

# 2009 Sakai Foundation By-law Revisions

 The Sakai Foundation is recommending two changes to the Sakai Foundation By-laws. A community comment period and approval of the Sakai Foundation membership is needed to make these changes. This page describes the changes, the reasons for those changes and the process for determining whether the changes will be made.

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## The Changes

### Change 1: Allowing appointed Board members

In September of 2008 after talking with other Higher Education open source Executive Directors, Michael Koruska proposed the following to the Board:

*The Sakai Board consists of 7-11 (currently 9) members who are elected by Sakai Foundation member representatives from a pool of nominees. Any one can be nominated. The result of this process is a Board that is solely drawn from Sakai community insiders, which has two primary drawbacks:*

- 1. Lack of diversity. A perspective from someone not actively engaged in the community would be valuable for a variety of reasons.*
- 2. Lack of specific expertise. It would be good to have financial expertise, at least, and I would argue that non-profit expertise and open source governance expertise would also be valuable. The election process will always ignore these issues.*

*I propose that the by-laws be revised to allow for 6-8 elected members (3 year terms as they are today) and 2-3 recruited members. These external members would be recruited by the Board and would serve 2-3 year terms (I think 3 is too long a commitment to ask from outsiders, but we could try). This means that the Sakai community will dominate the Board but we will have access to the diversity and expertise we need.*

After discussion in Board meetings and on the Board list, the Board recommended the following (note the differences to the original proposal):

- Revise the bylaws to allow the Board to appoint up to 2 individuals to the Board.
- Any appointed Board members would serve 2 year terms.
- Any appointed Board members could serve up to 3 consecutive terms.
- The total number of Board members remains 7 to 11 with no maximum on the number of elected members.

### Expected effects of the "appointed directors" change

The expected effect of this change is to increase the breadth of expertise on the Sakai Foundation Board of Directors without changing the fact that the Membership should have substantial control over the composition of the Board.

In the long run it is impossible to predict the effects of this change on the composition of the Board. There could be 11 elected Board members and 0 external Board members. There could also be 5 elected Board members and 2 appointed member. That still gives the elected members a 2/3 majority, which was the goal.

In the short term, the current Board has discussed what it might do if this change were approved. While there is no guarantee about what will actually happen, past discussions indicate that the Board would want to recruit and appoint one external Board member with financial expertise (perhaps a CFO or controller at a member institution). Getting outside perspective from another open source project has also been discussed as a potential reason for appointing a Board member, but no consensus was reached on this (the idea of an advisory board, separate from the Board of Directors, was floated as an alternative).

### Change 2: Removing the provision requiring Board approval of conference chair

The by-laws currently contain the following language:

*The Board of Directors shall have the following functions and such other functions as it deems consistent with the Purposes stated in Article VI, Section 6.2(a) above.*

*1. To hire an Executive Director, and hire or appoint a Secretary and Treasurer and to determine the conditions of their appointments and to appoint conference chairs and program committee chairs for each conference. (emphasis added)*

The Board deems this to be an operational issue that should not be required in the by-laws. If the Board wishes to have this sort of control over conferences they can do so through other mechanisms. It should not be in the by-laws. Michael noticed this quite a while ago and thought it strange, but we deemed it wasn't worth addressing by itself. We're addressing it now because another change has been proposed.

### Expected effects of the removal of this provision

This is expected to have no significant effect on the Sakai Foundation.

### The actual language

To see the proposed changes please download the a red-lined version in either [MSWord](#) or [PDF](#) format.

### Process Requirements

The Board originally asked Michael to have an attorney look at the language. After some delays that review has happened and the attorney sees no problem with the proposed language.

According to the Sakai by-laws the Board can modify the by-laws as follows:

#### **ARTICLE X AMENDMENTS**

*10.1 The Bylaws or the Articles of Incorporation may be amended in whole or in part by a two-thirds majority vote of the Board of Directors except as otherwise specified for special circumstances in these Bylaws or provided by Michigan law. Amendments may be proposed by any Organizational Representative to the Board of Directors. The Board shall circulate the proposed amendment to all Organizational Representatives, and publish it to the public, for discussion, at least thirty days prior to vote. In addition, all amendments must be discussed at a Board meeting prior to the one at which they are voted on by the Board.*

The publishing of this wiki page begins the process of circulating the proposed amendment for discussion. The Board has previously discussed these amendments and, in fact, approved them subject to the review of an attorney.

So the last step would be a formal vote after the public commentary. However, there is a small twist. According to Michigan's Nonprofit Corporation Act that governs membership corporations, changes of this type *probably* cannot be made without the approval of the Membership (by advice of our attorney). And, regardless of any legal requirement to do so, the Board feels it should get the Membership's approval to make the change to allow appointed Board members. A simple majority vote of current members is what is required.

In fact, it is unclear that the Board even **need** to vote if the Membership approves the changes, but the conservative position is that both the Membership and the Board of Directors need to approve the change.

The change to remove the language regarding the approval of conference chairs does not require membership approval. We will, however, ask for Membership approval for this change at the same time.

Each of the changes can be voted on independently.

### Timeline

There is a small question of sequence that is somewhat ambiguous given the bylaws and Michigan law. Should the Board formally vote before or after the Membership has approved? Or does it matter at all? Or could the Board vote happen during the allowed time period for the Membership vote? None of these options seem to be excluded by the by-laws or Michigan law.

The key things seem to be:

- The Board and Membership have access to the community discussion and commentary prior to their vote.
- The Membership and community know the Board's opinion on the changes before the commentary period.

Both of these are fulfilled. So, for expediency's sake, I'm recommending the Board and Membership voting process can happen in parallel, as follows:

Date	Description
July 30, 2009	The proposed amendments are be circulated for public comment
August 31, 2009	Comment period closes

By September 17, 2009	The Board will vote (via email or at the September meeting) to formally adopt or reject the proposed changes
By September 30, 2009	The Membership will be asked to vote on each amendment. The exact mechanism for voting is TBD.
October 2009	Assuming approval, paperwork will be filed with the State of Michigan.

If the commentary period results in a desire for the Board to modify the language, the cycle would start again. New language would have to be drafted and approved by legal counsel and the Board and the language would be sent for another 30 day commentary period.

If either or both amendments are rejected by the Board it is likely the process would stop there.