

Laws Pertaining to School District Creation

53A-2-118. Creation of new school district by county legislative body

-- Initiation of process -- Procedures to be followed.

(1) A county legislative body may create a new school district from an existing school district, as provided in this section, if the area of the new school district is within or, under Subsection **53A-2-118.1(2)(b)(ii)**, considered to be within the geographical boundaries of the county.

(2) (a) The process may be initiated:

(i) through a citizens' initiative petition;

(ii) at the request of the board of the existing district or districts to be affected by the creation of the new district; or

(iii) at the request of a city within the boundaries of the school district or at the request of interlocal agreement participants, pursuant to Section **53A-2-118.1**.

(b) (i) A petition submitted under Subsection (2)(a)(i) must be signed by qualified electors residing within the geographical boundaries of the proposed new school district equal in number to at least 15% of the number of electors in the area who voted for the office of governor at the last regular general election.

(ii) A request or petition submitted under Subsection (2)(a) shall:

(A) be filed with the county clerk;

(B) indicate the typed or printed name and current residence address of each governing board member making a request, or registered voter signing a petition, as the case may be;

(C) describe the proposed new school district boundaries; and

(D) designate up to five signers of the petition or request as sponsors, one of whom shall be designated as the contact sponsor, with the mailing address and telephone number of each.

(c) A signer of a petition under Subsection (2)(a)(i) may withdraw or, once withdrawn, reinstate the signer's signature at any time before the filing of the petition by filing a written withdrawal or reinstatement with the county clerk.

(d) The process under Subsection (2)(a)(i) may only be initiated once during any four-year period.

(e) A new district may not be formed pursuant to Subsection (2)(a) if the student population of the proposed new district is less than 3,000 or the existing district's student population would be less than 3,000 because of the creation of the new school district.

(f) Within 45 days after the filing of a request or petition under Subsection (2)(a), the county clerk shall:

(i) determine whether the request or petition complies with Subsections (2)(a), (b), (d), and (e), as applicable; and

(ii) (A) if the county clerk determines that the request or petition complies with the applicable requirements:

(I) certify the request or petition and deliver the certified request or petition to the county legislative body; and

(II) mail or deliver written notification of the certification to the contact sponsor; or

(B) if the county clerk determines that the request or petition fails to comply with any of the applicable requirements, reject the request or petition and notify the contact sponsor in writing of the rejection and reasons for the rejection.

(g) If the county clerk fails to certify or reject a request or petition within 45 days after its filing, the request or petition shall be considered to be certified.

(h) (i) If the county clerk rejects a request or petition, the request or petition may be amended to correct the deficiencies for which it was rejected and then refiled.

(ii) Subsection (2)(d) does not apply to a request or petition that is amended and refiled after having been rejected by a county clerk.

(i) If a county legislative body receives a request from a school board under Subsection (2)(a)(ii) or a petition under Subsection (2)(a)(i) which is certified by the county clerk on or before December 1:

(i) the county legislative body shall appoint an ad hoc advisory committee, as provided by Subsection (3), on or before January 1;

(ii) the ad hoc advisory committee shall submit its report and recommendations to the county legislative body,

as provided by Subsection (3), on or before July 1; and

(iii) if the county legislative body approves a proposal to create a new district, the proposal shall be submitted to the county clerk to be voted on by the electors of the existing district at the regular general or municipal general election held in November.

(3) (a) The county legislative body shall appoint an ad hoc advisory committee to review and make recommendations on a request for the creation of a new school district submitted under Subsection (2)(a)(i) or (ii).

(b) The advisory committee shall:

(i) seek input from:

(A) those requesting the creation of the new school district;

(B) the school board and school personnel of the existing school district;

(C) those citizens residing within the geographical boundaries of the existing school district;

(D) the State Board of Education; and

(E) other interested parties;

(ii) review data and gather information on at least:

(A) the financial viability of the proposed new school district;

(B) the proposal's financial impact on the existing school district;

(C) the exact placement of school district boundaries; and

(D) the positive and negative effects of creating a new school district and whether the positive effects outweigh the negative if a new school district were to be created; and

(iii) make a report to the county legislative body in a public meeting on the committee's activities, together with a recommendation on whether to create a new school district.

(4) For a request or petition submitted under Subsection (2)(a)(i) or (2)(a)(ii):

(a) The county legislative body shall provide for a 45-day public comment period on the report and recommendation to begin on the day the report is given under Subsection (3)(b)(iii).

