

**DIVIDED SCHOOL DISTRICT ASSETS AND
LIABILITIES**

2011 GENERAL SESSION
STATE OF UTAH

Chief Sponsor: Kenneth W. Sumsion

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill modifies provisions pertaining to the allocation of the assets and liabilities of certain divided school districts.

Highlighted Provisions:

This bill:

- ▶ specifies how the assets and liabilities of a divided school district shall be allocated between the new district and the remaining district when a school district is created pursuant to a proposal made by a city or interlocal agreement participants; and
- ▶ eliminates provisions requiring disagreements about the allocation of assets and liabilities to be resolved by binding arbitration.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53A-2-117, as last amended by Laws of Utah 2008, Chapters 92 and 236

53A-2-118.1, as last amended by Laws of Utah 2010, Chapter 230



28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **53A-2-117** is amended to read:

30 **53A-2-117. Definitions.**

31 As used in Sections 53A-2-117 through 53A-2-121:

32 (1) "Allocation date" means:

33 (a) June 30 of the second calendar year after the [~~creation~~] local school board general
34 election date described in Subsection 53A-2-118.1(3)(a)(i); or

35 (b) another date that the transition teams under Section 53A-1-118.1 mutually agree to.

36 (2) "Canvass date" means the date of the canvass of an election under Subsection
37 53A-2-118(5) at which voters approve the creation of a new school district under Section
38 53A-2-118.1.

39 (3) "Creation election date" means the date of the election under Subsection
40 53A-2-118(5) at which voters approve the creation of a new school district under Section
41 53A-2-118.1.

42 (4) "Divided school district, "existing district," or "existing school district" means a
43 school district from which a new district is created.

44 (5) "New district" or "new school district" means a school district created under
45 Section 53A-2-118 or 53A-2-118.1.

46 (6) "Remaining district" or "remaining school district" means an existing district after
47 the creation of a new district.

48 Section 2. Section **53A-2-118.1** is amended to read:

49 **53A-2-118.1. Proposal initiated by a city or interlocal agreement participants to**
50 **create a school district -- Boundaries -- Election of local school board members --**
51 **Allocation of assets and liabilities -- Startup costs -- Transfer of title.**

52 (1) (a) After conducting a feasibility study, a city with a population of at least 50,000,
53 as determined by the lieutenant governor using the process described in Subsection 67-1a-2(3),
54 may by majority vote of the legislative body, submit for voter approval a measure to create a
55 new school district with boundaries contiguous with that city's boundaries, in accordance with
56 Section 53A-2-118.

57 (b) (i) The determination of all matters relating to the scope, adequacy, and other
58 aspects of a feasibility study under Subsection (1)(a) is within the exclusive discretion of the

59 city's legislative body.

60 (ii) An inadequacy of a feasibility study under Subsection (1)(a) may not be the basis of
61 a legal action or other challenge to:

62 (A) an election for voter approval of the creation of a new school district; or

63 (B) the creation of the new school district.

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

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

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

72 (B) the combined population within the proposed new school district boundaries is at
73 least 50,000;

74 (C) the new school district boundaries:

75 (I) are contiguous;

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

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

81 (IV) subject to Subsection (2)(b)(ii), do not cross county lines; and

82 (D) the combined population within the proposed new school district of interlocal
83 agreement participants that have entered into an interlocal agreement proposing to create a new
84 school district is at least 80% of the total population of the proposed new school district.

85 (ii) The determination of all matters relating to the scope, adequacy, and other aspects
86 of a feasibility study under Subsection (2)(b)(i)(A), including whether to conduct a new
87 feasibility study or revise a previous feasibility study due to a change in the proposed new
88 school district boundaries, is within the exclusive discretion of the legislative bodies of the
89 interlocal agreement participants that enter into an interlocal agreement to submit for voter

90 approval a measure to create a new school district.

91 (iii) An inadequacy of a feasibility study under Subsection (2)(b)(i)(A) may not be the
92 basis of a legal action or other challenge to:

93 (A) an election for voter approval of the creation of a new school district; or

94 (B) the creation of the new school district.

95 (iv) For purposes of determining whether the boundaries of a proposed new school
96 district cross county lines under Subsection (2)(b)(i)(C)(IV):

97 (A) a municipality located in more than one county and entirely within the boundaries
98 of a single school district is considered to be entirely within the same county as other
99 participants in an interlocal agreement under Subsection (2)(a) if more of the municipality's
100 land area and population is located in that same county than outside the county; and

101 (B) a municipality located in more than one county that participates in an interlocal
102 agreement under Subsection (2)(a) with respect to some but not all of the area within the
103 municipality's boundaries on the basis of the exception stated in Subsection (2)(d)(ii)(B) may
104 not be considered to cross county lines.

