



Office of the Secretary
Evangelical Lutheran Church in America
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MEMORANDUM

To: Church Council

From: David Swartling

Date: October 24, 2012

Subject: Proposed Amendments to the *Constitutions, Bylaws, and Continuing Resolutions of the Evangelical Lutheran Church in America*

INTRODUCTION

One of the responsibilities of the Churchwide Assembly is to adopt amendments to the *Constitutions, Bylaws, and Continuing Resolutions of the Evangelical Lutheran Church in America*. The process for amending the governing documents is specified in Chapter 22 of the ELCA Constitution. The principal way that constitutional amendments are adopted is in accordance with provision 22.11.a. which states: “The Church Council may propose an amendment with an official notice to be sent to the synods at least six months prior to the next regular meeting of the Churchwide Assembly.” This is the only provision that authorizes adopting of constitutional amendments at a single meeting of the Churchwide Assembly. It means that proposed constitutional amendments for consideration at the Churchwide Assembly in 2013 must be considered and recommended at the Church Council meeting in November 2012.

Although the processes for adopting bylaw amendments and continuing resolutions at a Churchwide Assembly do not require similar notice, the historic practice of the Office of the Secretary has been to seek to provide a complete set of proposed governing document amendments at the fall Church Council meeting in the year before the Churchwide Assembly. Because many proposed constitutional amendments are accompanied by related bylaw and continuing resolution amendments, it is desirable to consider them at the same time.

For more than six months, the legal team in the Office of the Secretary has been working on possible governing document amendments. Early drafts of a number of proposals have been reviewed by many individuals, units, and organizations. There also have been multiple telephone conferences of the Legal and Constitutional Review Committee of the Church Council, and the most recent iteration of the proposed amendments was presented to the Conference of Bishops at its October meeting. Before the Church Council considers the proposed amendments they will be reviewed again by the Legal and Constitutional Review Committee.

The plan is that all or almost all of the proposed governing document amendments will be considered en bloc, but there will be an opportunity for Church Council members to consider individual provisions by timely removing them from *en bloc* consideration.

This summary is provided to facilitate and focus your review and analysis and is not intended to substitute for a thoughtful consideration of all the proposed amendments.

SUMMARY OF PROPOSED AMENDMENTS

The following summary is provided in the order that documents appear. Where there are corresponding amendments in other portions of the governing documents, the applicable provisions and page numbers are indicated.

- 7.46/+S14.13/*C9.05. (pp. 1-3, 33-35, 36-38). These provisions address situations of congregational conflict and the process and reasons for terminating a roster leader's call. These amendments respond to years of difficulty experienced by synods in invoking the existing provisions. In addition, the amendments better integrate "disability" provisions with the separate disability determination by Portico.
- 7.52.14. (p. 3). This proposed bylaw amendment clarifies that persons on the lay rosters may transfer from one synod to another in the same manner as a person on a clergy roster.
- 8.13. (p. 3). This is the constitutional provision that addresses synods in the chapter titled "Relationships." The LIFT implementing resolutions included an emphasis on the role of synods. In an earlier iteration of a proposed amendment to this provision, we suggested the possibility of switching the order of the sentences. A member of the Conference of Bishops convinced us that "pastoral care" must be viewed broadly and appropriately should be retained as the first enumerated responsibility. We also suggest substituting verbs in the second sentence from "develop resources for" to "plan for, facilitate, and nurture." We concluded that the existing language may be too narrow and is subject to misinterpretation. This language also mirrors the proposed revisions to ELCA constitutional provision 10.21 regarding the responsibilities of synods.
- 8.72.17. (p. 4). This new proposed bylaw clarifies that when an ordained minister from a full communion partner completes a contract to serve an ELCA congregation (and such pastors may *only* serve an ELCA congregation under contract!), the synod's file concerning that minister should be sent to the Office of the Secretary for retention. This is analogous to forwarding roster files to the Office of the Secretary when an ordained minister leaves the ELCA.
- 9.53.03/*C17.03. (pp. 4, 41). These proposals eliminate the provision that congregational governing document amendments automatically become effective 120 days after their submission unless the synod objects. The amended provisions provide that amendments are valid *only* when approved by the synod. These amendments eliminate the problem created when improper amendments become effective because a synod failed to review

them and respond in a clear and timely manner. Both synod bishops and vice presidents responded affirmatively when asked about the desirability of this specific provision.

- 9.53.07. (p. 4). This proposed bylaw amendment requires petitions from congregations to be acted upon by the synod before forwarding them to the churchwide organization. It also allows action by the Church Council and not just the Churchwide Assembly in response to petitions.
- 10.11.A13. (p. 4). This proposed continuing resolution requires synods contemplating amendments to articles of incorporation or undertaking fundamental changes in corporate structure (i.e., merger, dissolution, etc.) to consult with the Office of the Presiding Bishop, the Office of the Secretary, and bishops of other synods that would be affected.
- 10.21, 10.21.01-.04/+S6.03, +S6.03.01-04. (pp. 5-9, 28-31). These provisions re-organize and clarify the responsibilities and priorities of synods in response to the work of the LIFT Task Force and the discussions springing from the bishops' Group of Nine. The principal change is to re-organize the non-prioritized list of 17 synod responsibilities into four categories. Subsequent bylaws (10.21.01-.04 and +S6.03.01-04) enumerate in more detail the responsibilities. The Conference of Bishops reviewed and endorsed these provisions at its October meeting.
- 10.90 et seq./14.21.11. (pp. 9-10, 12). One aspect of these proposed amendments is to move provisions regarding the Conference of Bishops from Chapter 15 ("Churchwide Offices and Administration") to Chapter 10 ("Synods"). In addition, a proposed amendment to 10.91.01 (formerly 15.91.01), as well as proposed bylaw 14.21.11, incorporates the LIFT recommendation for the Conference of Bishops to have a relationship of mutual referral and advice with the Church Council.
- 11.41.06. (p. 11). The proposed amendment to this bylaw would authorize the Church Council, in addition to the Churchwide Assembly, to approve churchwide appeals. This provides greater flexibility in light of the change to a triennial assembly cycle. In all cases, action on a churchwide appeal requires consultation in advance with the Conference of Bishops.
- 12.12.01. (p. 11). This proposed bylaw clarifies that social statements will be adopted in accordance with a policy approved by the Church Council, following consultation with the Conference of Bishops. This policy refers to *Policies and Procedures of the Evangelical Lutheran Church in America for Addressing Social Concerns*, which was adopted by the Churchwide Assembly in 1997 and updated several times by the Church Council. Part of the work of the Addressing Social Concerns Review Task Force will be to make recommendations regarding this document. The reason for proposing an amendment to this bylaw is to clarify that social statements will be developed and proposed pursuant to this policy.
- 12.41.11. (pp. 11-12). This bylaw addresses the size and composition of the Churchwide Assembly. It was originally intended (and subsequently revised) to maintain the size of the

