

Superseded 5/9/2017

53A-2-118.1 Proposal initiated by a city or interlocal agreement participants to create a school district -- Boundaries -- Election of local school board members -- Allocation of assets and liabilities -- Startup costs -- Transfer of title.

- (1)
 - (a) After conducting a feasibility study, a city with a population of at least 50,000, as determined by the lieutenant governor using the process described in Subsection 67-1a-2(3), 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.
 - (b)
 - (i) The determination of all matters relating to the scope, adequacy, and other aspects of a feasibility study under Subsection (1)(a) is within the exclusive discretion of the city's legislative body.
 - (ii) An inadequacy of a feasibility study under Subsection (1)(a) may not be the basis of a legal action or other challenge to:
 - (A) an election for voter approval of the creation of a new school district; or
 - (B) the creation of the new school district.
- (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 is at least 50,000;
 - (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 that 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)(ii), do not cross county lines; and
 - (D) the combined population within the proposed new school district of interlocal agreement participants that have entered into an interlocal agreement proposing to create a new school district is at least 80% of the total population of the proposed new school district.
 - (ii) The determination of all matters relating to the scope, adequacy, and other aspects of a feasibility study under Subsection (2)(b)(i)(A), including whether to conduct a new feasibility study or revise a previous feasibility study due to a change in the proposed new school district boundaries, is within the exclusive discretion of the legislative bodies of the interlocal agreement participants that enter into an interlocal agreement to submit for voter approval a measure to create a new school district.

- (iii) An inadequacy of a feasibility study under Subsection (2)(b)(i)(A) may not be the basis of a legal action or other challenge to:
 - (A) an election for voter approval of the creation of a new school district; or
 - (B) the creation of the new school district.
- (iv) For purposes of determining whether the boundaries of a proposed new school district cross county lines under Subsection (2)(b)(i)(C)(IV):
 - (A) a municipality located in more than one county and entirely within the boundaries of a single school district 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; and
 - (B) a municipality located in more than one county that participates in an interlocal agreement under Subsection (2)(a) with respect to some but not all of the area within the municipality's boundaries on the basis of the exception stated in Subsection (2)(d)(ii)(B) may not be considered to cross county lines.
- (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) a portion of one or more existing school districts; and
 - (B) a portion of the unincorporated area of a 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:
 - (A) 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; or
 - (B)
 - (I) the portion of the municipality proposed to be included in the new school district is within the boundaries of the same school district that includes the other interlocal agreement participants; and
 - (II) the portion of the municipality proposed to be excluded from the new school district is within the boundaries of a school district other than the school district that includes the other interlocal agreement participants.
 - (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 local school board general election date described in Subsection (3)(a)(i), 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; and
 - (Bb) require allocation of the existing district's assets and liabilities among the new district, the remaining district, and the municipality's school district.
 - (IV) The existing district shall continue to provide educational services to the isolated area until July 1 of the second calendar year following the local school board general election date described in Subsection (3)(a)(i).
- (3)
- (a) If a proposal under this section is approved by voters:
 - (i) an election shall be held at the next regular general election to elect:
 - (A) members to the local school board of the existing school district whose terms are expiring;
 - (B) all members to the local school board of the new school district; and
 - (C) all members to the local school board of the remaining district;
 - (ii) the assets and liabilities of the existing school district shall be divided between the remaining school district and the new school district as provided in Subsection (5) and Section 53A-2-121;
 - (iii) transferred employees shall be treated in accordance with Sections 53A-2-116 and 53A-2-122;
 - (iv)
 - (A) an individual residing within the boundaries of a new school district at the time the new school district is created may, for six school years after the creation of the new school district, elect to enroll in a secondary school located outside the boundaries of the new school district if:
 - (I) the individual resides within the boundaries of that secondary school as of the day before the new school district is created; and
 - (II) the individual would have been eligible to enroll in that secondary school had the new school district not been created; and