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

107 (ii) Boundaries of a new school district created under this section may include:

108 (A) a portion of one or more existing school districts; and

109 (B) a portion of the unincorporated area of a county, including a portion of a township.

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

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

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

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

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

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

121 within the municipality's boundaries if:

122 (A) the portion of the municipality proposed to be included in the new school district
123 would, if not included, become an isolated area upon the creation of the new school district; or

124 (B) (I) the portion of the municipality proposed to be included in the new school
125 district is within the boundaries of the same school district that includes the other interlocal
126 agreement participants; and

127 (II) the portion of the municipality proposed to be excluded from the new school
128 district is within the boundaries of a school district other than the school district that includes
129 the other interlocal agreement participants.

130 (iii) (A) Notwithstanding Subsection (2)(b)(i)(C)(II), a proposal to create a new school
131 district may be submitted for voter approval pursuant to an interlocal agreement under
132 Subsection (2)(a), even though the new school district boundaries would create an isolated
133 area, if:

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

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

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

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

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

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

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

150 (II) The isolated area shall, on July 1 of the second calendar year following the local
151 school board general election date described in Subsection (3)(a)(i), become part of the

152 municipality's school district.

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

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

157 (Bb) require allocation of the existing district's [~~property~~] assets and liabilities among
158 the new district, the remaining district, and the municipality's school district[~~;~~].

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

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

162 (IV) The existing district shall continue to provide educational services to the isolated
163 area until July 1 of the second calendar year following the local school board general election
164 date described in Subsection (3)(a)(i).

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

166 (i) an election shall be held at the next regular general election to elect:

167 (A) members to the local school board of the existing school district whose terms are
168 expiring;

169 (B) all members to the local school board of the new school district; and

170 (C) all members to the local school board of the remaining district;

171 (ii) the assets and liabilities of the existing school district [~~property~~] shall be divided
172 between the [~~existing~~] remaining school district and the new school district as provided in
173 Subsection [~~(4)~~] (5) and Section 53A-2-121;

174 (iii) transferred employees shall be treated in accordance with Sections 53A-2-116 and
175 53A-2-122;

176 (iv) (A) an individual residing within the boundaries of a new school district at the
177 time the new school district is created may, for six school years after the creation of the new
178 school district, elect to enroll in a secondary school located outside the boundaries of the new
179 school district if:

180 (I) the individual resides within the boundaries of that secondary school as of the day
181 before the new school district is created; and

182 (II) the individual would have been eligible to enroll in that secondary school had the

183 new school district not been created; and

184 (B) the school district in which the secondary school is located shall provide
185 educational services, including, if provided before the creation of the new school district,
186 busing, to each individual making an election under Subsection (3)(a)(iv)(A) for each school
187 year for which the individual makes the election; and

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

192 (b) (i) The terms of the initial members of the local school [~~district~~] board of the new
193 district and remaining district shall be staggered and adjusted by the county legislative body so
194 that approximately half of the local school board is elected every two years.

195 (ii) The term of a member of the existing local school board, including a member
196 elected under Subsection (3)(a)(i)(A), terminates on July 1 of the second year after the local
197 school board general election date described in Subsection (3)(a)(i), regardless of when the
198 term would otherwise have terminated.

199 (iii) Notwithstanding the existence of a local school board for the new district and a
200 local school board for the remaining district under Subsection (3)(a)(i), the local school board
201 of the existing district shall continue, until the time specified in Subsection
202 53A-2-118(5)(b)(ii)(A), to function and exercise authority as a local school board to the extent
203 necessary to continue to provide educational services to the entire existing district.

204 (iv) A person may simultaneously serve as or be elected to be a member of the local
205 school board of an existing district and a member of the local school board of:

206 (A) a new district; or

207 (B) a remaining district.

208 (4) (a) Within 45 days after the canvass date for the election at which voters approve
209 the creation of a new district:

210 (i) a transition team to represent the remaining district shall be appointed by the
211 members of the existing [~~district~~] local school board who reside within the area of the
212 remaining district, in consultation with:

213 (A) the legislative bodies of all municipalities in the area of the remaining district; and

214 (B) the legislative body of the county in which the remaining district is located, if the
215 remaining district includes one or more unincorporated areas of the county; and

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

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

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

221 (b) The local school [~~district~~] board of the existing school district shall, within 60 days
222 after the canvass date for the election at which voters approve the creation of a new district:

223 (i) prepare an inventory of the existing district's:

224 (A) [~~property~~] assets, both tangible and intangible, real and personal; and

225 (B) liabilities; and

226 (ii) deliver a copy of the inventory to each of the transition teams.