Churchwide Assembly at approximately 1000 voting members. As the result of membership loss, the voting membership of the 2013 Churchwide Assembly will be 952. In an informal survey of bishops conducted in March 2012, 46 of 52 bishops who responded recommended increasing the size of the assembly. Since that time, the Office of the Secretary has further investigated the cost implications of adding voting members. The estimated marginal cost of adding voting members is approximately \$2000 each. (This includes airfare, accommodations, meals, registration and other expenses paid by the churchwide organization.) Additionally, after 2013 the Churchwide Assembly budget will not be supported by grant proceeds from Thrivent. In light of these considerations, the recommendation is to amend this bylaw to return the size of the Churchwide Assembly to approximately 1000 voting members. In addition, the proposed amendment also adjusts the allocation of voting members. Rather than having all synod voting members determined on the basis of a formula based on number of congregations and their size, two voting members (a youth or young person and a person of color) will be allocated to each synod. The remainder of synod voting members will be determined as before.

- 13.11/13.22/13.32/13.42/13.52. (p. 12). These proposed amendments clarify an ambiguity and expressly provide that churchwide officers serve until their successors take office.
- 14.32/19.21.A13. (pp. 12, 19). This proposed amendment provides that youth members of the Church Council will be elected for terms of three years. The opportunity to elect persons in a category of "youth" is provided in ELCA constitutional provision 19.02, and will be addressed by the Church Council meeting in November. Proposed continuing resolution 19.21.A13 includes a commitment that at least 10 percent of the Church Council should be youth and young adults.
- 14.41.11. (p. 13). This proposed bylaw amendment provides that the chair of the Conference of Bishops will be a member of the Executive Committee of the Church Council. This represents an additional response to the LIFT recommendation to enhance the consultative role of the Conference of Bishops.
- Chapter 17/19.21.02. (pp. 15-17, 19). These proposed amendments address the governance of Portico, Augsburg Fortress, and the Mission Investment Fund. In order to provide for election by the Churchwide Assembly, terms of trustees would be amended to provide for three years, with the possibility of two consecutive re-elections. The proposed amendments also would clarify that separately incorporated ministries (SIMs) are expected to comply with the representational principles for ELCA boards. The proposal also would allow up to two trustees from full communion partners. (Although it is not incorporated into the proposed amendment, it is anticipated that SIMs will develop a trustee review and evaluation process.) Proposed amendments to ELCA bylaw 19.21.02 provide that in the case of re-election, if authorized, and for nominees from church bodies with which this church is in a relation of full communion, only one person need be nominated. These proposals have been under development for a significant period of time, and the applicable SIMs have provided superb assistance and input to the process. Each has reviewed and endorsed the concepts embedded in these recommendations.

- Chapter 20/*C15.01 et seq. (pp. 20-26, 38-41). The member discipline process has been re-written to make it less of a legal process and to have responsibility for consultation and hearing reside in the synod committees for those purposes. These draft provisions have gone through several iterations, incorporating input from bishops.
- +S8.13. (p.32). This proposed amendment formalizes the recommendation that each synod appoint a synod attorney.
- C10.02. (p. 38). This proposed amendment to a non-mandatory provision in the *Model Constitution for Congregations* provides that the congregational president shall call a special congregational meeting upon the request of the synodical bishop.
- C10.03/*C16.03/*C17.01/*C17.03/*C17.04. (pp. 38, 41-42). These proposed amendments allow notice of congregation meetings to be provided by electronic means as well as by mail, where permitted by state law. These proposals were under development when a resolution was received from the Southwestern Washington Synod proposing electronic notification in lieu of regular mail. These proposed amendments respond to that resolution. However, it is important to point out that the issue of notification for meetings of not-for-profit corporations is governed by state law, and each congregation must be sure that its governing documents and practices comply with that law.
- C12.13. (p. 38). This proposed amendment empowers the Congregation Council and its committees to hold meetings by remote communication to the extent permitted by state law. Again, the format of meetings must comply with state law and *Robert's Rules of Order Newly Revised* (11th ed. 2011).

CONCLUSION

These proposed amendments represent an ongoing commitment of the Office of the Secretary and this church to continue to evaluate the efficacy of its governing documents and their alignment to its mission and ministry. They contain a plethora of laws and procedures, but they are missional documents that define this church as part of the one holy catholic and apostolic Church and facilitate the proclamation of the Gospel and service to humankind.