

SB3784



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB3784

Introduced 1/21/2022, by Sen. Chapin Rose

SYNOPSIS AS INTRODUCED:

65 ILCS 5/3.1-10-50

65 ILCS 5/3.1-25-5

from Ch. 24, par. 3.1-25-5

Amends the Illinois Municipal Code. In provisions relating to vacancies by abandonment in municipalities with a population under 500,000, provides that abandonment of office includes, but is not limited to, when an elected official does not file for reelection and no other person files for election to that official's office. In provisions related to trustee terms, provides that, if a candidate has not yet been elected or qualified to fill a vacancy, then the vacancy process as provided in Section 3.1-10-50 of the Code shall ensue. Effective immediately.

LRB102 24013 AWJ 33223 b

A BILL FOR

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 3.1-10-50 and 3.1-25-5 as follows:

6 (65 ILCS 5/3.1-10-50)

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

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

12 (1) Unconditional resignation. An unconditional
13 resignation by a person holding the elective office may
14 specify a future date, not later than 60 days after the
15 date the resignation is received by the officer authorized
16 to fill the vacancy, at which time it becomes operative,
17 but the resignation may not be withdrawn after it is
18 received by the officer authorized to fill the vacancy.
19 The effective date of a resignation that does not specify
20 a future date at which it becomes operative is the date the
21 resignation is received by the officer authorized to fill
22 the vacancy. The effective date of a resignation that has
23 a specified future effective date is that specified future

1 date or the date the resignation is received by the
2 officer authorized to fill the vacancy, whichever date
3 occurs later.

4 (2) Conditional resignation. A resignation that does
5 not become effective unless a specified event occurs can
6 be withdrawn at any time prior to the occurrence of the
7 specified event, but if not withdrawn, the effective date
8 of the resignation is the date of the occurrence of the
9 specified event or the date the resignation is received by
10 the officer authorized to fill the vacancy, whichever date
11 occurs later.

12 (3) Vacancy upon the effective date. For the purpose
13 of determining the time period that would require an
14 election to fill the vacancy by resignation or the
15 commencement of the 60-day time period referred to in
16 subsection (e), the resignation of an elected officer is
17 deemed to have created a vacancy as of the effective date
18 of the resignation.

19 (4) Duty of the clerk. If a resignation is delivered
20 to the clerk of the municipality, the clerk shall forward
21 a certified copy of the written resignation to the
22 official who is authorized to fill the vacancy within 7
23 business days after receipt of the resignation.

24 (b) Vacancy by death or disability. A vacancy occurs in an
25 office by reason of the death of the incumbent. The date of the
26 death may be established by the date shown on the death

1 certificate. A vacancy occurs in an office by permanent
2 physical or mental disability rendering the person incapable
3 of performing the duties of the office. The corporate
4 authorities have the authority to make the determination
5 whether an officer is incapable of performing the duties of
6 the office because of a permanent physical or mental
7 disability. A finding of mental disability shall not be made
8 prior to the appointment by a court of a guardian ad litem for
9 the officer or until a duly licensed doctor certifies, in
10 writing, that the officer is mentally impaired to the extent
11 that the officer is unable to effectively perform the duties
12 of the office. If the corporate authorities find that an
13 officer is incapable of performing the duties of the office
14 due to permanent physical or mental disability, that person is
15 removed from the office and the vacancy of the office occurs on
16 the date of the determination.

17 (c) Vacancy by other causes.

18 (1) Abandonment and other causes. A vacancy occurs in
19 an office by reason of abandonment of office; removal from
20 office; or failure to qualify; or more than temporary
21 removal of residence from the municipality; or in the case
22 of an alderperson of a ward or councilman or trustee of a
23 district, more than temporary removal of residence from
24 the ward or district, as the case may be. Abandonment of
25 office includes, but is not limited to, when an elected
26 official does not file for reelection and no other person

1 files for election to that official's office. The
2 corporate authorities have the authority to determine
3 whether a vacancy under this subsection has occurred. If
4 the corporate authorities determine that a vacancy exists,
5 the office is deemed vacant as of the date of that
6 determination for all purposes including the calculation
7 under subsections (e), (f), and (g).