(b) Within 14 days after the end of the comment period, the county legislative body shall vote on the creation of the proposed new school district.

(c) The proposal is approved if a majority of the members of the county legislative body votes in favor of the proposal.

(d) If the proposal is approved, the county legislative body shall submit the proposal to the county clerk to be voted on:

(i) by the legal voters of the existing school district;

(ii) in accordance with Title 20A, Election Code; and

(iii) at the next regular general election or municipal general election, whichever is first.

(e) Creation of the new school district shall occur if a majority of the electors within both the proposed school district and the remaining school district voting on the proposal vote in favor of the creation of the new district.

(f) The county legislative body shall provide notice of the action as required in Section **53A-2-101.5**.

(g) If a proposal submitted under Subsection (2)(a)(i) or (ii) to create a new district is approved by the electors, the existing district's documented costs to study and implement the proposal shall be reimbursed by the new district.

(5) (a) If a proposal submitted under Subsection (2)(a)(iii) is certified under Subsection (2)(f) or (g), the county legislative body shall submit the proposal to the county clerk to be voted on:

(i) by the legal voters residing within the proposed new school district boundaries;

(ii) in accordance with Title 20A, Election Code; and

(iii) at the next regular general election or municipal general election, whichever is first.

(b) (i) If a majority of the legal voters within the proposed new school district boundaries voting on the proposal at an election under Subsection (5)(a) vote in favor of the creation of the new district:

(A) the county legislative body shall, within 30 days after the canvass of the election, file with the lieutenant governor the written notice required under Section **53A-2-101.5**; and

(B) upon the lieutenant governor's issuance of the certificate under Section **67-1a-6.5**, the new district is created.

- (ii) Notwithstanding the creation of a new district as provided in Subsection (5)(b)(i)(B):
 - (A) a new school district may not begin to provide educational services to the area within the new district until July 1 of the second calendar year following the election at which voters approve creation of the new school district;
 - (B) a remaining district may not begin to provide educational services to the area within the remaining district until the time specified in Subsection (5)(b)(ii)(A); and
 - (C) the existing district shall continue, until the time specified in Subsection (5)(b)(ii)(A), to provide educational services within the entire area covered by the existing district as though the new district had not been created.

Amended by Chapter 215, 2007 General Session

53A-2-118.1. Option for school district creation.

(1) After conducting a feasibility study, a city of the first or second class, as defined under Section **10-2-301**, may by majority vote of the legislative body, submit for voter approval a measure to create a new school district with boundaries contiguous with that city's boundaries, in accordance with Section **53A-2-118**.

(2) (a) By majority vote of the legislative body, a city of any class, a town, or a county, may, together with one or more other cities, towns, or the county enter into an interlocal agreement, in accordance with Title 11, Chapter 13, Interlocal Cooperation Act, for the purpose of submitting for voter approval a measure to create a new school district.

(b) (i) In accordance with Section **53A-2-118**, interlocal agreement participants under Subsection (2)(a) may submit a proposal for voter approval if:

(A) the interlocal agreement participants conduct a feasibility study prior to submitting the proposal to the county;

(B) the combined population within the proposed new school district boundaries meets the minimum population threshold for a city of the second class; and

(C) the new school district boundaries:

(I) are contiguous;

(II) do not completely surround or otherwise completely geographically isolate a portion of an existing school district that is not part of the proposed new school district from the remaining part of the existing school district, except as provided in Subsection (2)(d)(iii);

(III) include the entire boundaries of each participant city or town, except as provided in Subsection (2)(d)(ii); and

(IV) subject to Subsection (2)(b)(i)(C)(IV), do not cross county lines.

(ii) For purposes of Subsection (2)(b)(i)(C)(IV) and Subsection **53A-2-118(1)**, a municipality located in more than one county is considered to be entirely within the same county as other participants in an interlocal agreement under Subsection (2)(a) if more of the municipality's land area and population is located in that same county than outside the county.

(c) (i) A county may only participate in an interlocal agreement under this Subsection (2) for the unincorporated areas of the county.

(ii) Boundaries of a new school district created under this section may include a portion of the unincorporated area of the county, including a portion of a township.

(d) (i) As used in this Subsection (2)(d):

(A) "Isolated area" means an area that:

(I) is entirely within the boundaries of a municipality that, except for that area, is entirely within a school district different than the school district in which the area is located; and

(II) would, because of the creation of a new school district from the existing district in which the area is located, become completely geographically isolated.