- (B) the school district in which the secondary school is located shall provide educational services, including, if provided before the creation of the new school district, busing, to each individual making an election under Subsection (3)(a)(iv)(A) for each school year for which the individual makes the election; and
 - (v) 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.
- (b)
- (i) The terms of the initial members of the local school board of the new district and remaining district shall be staggered and adjusted by the county legislative body so that approximately half of the local school board is elected every two years.
 - (ii) The term of a member of the existing local school board, including a member elected under Subsection (3)(a)(i)(A), terminates on July 1 of the second year after the local school board general election date described in Subsection (3)(a)(i), regardless of when the term would otherwise have terminated.
 - (iii) Notwithstanding the existence of a local school board for the new district and a local school board for the remaining district under Subsection (3)(a)(i), the local school 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 local school board to the extent necessary to continue to provide educational services to the entire existing district.
 - (iv) A person may simultaneously serve as or be elected to be a member of the local school board of an existing district and a member of the local school board of:
 - (A) a new district; or
 - (B) a remaining district.
- (4)
- (a) Within 45 days after the canvass date for the election at which voters approve the creation of a new district:
 - (i) a transition team to represent the remaining district shall be appointed by the members of the existing local school 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 school board of the existing school district shall, within 60 days after the canvass date for the election at which voters approve the creation of a new district:
 - (i) prepare an inventory of the existing district's:
 - (A) assets, both tangible and intangible, real and personal; and
 - (B) liabilities; and
 - (ii) deliver a copy of the inventory to each of the transition teams.
 - (c) The transition teams appointed under Subsection (4)(a) shall:
 - (i) determine the allocation of the existing district's assets and, except for indebtedness under Section 53A-2-121, liabilities between the remaining district and the new district in accordance with Subsection (5);

- (ii) prepare a written report detailing how the existing district's assets and, except for indebtedness under Section 53A-2-121, liabilities are to be allocated; and
- (iii) deliver a copy of the written report to:
 - (A) the local school board of the existing district;
 - (B) the local school board of the remaining district; and
 - (C) the local school board of the new district.
- (d) The transition teams shall determine the allocation under Subsection (4)(c)(i) and deliver the report required under Subsection (4)(c)(ii) before August 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 local school board of the existing district; and
 - (ii)
 - (A) the legislative body of the city in which the new district is located, for a new district located entirely within a single city; or
 - (B) the legislative bodies of all interlocal agreement participants, for each other new district.
- (e)
 - (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 initially be borne by:
 - (A) the city whose legislative body appoints the transition team, if the transition team is appointed by the legislative body of a single city; or
 - (B) the interlocal agreement participants, if the transition team is appointed by the legislative bodies of interlocal agreement participants.
 - (iii) The new district may, to a maximum of \$500,000, reimburse the city or interlocal agreement participants for:
 - (A) transition team costs and expenses; and
 - (B) startup costs and expenses incurred by the city or interlocal agreement participants on behalf of the new district.
- (5)
 - (a) As used in this Subsection (5):
 - (i) "Associated property" means furniture, equipment, or supplies located in or specifically associated with a physical asset.
 - (ii)
 - (A) "Discretionary asset or liability" means, except as provided in Subsection (5)(a)(ii)(B), an asset or liability that is not tied to a specific project, school, student, or employee by law or school district accounting practice.
 - (B) "Discretionary asset or liability" does not include a physical asset, associated property, a vehicle, or bonded indebtedness.
 - (iii)
 - (A) "Nondiscretionary asset or liability" means, except as provided in Subsection (5)(a)(iii)(B), an asset or liability that is tied to a specific project, school, student, or employee by law or school district accounting practice.
 - (B) "Nondiscretionary asset or liability" does not include a physical asset, associated property, a vehicle, or bonded indebtedness.
 - (iv) "Physical asset" means a building, land, or water right together with revenue derived from the lease or use of the building, land, or water right.

