



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB3755

Introduced 2/25/2009, by Rep. Naomi D. Jakobsson

#### SYNOPSIS AS INTRODUCED:

65 ILCS 5/3.1-10-50

Amends the Illinois Municipal Code. Provides that "unless otherwise specified" in another provision of the Illinois Municipal Code, an elective office becomes vacant in a municipality with a population of under 500,000 if certain specified events occur.

LRB096 09475 RLJ 19632 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 Section 3.1-10-50 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 Unless otherwise specified in another provision of this Code,  
10 an elective office becomes vacant in a municipality with a  
11 population of under 500,000 if any of the following events  
12 occur.

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

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21 but the resignation may not be withdrawn after it is  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

1 future date at which it becomes operative is the date the  
2 resignation is received by the officer authorized to fill  
3 the vacancy. The effective date of a resignation that has a  
4 specified future effective date is that specified future  
5 date or the date the resignation is received by the officer  
6 authorized to fill the vacancy, whichever date occurs  
7 later.

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10 withdrawn at any time prior to the occurrence of the  
11 specified event, but if not withdrawn, the effective date  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

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

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

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

19           (c) Vacancy by other causes.

20           (1) Abandonment and other causes. A vacancy occurs in  
21 an office by reason of abandonment of office; removal from  
22 office; or failure to qualify; or more than temporary  
23 removal of residence from the municipality; or in the case  
24 of an alderman of a ward or councilman or trustee of a  
25 district, more than temporary removal of residence from the  
26 ward or district, as the case may be. The corporate

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

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

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

22 (d) Election of an acting mayor or acting president. The  
23 election of an acting mayor or acting president pursuant to  
24 subsection (f) or (g) does not create a vacancy in the original  
25 office of the person on the city council or as a trustee, as  
26 the case may be, unless the person resigns from the original

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

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

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

21 (f) Election to fill vacancies in municipal offices with  
22 4-year terms. If a vacancy occurs in an elective municipal  
23 office with a 4-year term and there remains an unexpired  
24 portion of the term of at least 28 months, and the vacancy  
25 occurs at least 130 days before the general municipal election  
26 next scheduled under the general election law, then the vacancy

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

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

26 (2) Alderman or trustee. If the vacancy is in the



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

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

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

20 (1) Mayor or president. If the vacancy is in the office  
21 of mayor or president, the vacancy must be filled by the  
22 corporate authorities electing one of their members as  
23 acting mayor or acting president. Except as set forth in  
24 subsection (d), the acting mayor or acting president shall  
25 perform the duties and possess all the rights and powers of  
26 the mayor or president until a mayor or president is

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

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

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

24           (h) In cases of vacancies arising by reason of an election  
25          being declared void pursuant to paragraph (3) of subsection  
26          (c), persons holding elective office prior thereto shall hold

1 office until their successors are elected and qualified or  
2 appointed and confirmed by advice and consent, as the case may  
3 be.

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

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