(B) "Municipality's school district" means the school district that includes all of the municipality in which the isolated area is located except the isolated area.

(ii) Notwithstanding Subsection (2)(b)(i)(C)(III), a municipality may be a participant in an interlocal agreement under Subsection (2)(a) with respect to some but not all of the area within the municipality's

boundaries if the portion of the municipality proposed to be included in the new school district would, if not included, become an isolated area upon the creation of the new school district.

(iii) (A) Notwithstanding Subsection (2)(b)(i)(C)(II), a proposal to create a new school

district may be submitted for voter approval pursuant to an interlocal agreement under Subsection (2)(a), even though the new school district boundaries would create an isolated area, if:

(I) the potential isolated area is contiguous to one or more of the interlocal agreement participants;

(II) the interlocal participants submit a written request to the municipality in which the potential isolated area is located, requesting the municipality to enter into an interlocal agreement under Subsection (2)(a) that proposes to submit for voter approval a measure to create a new school district that includes the potential isolated area; and

(III) 90 days after a request under Subsection (2)(d)(iii)(A)(II) is submitted, the municipality has not entered into an interlocal agreement as requested in the request.

(B) Each municipality receiving a request under Subsection (2)(d)(iii)(A)(II) shall hold one or more public hearings to allow input from the public and affected school districts regarding whether or not the municipality should enter into an interlocal agreement with respect to the potential isolated area.

(C) (I) This Subsection (2)(d)(iii)(C) applies if:

(Aa) a new school district is created under this section after a measure is submitted to voters based on the authority of Subsection (2)(d)(iii)(A); and

(Bb) the creation of the new school district results in an isolated area.

(II) The isolated area shall, on July 1 of the second calendar year following the election at which voters approve the creation of a new school district, become part of the municipality's school district.

(III) Unless the isolated area is the only remaining part of the existing district, the process described in Subsection (4) shall be modified to:

(Aa) include a third transition team, appointed by the local school board of the municipality's school district, to represent that school district;

(Bb) require allocation of the existing district's property among the new district, the remaining district, and the municipality's school district;

(Cc) require each of the three transition teams to appoint one member to the three-member arbitration panel, if an arbitration panel is established; and

(Dd) require the municipality's school district to bear 1/3 of the costs of arbitration.

(IV) The existing district shall continue to provide educational services to the isolated area until July 1 of the second calendar year following the election at which voters approve the creation of a new school district.

(3) (a) If a proposal under this section is approved by voters:

(i) an election shall be held on the June special election date, as provided in Section **20A-1-204**, in the year following the election at which voters approved the creation of a new school district, to elect:

(A) all members to the board of the new school district; and

(B) all members to the board of the remaining district;

(ii) school district property shall be divided between the existing school district and the new school district as provided in Subsection (4);

(iii) transferred employees shall be treated in accordance with Sections **53A-2-116** and **53A-2-122**; and

(iv) within one year after the new district begins providing educational services, the superintendent of each remaining district affected and the superintendent of the new district shall meet, together with the Superintendent of Public Instruction, to determine if further boundary changes should be proposed in accordance with Section **53A-2-104** or Subsection **53A-2-118(2)**.

(b) Each member elected to a school district board of a new district and remaining district at an election under Subsection (3)(a)(i) shall take office on July 15 immediately following the election.

(c) (i) Subject to Subsection (3)(c)(ii), the terms of the initial members of the school district board of the new district and remaining district who are elected at an election under Subsection (3)(a)(i) shall be staggered and adjusted by the county legislative body so that:

(A) the school district board members' successors are elected at a future regular general election; and

(B) the terms of their successors coincide with the schedule of terms for school district board members

established in Section **20A-14-202**.

(ii) (A) The term of a member elected to a school district board at an election under Subsection (3)(a)(i) may not be less than 17 months.

(B) In order to comply with the requirements of Subsection (3)(c)(i), the term of a member elected to a school district board at an election under Subsection (3)(a)(i) held in an even-numbered year may exceed four years but may not exceed five years.

(d) (i) The term of each member of the school district board of the existing district terminates on July 15 of the second year after the election at which voters approve the creation of a new district, regardless of when the term would otherwise have terminated.

(ii) Notwithstanding the election of a board for the new district and a board for the remaining district under Subsection (3)(a)(i), the board of the existing district shall continue, until the time specified in Subsection **53A-2-118(5)(b)(ii)(A)**, to function and exercise authority as a board to the extent necessary to continue to provide educational services to the entire existing district as though the new district had not been created.

