



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5366

Introduced 1/31/2022, by Rep. Brad Halbrook

SYNOPSIS AS INTRODUCED:

65 ILCS 5/3.1-10-50

Amends the Illinois Municipal Code. For vacancies for abandonment and other causes in municipalities with a population under 500,000, removes language providing that the corporate authorities have the authority to determine whether a vacancy has occurred and, if the corporate authorities determine that a vacancy exists, the office is deemed vacant as of the date of that determination. Effective immediately.

LRB102 25429 AWJ 34715 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 (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17 but the resignation may not be withdrawn after it is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6 be withdrawn at any time prior to the occurrence of the
7 specified event, but if not withdrawn, the effective date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. ~~The corporate~~
25 ~~authorities have the authority to determine whether a~~
26 ~~vacancy under this subsection has occurred. If the~~

1 ~~corporate authorities determine that a vacancy exists, the~~
2 ~~office is deemed vacant as of the date of that~~
3 ~~determination for all purposes including the calculation~~
4 ~~under subsections (c), (f), and (g).~~

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

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

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

24 (A) Before a vacancy may occur under this
25 paragraph (4), the municipal clerk shall deliver, by
26 personal service, a written notice to the municipal

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

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

25 (C) Upon the conclusion of the hearing, the
26 hearing officer shall make a determination on the

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

26 (D) A municipal official aggrieved by the

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

21 (E) If a municipal official chooses to pay the
22 debt, or is ordered to pay the debt after the hearing,
23 the municipal official must present proof of payment
24 to the municipal clerk that the debt was paid in full,
25 and, if applicable, within the required time period as
26 ordered by a hearing officer or circuit court judge.

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

15 (G) For purposes of this paragraph, a "debt" shall
16 mean an arrearage in a definitely ascertainable and
17 quantifiable amount after service of written notice
18 thereof, in the payment of any indebtedness due to the
19 municipality, which has been adjudicated before a
20 tribunal with jurisdiction over the matter. A
21 municipal official is considered in arrears of a debt
22 to a municipality if a debt is more than 30 days
23 overdue from 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
6 original office must be filled pursuant to the terms of this
7 Section and the acting mayor or acting president shall
8 exercise the powers of the mayor or president and shall vote
9 and have veto power in the manner provided by law for a mayor
10 or president. If the person does not resign from the original
11 office following election as acting mayor or acting president,
12 then the acting mayor or acting president shall exercise the
13 powers of the mayor or president but shall be entitled to vote
14 only in the manner provided for as the holder of the original
15 office and shall not have the power to veto. If the person does
16 not resign from the original office following election as
17 acting mayor or acting president, and if that person's
18 original term of office has not expired when a mayor or
19 president is elected and has qualified for office, the acting
20 mayor or acting-president shall return to the original office
21 for the remainder of the term thereof.

22 (e) Appointment to fill alderperson or trustee vacancy. An
23 appointment by the mayor or president or acting mayor or
24 acting 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 alderperson or trustee must be made within 60

1 days after the vacancy occurs. Once the appointment of the
2 qualified person has been forwarded to the corporate
3 authorities, the corporate authorities shall act upon the
4 appointment within 30 days. If the appointment fails to
5 receive the advice and consent of the corporate authorities
6 within 30 days, the mayor or president or acting mayor or
7 acting president shall appoint and forward to the corporate
8 authorities a second qualified person as described in Section
9 3.1-10-5. Once the appointment of the second qualified person
10 has been forwarded to the corporate authorities, the corporate
11 authorities shall act upon the appointment within 30 days. If
12 the appointment of the second qualified person also fails to
13 receive the advice and consent of the corporate authorities,
14 then the mayor or president or acting mayor or acting
15 president, without the advice and consent of the corporate
16 authorities, may make a temporary appointment from those
17 persons who were appointed but whose appointments failed to
18 receive the advice and consent of the corporate authorities.
19 The person receiving the temporary appointment shall serve
20 until an appointment has received the advice and consent and
21 the appointee has qualified or until a person has been elected
22 and has qualified, whichever first 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
3 vacancy shall be filled for the remainder of the term at that
4 general municipal election. Whenever an election is held for
5 this purpose, the municipal clerk shall certify the office to
6 be filled and the candidates for the office to the proper
7 election authorities as provided in the general election law.
8 If a 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
12 office of mayor or president, the vacancy must be filled
13 by the corporate authorities electing one of their members
14 as acting mayor or acting president. Except as set forth
15 in subsection (d), the acting mayor or acting president
16 shall perform the duties and possess all the rights and
17 powers of the mayor or president until a mayor or
18 president is elected at the next general municipal
19 election and has qualified. However, in villages with a
20 population of less than 5,000, if each of the trustees
21 either declines the election as acting president or is not
22 elected by a majority vote of the trustees presently
23 holding office, then the trustees may elect, as acting
24 president, any other village resident who is qualified to
25 hold municipal office, and the acting president shall
26 exercise the powers of the president and shall vote and

1 have veto power in the manner provided by law for a
2 president.

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

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

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

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

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

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

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

1 the case may be.

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

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

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

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.