

Tab 12

Need for Bylaw Clarification re: Director Term-Limits

April 27, 2021

BACKGROUND:

We have the situation this year where two board members, whose terms are expiring, have served four years so far. The Nominating Committee was not sure if they were eligible to run for reelection because if they run again and are elected to three-year terms, they would be serving for seven consecutive years. The Bylaws Article IV, Section 2 states “*Directors elected by the membership at the annual meeting shall not serve more than six (6) years consecutively.*” In addition, PRP 16, Section O states “*No candidate may run for an open Director position that exceeds the maximum term limit as defined in the Bylaws.*” When we sought clarification, we found that various people interpreted the current Bylaws in different ways. Therefore, we asked for the LHCC attorney’s legal opinion to be sure we accurately understood the current Bylaws.

OUR CURRENT BYLAWS AND THEIR INTENTION

ARTICLE IV - BOARD OF DIRECTORS SELECTION AND TERM OF OFFICE

Section 2. TERM OF OFFICE

Terms of office of the Directors shall be three years and staggered. Normally, either three or four Director positions shall be open in an election. Beginning in 2009, four (4) three-year Director positions are open; in 2010, four (4) three-year Director positions are open; in 2011, three (3) three-year Director positions are open. This cycle of three-year terms repeats every three years beginning in 2012, 2015, 2018, et cetera.

Directors elected by the membership at the annual meeting shall not serve more than six (6) years consecutively. *Directors may, however, seek reelection at an annual meeting of the membership after having been off the Board for one (1) year. In the event that any sitting Director has failed for any reason to complete his/her term of office, the candidate who is appointed by the majority affirmative vote of the Board to take his/her place shall serve only until the next annual meeting of the membership. **The term of any interim Director as appointed by a majority affirmative vote of the Board of Directors shall not be considered a term of office for the purpose of term limits.***

It is our understanding that the intent of the Board who proposed the last change to the Bylaws was:

- that no Director should serve more than 6 years consecutively
- if a Director is **appointed** by the Board to fill a vacated term, then that **appointed** time of service does not count towards the 6-year limit.
- only **elected** time counts toward their 6-year limit.

CURRENT PRP #16 – ELECTIONS AND VOTING AND IT’S INTENTION

SECTION O. FILLING OPEN DIRECTOR POSITIONS AT ANNUAL MEETING

Positions of less than three years may be open if a Director left the Board during the preceding year. After all votes have been tallied and verified by the Vote Administrator at the Annual Meeting, the open three-year terms are filled first, then any additional open positions. Total votes (highest to lowest) determine the

order of election. No candidate may run for an open Director position that exceeds the maximum term limit as defined in the Bylaws.

Our understanding is that the intent of PRP #16 was to make sure that every candidate could serve their full elected term without exceeding the six-year limit as stated in the Bylaws.

THE ATTORNEY'S LEGAL OPINION

The Attorney's position regarding the 2021 election is that the incumbent directors who have already served four elected years of service are eligible to run for reelection even though this will result in them serving more than six years, if elected to three-year terms. This is based on the legal interpretation of our current Bylaws. The items critical to the legal interpretation are these:

1. *Terms of office of the Directors shall be three years*
2. *Directors elected by the membership at the annual meeting shall not serve more than six (6) years consecutively*
3. *The term of any interim Director as appointed by a majority affirmative vote of the Board of Directors shall not be considered a term of office for the purpose of term limits.*

Because the first sentence defines a "term" as three years, the use of the word "term" in the last sentence includes all time served filling the remainder of the original three-year term, whether by appointment or election. Thus the actual legal meaning of point 3 above is: *"The time of service of any interim Director, as appointed by a majority affirmative vote of the Board of Directors, or as elected by the membership to fill the remaining portion of a three year term should not count toward the six (6) year limitation."* He also said that the PRP is irrelevant in this case because the Bylaws are the higher-level document and take precedence. Therefore, it is his opinion that anyone who is elected for a period less than three years, is merely completing the original three-year term and none of those years served would count toward the six-year term limit.

POINTS TO CONSIDER

The attorney said that if the intention is that only the appointed period doesn't count, the last sentence should read *"The **time of service** of any interim Director as appointed by a majority affirmative vote of the Board of Directors shall not be considered a term of office for the purpose of term limits."* He did point out, however, that if we do this, we could be penalizing someone for running and being elected to only a partial term. Potential candidates might sit out elections that had open partial terms in favor of waiting until they would serve a full three-year term if elected.

However, if the Bylaws are left as they are, a Director could possibly serve nine consecutive years or even more. Consider this scenario which is illustrated by the chart that follows the description:

2021 Annual Meeting: Directors A, B & C are all elected to three-year terms ending in 2024. Two days after the Annual Meeting, Director A resigns for some reason. The Board appoints Director D to serve the remainder of Director A's first year until the next Annual Meeting.