(iii) A person may simultaneously serve as a member of the board of an existing district and a member of the board of:

- (A) a new district; or
- (B) a remaining district.

(4) (a) Within 30 days after the canvass of an election at which voters approve the creation of a new school district under this section:

(i) a transition team to represent the remaining district shall be appointed by the members of the existing district board who reside within the area of the remaining district, in consultation with:

- (A) the legislative bodies of all municipalities in the area of the remaining district; and
- (B) the legislative body of the county in which the remaining district is located, if the remaining district includes one or more unincorporated areas of the county; and

(ii) another transition team to represent the new district shall be appointed by:

- (A) for a new district located entirely within the boundaries of a single city, the legislative body of that city;

or

- (B) for each other new district, the legislative bodies of all interlocal agreement participants.

(b) The local board of the existing school district shall:

(i) within 30 days after the canvass of an election at which voters approve the creation of a new school district under this section, prepare an inventory of the existing district's assets and liabilities; and

(ii) within 45 days after the canvass, deliver a copy of the inventory to each of the transition teams.

(c) (i) (A) The transition teams appointed under Subsection (4)(a) shall, subject to Subsection (4)(c)(iii), determine the allocation of the existing district's property between the remaining district and the new district in accordance with Subsection (4)(c)(ii).

(B) The transition teams shall determine the allocation under Subsection (4)(c)(i)(A) before July 1 of the year following the election at which voters approve the creation of a new district, unless that deadline is extended by the mutual agreement of:

(I) the school district board of the remaining district; and

(II) (Aa) the legislative body of the city in which the new district is located, for a new district located entirely within a single city; or

(Bb) the legislative bodies of all interlocal agreement participants, for each other new district.

(ii) Subject to Subsection (4)(c)(iii), all property of the existing district, both tangible and intangible, real and personal, shall be allocated between the existing district and the new district in a way that is fair and equitable to both the existing district and the new district, taking into account:

(A) the relative student populations between the existing district and new district;

(B) the relative assessed value of taxable property between the existing district and the new district;

(C) the historical amount of property used to deliver educational services to students in the existing district and the new district; and

(D) any other factors that the transition teams consider relevant in dividing the property in a fair and equitable manner.

(iii) (A) The transition teams shall allocate school buildings and associated property used primarily to

provide educational services to local residents and not serving district-wide purposes to the school district in which the buildings are geographically located after the creation of the new district.

(B) Except as provided in Subsection (4)(c)(iii)(A), nothing in this Subsection (4)(c) may be construed to limit the ability of the transition teams to:

(I) provide that an existing district's property be shared by a remaining district and new district;

(II) determine, by mutual agreement, that the value of the school buildings and associated property described in Subsection (4)(c)(iii)(A) may be excluded from consideration in the asset allocation process under this Subsection (4)(c); or

(III) provide for any other arrangement with respect to existing district property that is beneficial to and in the best interests of the remaining district and new district.

(d) (i) Each disagreement between the transition teams about the proper allocation of property between the districts shall be resolved by binding arbitration to a three-member arbitration panel.

(ii) Each transition team shall appoint one member to an arbitration panel under this Subsection (4)(d), and those two members shall appoint a third member.

(iii) The costs of arbitration shall initially be borne entirely by the existing district, but the new district shall reimburse the existing district half of those costs within one year after the new district begins providing educational services.

(e) Each decision of the transition teams and of the arbitration panel resolving a disagreement between the transition teams is final and binding on the boards of the existing district and new district.

(f) (i) All costs and expenses of the transition team that represents a remaining district shall be borne by the remaining district.

(ii) All costs and expenses of the transition team that represents a new district shall:

(A) initially be borne by:

(I) the city whose legislative body appoints the transition team, if the transition team is appointed by the legislative body of a single city; or

(II) the interlocal agreement participants, if the transition team is appointed by the legislative bodies of interlocal agreement participants; and

(B) be reimbursed to the city or interlocal agreement participants by the new district within one year after the new district begins providing educational services.

53A-2-118.2. New school district property tax -- Limitations.

(1) (a) A new school district created under Section **53A-2-118.1** may not impose a property tax prior to the fiscal year in which the new school district assumes responsibility for providing student instruction.

(b) The remaining school district retains authority to impose property taxes on the existing school district, including the territory of the new school district, until the fiscal year in which the new school district assumes responsibility for providing student instruction.

