the corporate authorities a second qualified
8 person as described in Section 3.1-10-5. Once the appointment
9 of the second qualified person has been forwarded to the
10 corporate authorities, the corporate authorities shall act
11 upon the appointment within 30 days. If the appointment of the
12 second qualified person also fails to receive the advice and
13 consent of the corporate authorities, then the mayor or
14 president or acting mayor or acting president, without the
15 advice and consent of the corporate authorities, may make a
16 temporary appointment from those persons who were appointed but
17 whose appointments failed to receive the advice and consent of
18 the corporate authorities. The person receiving the temporary
19 appointment shall serve until an appointment has received the
20 advice and consent and the appointee has qualified or until a
21 person has been elected and has qualified, whichever first
22 occurs.

23 (f) Election to fill vacancies in municipal offices with
24 4-year terms. If a vacancy occurs in an elective municipal
25 office with a 4-year term and there remains an unexpired
26 portion of the term of at least 28 months, and the vacancy

1 occurs at least 130 days before the general municipal election
2 next scheduled under the general election law, then the vacancy
3 shall be filled for the remainder of the term at that general
4 municipal election. Whenever an election is held for this
5 purpose, the municipal clerk shall certify the office to be
6 filled and the candidates for the office to the proper election
7 authorities as provided in the general election law. If a
8 vacancy occurs with less than 28 months remaining in the
9 unexpired portion of the term or less than 130 days before the
10 general municipal election, then:

11 (1) Mayor or president. If the vacancy is in the office
12 of mayor or president, the vacancy must be filled by the
13 corporate authorities electing one of their members as
14 acting mayor or acting president. Except as set forth in
15 subsection (d), the acting mayor or acting president shall
16 perform the duties and possess all the rights and powers of
17 the mayor or president until a mayor or president is
18 elected at the next general municipal election and has
19 qualified. However, in villages with a population of less
20 than 5,000, if each of the trustees either declines the
21 election as acting president or is not elected by a
22 majority vote of the trustees presently holding office,
23 then the trustees may elect, as acting president, any other
24 village resident who is qualified to hold municipal office,
25 and the acting president shall exercise the powers of the
26 president and shall vote and have veto power in the manner

1 provided by law for a president.

2 (2) Alderman or trustee. If the vacancy is in the
3 office of alderman or trustee, the vacancy must be filled
4 by the mayor or president or acting mayor or acting
5 president, as the case may be, in accordance with
6 subsection (e).

7 (3) Other elective office. If the vacancy is in any
8 elective municipal office other than mayor or president or
9 alderman or trustee, the mayor or president or acting mayor
10 or acting president, as the case may be, must appoint a
11 qualified person to hold the office until the office is
12 filled by election, subject to the advice and consent of
13 the city council or the board of trustees, as the case may
14 be.

15 (g) Vacancies in municipal offices with 2-year terms. In
16 the case of an elective municipal office with a 2-year term, if
17 the vacancy occurs at least 130 days before the general
18 municipal election next scheduled under the general election
19 law, the vacancy shall be filled for the remainder of the term
20 at that general municipal election. If the vacancy occurs less
21 than 130 days before the general municipal election, then:

22 (1) Mayor or president. If the vacancy is in the office
23 of mayor or president, the vacancy must be filled by the
24 corporate authorities electing one of their members as
25 acting mayor or acting president. Except as set forth in
26 subsection (d), the acting mayor or acting president shall

1 perform the duties and possess all the rights and powers of
2 the mayor or president until a mayor or president is
3 elected at the next general municipal election and has
4 qualified. However, in villages with a population of less
5 than 5,000, if each of the trustees either declines the
6 election as acting president or is not elected by a
7 majority vote of the trustees presently holding office,
8 then the trustees may elect, as acting president, any other
9 village resident who is qualified to hold municipal office,
10 and the acting president shall exercise the powers of the
11 president and shall vote and have veto power in the manner
12 provided by law for a president.

13 (2) Alderman or trustee. If the vacancy is in the
14 office of alderman or trustee, the vacancy must be filled
15 by the mayor or president or acting mayor or acting
16 president, as the case may be, in accordance with
17 subsection (e).

18 (3) Other elective office. If the vacancy is in any
19 elective municipal office other than mayor or president or
20 alderman or trustee, the mayor or president or acting mayor
21 or acting president, as the case may be, must appoint a
22 qualified person to hold the office until the office is
23 filled by election, subject to the advice and consent of
24 the city council or the board of trustees, as the case may
25 be.

26 (h) In cases of vacancies arising by reason of an election

1 being declared void pursuant to paragraph (3) of subsection
2 (c), persons holding elective office prior thereto shall hold
3 office until their successors are elected and qualified or
4 appointed and confirmed by advice and consent, as the case may
5 be.

6 (i) This Section applies only to municipalities with
7 populations under 500,000.

8 (Source: P.A. 94-645, eff. 8-22-05; 95-646, eff. 1-1-08.)

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.