8 (2) Guilty of a criminal offense. An admission of
9 guilt of a criminal offense that upon conviction would
10 disqualify the municipal officer from holding the office,
11 in the form of a written agreement with State or federal
12 prosecutors to plead guilty to a felony, bribery, perjury,
13 or other infamous crime under State or federal law,
14 constitutes a resignation from that office, effective on
15 the date the plea agreement is made. For purposes of this
16 Section, a conviction for an offense that disqualifies a
17 municipal officer from holding that office occurs on the
18 date of the return of a guilty verdict or, in the case of a
19 trial by the court, on the entry of a finding of guilt.

20 (3) Election declared void. A vacancy occurs on the
21 date of the decision of a competent tribunal declaring the
22 election of the officer void.

23 (4) Owing a debt to the municipality. A vacancy occurs
24 if a municipal official fails to pay a debt to a
25 municipality in which the official has been elected or
26 appointed to an elected position subject to the following:

1 (A) Before a vacancy may occur under this
2 paragraph (4), the municipal clerk shall deliver, by
3 personal service, a written notice to the municipal
4 official that (i) the municipal official is in arrears
5 of a debt to the municipality, (ii) that municipal
6 official must either pay or contest the debt within 30
7 days after receipt of the notice or the municipal
8 official will be disqualified and his or her office
9 vacated, and (iii) if the municipal official chooses
10 to contest the debt, the municipal official must
11 provide written notice to the municipal clerk of the
12 contesting of the debt. A copy of the notice, and the
13 notice to contest, shall also be mailed by the
14 municipal clerk to the appointed municipal attorney by
15 certified mail. If the municipal clerk is the
16 municipal official indebted to the municipality, the
17 mayor or president of the municipality shall assume
18 the duties of the municipal clerk required under this
19 paragraph (4).

20 (B) In the event that the municipal official
21 chooses to contest the debt, a hearing shall be held
22 within 30 days of the municipal clerk's receipt of the
23 written notice of contest from the municipal official.
24 An appointed municipal hearing officer shall preside
25 over the hearing, and shall hear testimony and accept
26 evidence relevant to the existence of the debt owed by

1 the municipal officer to the municipality.

2 (C) Upon the conclusion of the hearing, the
3 hearing officer shall make a determination on the
4 basis of the evidence presented as to whether or not
5 the municipal official is in arrears of a debt to the
6 municipality. The determination shall be in writing
7 and shall be designated as findings, decision, and
8 order. The findings, decision, and order shall
9 include: (i) the hearing officer's findings of fact;
10 (ii) a decision of whether or not the municipal
11 official is in arrears of a debt to the municipality
12 based upon the findings of fact; and (iii) an order
13 that either directs the municipal official to pay the
14 debt within 30 days or be disqualified and his or her
15 office vacated or dismisses the matter if a debt owed
16 to the municipality is not proved. A copy of the
17 hearing officer's written determination shall be
18 served upon the municipal official in open proceedings
19 before the hearing officer. If the municipal official
20 does not appear for receipt of the written
21 determination, the written determination shall be
22 deemed to have been served on the municipal official
23 on the date when a copy of the written determination is
24 personally served on the municipal official or on the
25 date when a copy of the written determination is
26 deposited in the United States mail, postage prepaid,

1 addressed to the municipal official at the address on
2 record with the municipality.

3 (D) A municipal official aggrieved by the
4 determination of a hearing officer may secure judicial
5 review of such determination in the circuit court of
6 the county in which the hearing was held. The
7 municipal official seeking judicial review must file a
8 petition with the clerk of the court and must serve a
9 copy of the petition upon the municipality by
10 registered or certified mail within 5 days after
11 service of the determination of the hearing officer.
12 The petition shall contain a brief statement of the
13 reasons why the determination of the hearing officer
14 should be reversed. The municipal official shall file
15 proof of service with the clerk of the court. No answer
16 to the petition need be filed, but the municipality
17 shall cause the record of proceedings before the
18 hearing officer to be filed with the clerk of the court
19 on or before the date of the hearing on the petition or
20 as ordered by the court. The court shall set the matter
21 for hearing to be held within 30 days after the filing
22 of the petition and shall make its decision promptly
23 after such hearing.

24 (E) If a municipal official chooses to pay the
25 debt, or is ordered to pay the debt after the hearing,
26 the municipal official must present proof of payment

1 to the municipal clerk that the debt was paid in full,
2 and, if applicable, within the required time period as
3 ordered by a hearing officer or circuit court judge.