- (b) Except as provided in Subsection (5)(c), the transition teams appointed under Subsection (4)
 - (a) shall allocate all assets and liabilities the existing district owns on the allocation date, both tangible and intangible, real and personal, to the new district and remaining district as follows:
 - (i) a physical asset and associated property shall be allocated to the school district in which the physical asset is located;
 - (ii) a discretionary asset or liability shall be allocated between the new district and remaining district in proportion to the student populations of the school districts;
 - (iii) a nondiscretionary asset shall be allocated to the school district where the project, school, student, or employee to which the nondiscretionary asset is tied will be located;
 - (iv) vehicles used for pupil transportation shall be allocated:
 - (A) according to the transportation needs of schools, as measured by the number and assortment of vehicles used to serve transportation routes serving schools within the new district and remaining district; and
 - (B) in a manner that gives each school district a fleet of vehicles for pupil transportation that is equivalent in terms of age, condition, and variety of carrying capacities; and
 - (v) other vehicles shall be allocated:
 - (A) in proportion to the student populations of the school districts; and
 - (B) in a manner that gives each district a fleet of vehicles that is similar in terms of age, condition, and carrying capacities.
 - (c) By mutual agreement, the transition teams may allocate an asset or liability in a manner different than the allocation method specified in Subsection (5)(b).
- (6)
 - (a) As used in this Subsection (6):
 - (i) "New district startup costs" means:
 - (A) costs and expenses incurred by a new district in order to prepare to begin providing educational services on July 1 of the second calendar year following the local school board general election date described in Subsection (3)(a)(i); and
 - (B) the costs and expenses of the transition team that represents the new district.
 - (ii) "Remaining district startup costs" means:
 - (A) costs and expenses incurred by a remaining district in order to:
 - (I) make necessary adjustments to deal with the impacts resulting from the creation of the new district; and
 - (II) prepare to provide educational services within the remaining district once the new district begins providing educational services within the new district; and
 - (B) the costs and expenses of the transition team that represents the remaining district.
 - (b)
 - (i) By January 1 of the year following the local school board general election date described in Subsection (3)(a)(i), the existing district shall make half of the undistributed reserve from its General Fund, to a maximum of \$9,000,000, available for the use of the remaining district and the new district, as provided in this Subsection (6).
 - (ii) The existing district may make additional funds available for the use of the remaining district and the new district beyond the amount specified in Subsection (6)(b)(i) through an interlocal agreement.
 - (c) The existing district shall make the money under Subsection (6)(b) available to the remaining district and the new district proportionately based on student population.
 - (d) The money made available under Subsection (6)(b) may be accessed and spent by:
 - (i) for the remaining district, the local school board of the remaining district; and
 - (ii) for the new district, the local school board of the new district.

- (e)
 - (i) The remaining district may use its portion of the money made available under Subsection (6)(b) to pay for remaining district startup costs.
 - (ii) The new district may use its portion of the money made available under Subsection (6)(b) to pay for new district startup costs.
- (7)
 - (a) The existing district shall transfer title or, if applicable, partial title of property to the new school district in accordance with the allocation of property by the transition teams, as stated in the report under Subsection (4)(c)(ii).
 - (b) The existing district shall complete each transfer of title or, if applicable, partial title to real property and vehicles by July 1 of the second calendar year following the local school board general election date described in Subsection (3)(a)(i), except as that date is changed by the mutual agreement of:
 - (i) the local school board of the existing district;
 - (ii) the local school board of the remaining district; and
 - (iii) the local school board of the new district.
 - (c) The existing district shall complete the transfer of all property not included in Subsection (7)(b) by November 1 of the second calendar year after the local school board general election date described in Subsection (3)(a)(i).
- (8) Except as provided in Subsections (6) and (7), after the creation election date an existing school district may not transfer or agree to transfer title to district property without the prior consent of:
 - (a) the legislative body of the city in which the new district is located, for a new district located entirely within a single city; or
 - (b) the legislative bodies of all interlocal agreement participants, for each other new district.
- (9) This section does not apply to the creation of a new district initiated through a citizens' initiative petition or at the request of a local school board under Section 53A-2-118.