(2) (a) If at the time a new school district created pursuant to Section **53A-2-118.1** assumes responsibility for student instruction any portion of the territory within the new school district was subject to a levy pursuant to Section **53A-16-110** or **53A-17a-133**, the new school district's board may:

(i) discontinue the levy for the new school district;

(ii) impose a levy on the new school district as provided in Section **53A-16-110** or **53A-17a-133**; or

(iii) impose the levy on the new school district, subject to Subsection (2)(b).

(b) If the new school district's board applies a levy to the new school district pursuant to Subsection (2)(a)(iii), the levy may not exceed the maximum duration or rate authorized by the voters of the existing district or districts at the time of the vote to create the new school district.

Enacted by Chapter 297, 2007 General Session

53A-2-122. Employees of a new district.

(1) Upon the creation of a new district:

(a) an employee of an existing district who is employed at a school that is transferred to the new district shall become an employee of the new district; and

(b) the school board of the new district shall:

(i) have discretion in the hiring of all other staff;

(ii) adopt the personnel policies and practices of the existing district, including salary schedules and benefits; and

(iii) enter into agreements with employees of the new district, or their representatives, that have the same terms as those in the negotiated agreements between the existing district and its employees.

(2) (a) Subject to Subsection (2)(b), an employee of a school district from which a new district is created who becomes an employee of the new district shall retain the same status as a career or provisional employee with accrued seniority and accrued benefits.

(b) Subsection (2)(a) applies to:

(i) employees of an existing district who are transferred to a new district pursuant to Subsection (1)(a); and

(ii) employees of a school district from which a new district is created who are hired by the new district within one year of the date of the creation of the new district.

(3) An employee who is transferred to a new district pursuant to Subsection (1)(a) and is rehired by the existing district within one year of the date of the creation of the new district shall, when rehired by the existing district, retain the same status as a career or provisional employee with accrued seniority and accrued benefits.

Amended by Chapter 183, 2006 General Session

53A-2-105. Transfer of school property -- Indebtedness on transferred property.

(1) If a transfer of a portion of one school district to another school district is approved under Section **53A-2-104**, the state superintendent and the superintendents and presidents of the boards of education of each of the affected school districts shall determine the basis for a transfer of all school property reasonably and fairly allocable to that portion being transferred.

(2) (a) Title to property transferred vests in the transferee board of education.

(b) The transfer of a school building that is in operation at the time of determination shall be made at the close of a fiscal year.

(c) The transfer of all other school property shall be made five days after approval of the transfer of territory under Section **53A-2-104**.

(3) (a) The individuals referred to in Subsection (1) shall determine the portion of bonded indebtedness and other indebtedness of the transferor board for which the transferred property remains subject to the levy of taxes to pay a proportionate share of the outstanding indebtedness of the transferor board.

(b) This is done by:

(i) determining the amount of the outstanding bonded indebtedness and other indebtedness of the transferor board of education;

(ii) determining the total taxable value of the property of the transferor district and the taxable value of the property to be transferred; and

(iii) calculating the portion of the indebtedness of the transferor board for which the transferred portion retains liability.

(4) (a) The agreement reflecting these determinations takes effect upon being filed with the State Board of Education.

(b) The transferred property remains subject to the levy of taxes to pay a proportionate share of the outstanding indebtedness of the transferor school board.

(c) The transferee school board may assume the obligation to pay the proportionate share of the transferor school board's indebtedness that has been determined under Subsection (3) to be the obligation of the transferred portion by the approval of a resolution by a majority of the qualified electors of the transferee school district at an election called and held for that purpose under Title 11, Chapter 14, Local Government Bonding Act.

(5) If the transferee school district assumes the obligation to pay this proportionate share of the transferor school board's indebtedness, the transferee school board shall levy a tax in the whole of the transferee district, including the transferred portion, sufficient to pay the assumed indebtedness, and shall turn over the proceeds of the tax to the business administrator of the transferor board.

(6) If the transferee school board does not assume this obligation, the transferee school board shall levy a tax on the transferred territory sufficient to pay the proportionate share of the indebtedness determined under this section, and shall turn over the proceeds of the tax to the business administrator of the transferor board.

(7) For the purposes of school districts affected by repealed laws governing the annexation of an unincorporated area of a school district by a city which included what was formerly known as a city school district, transitions of unincorporated areas and property from the transferor district to the transferee district in progress on the effective date of this act shall revert to the boundaries and ownership prior to the initiation of annexation and may then proceed under this section and Section **53A-2-104**.

Amended by Chapter 215, 2007 General Session