4 (F) A municipal official will be disqualified and
5 his or her office vacated pursuant to this paragraph
6 (4) on the later of the following times if the
7 municipal official: (i) fails to pay or contest the
8 debt within 30 days of the municipal official's
9 receipt of the notice of the debt; (ii) fails to pay
10 the debt within 30 days after being served with a
11 written determination under subparagraph (C) ordering
12 the municipal official to pay the debt; or (iii) fails
13 to pay the debt within 30 days after being served with
14 a decision pursuant to subparagraph (D) upholding a
15 hearing officer's determination that the municipal
16 officer has failed to pay a debt owed to a
17 municipality.

18 (G) For purposes of this paragraph, a "debt" shall
19 mean an arrearage in a definitely ascertainable and
20 quantifiable amount after service of written notice
21 thereof, in the payment of any indebtedness due to the
22 municipality, which has been adjudicated before a
23 tribunal with jurisdiction over the matter. A
24 municipal official is considered in arrears of a debt
25 to a municipality if a debt is more than 30 days
26 overdue from the date the debt was due.

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

25 (e) Appointment to fill alderperson or trustee vacancy. An
26 appointment by the mayor or president or acting mayor or

1 acting president, as the case may be, of a qualified person as
2 described in Section 3.1-10-5 of this Code to fill a vacancy in
3 the office of alderperson or trustee must be made within 60
4 days after the vacancy occurs. Once the appointment of the
5 qualified person has been forwarded to the corporate
6 authorities, the corporate authorities shall act upon the
7 appointment within 30 days. If the appointment fails to
8 receive the advice and consent of the corporate authorities
9 within 30 days, the mayor or president or acting mayor or
10 acting president shall appoint and forward to the corporate
11 authorities a second qualified person as described in Section
12 3.1-10-5. Once the appointment of the second qualified person
13 has been forwarded to the corporate authorities, the corporate
14 authorities shall act upon the appointment within 30 days. If
15 the appointment of the second qualified person also fails to
16 receive the advice and consent of the corporate authorities,
17 then the mayor or president or acting mayor or acting
18 president, without the advice and consent of the corporate
19 authorities, may make a temporary appointment from those
20 persons who were appointed but whose appointments failed to
21 receive the advice and consent of the corporate authorities.
22 The person receiving the temporary appointment shall serve
23 until an appointment has received the advice and consent and
24 the appointee has qualified or until a person has been elected
25 and has qualified, whichever first occurs.

26 (f) Election to fill vacancies in municipal offices with

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

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

1 president, any other village resident who is qualified to
2 hold municipal office, and the acting president shall
3 exercise the powers of the president and shall vote and
4 have veto power in the manner provided by law for a
5 president.

6 (2) Alderperson or trustee. If the vacancy is in the
7 office of alderperson or trustee, the vacancy must be
8 filled by the mayor or president or acting mayor or acting
9 president, as the case may be, in accordance with
10 subsection (e).

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

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

26 (1) Mayor or president. If the vacancy is in the

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

18 (2) Alderperson or trustee. If the vacancy is in the
19 office of alderperson or trustee, the vacancy must be
20 filled by the mayor or president or acting mayor or acting
21 president, as the case may be, in accordance with
22 subsection (e).

23 (3) Other elective office. If the vacancy is in any
24 elective municipal office other than mayor or president or
25 alderperson or trustee, the mayor or president or acting
26 mayor or acting president, as the case may be, must

1 appoint a qualified person to hold the office until the
2 office is filled by election, subject to the advice and
3 consent of the city council or the board of trustees, as
4 the case may be.

5 (h) In cases of vacancies arising by reason of an election
6 being declared void pursuant to paragraph (3) of subsection
7 (c), persons holding elective office prior thereto shall hold
8 office until their successors are elected and qualified or
9 appointed and confirmed by advice and consent, as the case may
10 be.

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

13 (Source: P.A. 102-15, eff. 6-17-21.)

14 (65 ILCS 5/3.1-25-5) (from Ch. 24, par. 3.1-25-5)

15 Sec. 3.1-25-5. Trustees; terms. In each village
16 incorporated under this Code, the electors of the village
17 shall elect 6 trustees. The term of office of the trustees
18 shall be 4 years and until their successors are elected and
19 have qualified. If a candidate has not yet been elected or
20 qualified to fill a vacancy, then the vacancy process as
21 provided in Section 3.1-10-50 shall ensue. Trustees elected at
22 the first election for village officers after a village is
23 incorporated, however, shall by lot designate one-half of
24 their number, whose terms shall be 2 years and until their
25 successors are elected and have qualified.

1 (Source: P.A. 87-1119.)

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.