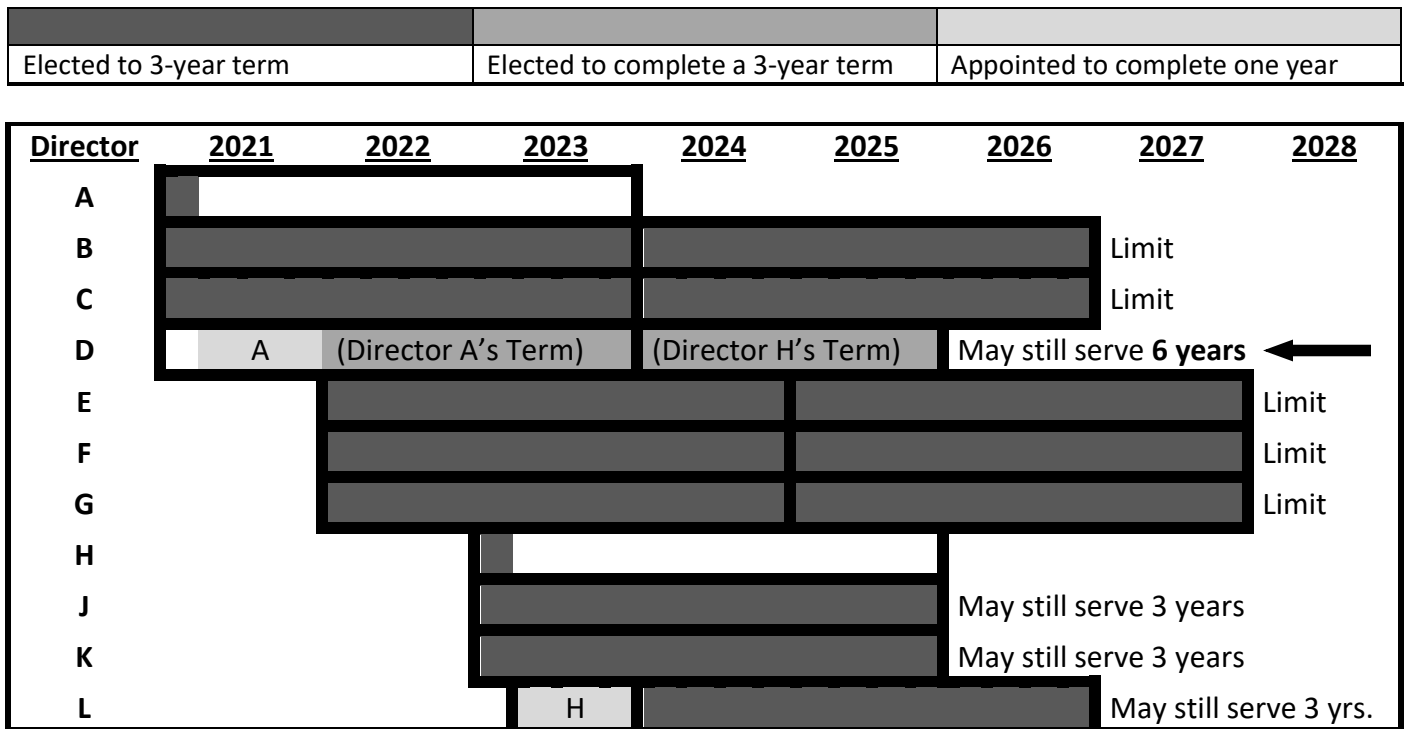
2022 Annual Meeting: There are 3 three-year terms open ending in 2025 and one two-year partial term open to fill the remainder of Director A's term ending in 2024. Directors E, F & G get the most votes and are elected to the three-year terms. Director D is elected to the two-year position.

2023 Annual Meeting: There are 3 three-year terms open ending in 2026 with no partial terms available. Directors B, C, D & E are not running because none of their terms are up yet. Directors H, J and K are elected to the three-year terms. Two days after the Annual Meeting, Director H resigns. The Board appoints Director L to serve the remainder of Director F’s first year until the next Annual Meeting.

2024 Annual Meeting: There are three 3-year terms open ending in 2027 and one 2-year partial term open to fill the remainder of Director H’s term ending in 2026. Prior to this Annual Meeting, Directors B & C have each served one full three-year term and decide to run for reelection. Director D has served one appointed year and two elected years. But since it was all to complete Director A’s original three-year term, none of those years count toward the term limit. Director D is still eligible to serve two more three-year terms, so he decides to run. Director L has only served the one appointed year and decides to run as well. The election is held, and Directors B, C and L get the most votes and thus the three 3-year terms. Director D is elected to the 2-year term.

2025 Annual Meeting: There are three 3-terms open. Directors E, F and G are still eligible for three more years. They all run and are all reelected for 3-year terms.

Illustration: The shading reflects years served according to how they came to be on the Board as follows:



Result: This means that by the 2026 Annual Meeting, Director D will have served one appointed year and four elected years, but all in completion of Director A’s and Director H’s terms. So, he will still have six years of eligibility. While very unlikely, this could potentially continue for even more years if he is repeatedly elected to partial terms. There is potentially no limit to the number of years Director D could serve consecutively. It should also be noted that someone who is repeatedly elected to partial terms has never been the first choice of the membership. Yet, they could conceivably serve for more consecutive years than those who got the most votes.

CONCLUSIONS

1. The rules for the 2021 election have now been clarified by our legal counsel, and we must abide by the current Bylaws.
2. Our legal counsel recommends we amend our Bylaws to remove ambiguity and conflicting statements, so we don't have the same confusion for future elections.

RECOMMENDATIONS

1. Proceed to administer the 2021 elections by following the guidance of our legal counsel.
2. Revise the Bylaws at this year's Annual Meeting of Members. The Nominating Committee is prepared to offer draft verbiage for the needed changes and will propose revision(s) to PRP # 16 verbiage to be in synch with the revised Bylaws. These proposed revisions will be submitted for Board Review and approval at the regular May Board Meeting.
3. The Bylaw amendment(s) , when approved by the Board, will be included on the ballot for the 2021 Annual Meeting of Members.

PROPOSED MOTION/ACTION:

Move that the LHCC Board approves the Nominating Committee Recommendations.

SPONSOR:

The LHCC Nominating Committee
Betka Hardgrave, Board Liaison