227 (c) [~~(i)-(A)~~] The transition teams appointed under Subsection (4)(a) shall [~~subject to~~
228 ~~Subsection (4)(c)(iii)~~]:

229 [(F)] (i) determine the allocation of the existing district's [~~property~~] assets and, except
230 for indebtedness under Section 53A-2-121, liabilities between the remaining district and the
231 new district in accordance with Subsection [~~(4)(c)(ii)~~] (5);

232 [(H)] (ii) prepare a written report detailing how the existing district's [~~property~~] assets
233 and, except for indebtedness under Section 53A-2-121, liabilities are to be allocated [~~;~~
234 ~~including~~]; and

235 [~~(Aa)~~] a designation of the property that should be transferred to the new district;

236 [~~(Bb)~~] a designation of any property that should be shared between the remaining
237 district and the new district; and]

238 [~~(Cc)~~] a designation of any property that will need to be allocated by arbitration under
239 Subsection (4)(d); and]

240 [(HH)] (iii) deliver a copy of the written report to:

241 [(Aa)] (A) the local school [~~district~~] board of the existing district;

242 [(Bb)] (B) the local school [~~district~~] board of the remaining district; and

243 [(Cc)] (C) the local school [~~district~~] board of the new district.

244 [(B)] (d) The transition teams shall determine the allocation under Subsection

245 (4)(c)(i)~~[(A)(f)]~~ and deliver the report required under Subsection (4)(c)~~[(f)(A)(H)]~~(ii) before
246 August 1 of the year following the election at which voters approve the creation of a new
247 district, unless that deadline is extended by the mutual agreement of:

248 ~~[(f)]~~ (i) the local school ~~[district]~~ board of the existing district; and

249 ~~[(H)(Aa)]~~ (ii) (A) the legislative body of the city in which the new district is located,
250 for a new district located entirely within a single city; or

251 ~~[(Bb)]~~ (B) the legislative bodies of all interlocal agreement participants, for each other
252 new district.

253 ~~[(ii) Subject to Subsection (4)(c)(iii), all property, assets, and liabilities that the
254 existing district owns on the allocation date, both tangible and intangible, real and personal,
255 shall be allocated between the remaining district and the new district in a way that is fair and
256 equitable to both the remaining district and the new district, taking into account:]~~

257 ~~[(A) the relative student populations between the remaining district and new district;]~~

258 ~~[(B) the relative assessed value of taxable property between the remaining district and
259 the new district;]~~

260 ~~[(C) the historical amount of property used to deliver educational services to students
261 in the remaining district and the new district;]~~

262 ~~[(D) any money made available for the use of the new district under Subsection (5);
263 and]~~

264 ~~[(E) any other factors that the transition teams consider relevant in dividing the
265 property in a fair and equitable manner.]~~

266 ~~[(iii) (A) The transition teams shall allocate each school building and associated
267 property used primarily to provide educational services to local residents and not serving
268 district-wide purposes to the school district that would best serve the existing student
269 population of that school building and associated property.]~~

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

272 ~~[(f) provide that an existing district's property be shared by a remaining district and
273 new district;]~~

274 ~~[(H) determine, by mutual agreement, that the value of the school buildings and
275 associated property described in Subsection (4)(c)(iii)(A) may be excluded from consideration~~

276 in the property allocation process under this Subsection (4)(c); or]

277 [~~(H)~~ provide for any other arrangement with respect to existing district property that is
278 beneficial to and in the best interests of the remaining district and new district.]

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

282 [~~(ii)~~ Each transition team shall, no later than September 1 of the year after the creation
283 election date, appoint one qualified, independent arbitrator to an arbitration panel under this
284 Subsection (4)(d), and those two arbitrators shall, within 15 days after their appointment,
285 appoint a third qualified, independent arbitrator.]

286 [~~(iii)~~ In the process of resolving a dispute between the transition teams, the arbitration
287 panel may engage the services of one or more professionals to provide technical advice to the
288 panel.]

289 [~~(iv)~~ The costs of arbitration shall initially be borne entirely by the existing district, but
290 the new district shall reimburse the existing district half of those costs within one year after the
291 new district begins providing educational services.]

292 [~~(e)~~ Each decision of the transition teams and of the arbitration panel resolving a
293 disagreement between the transition teams is final and binding on the boards of the existing
294 district, remaining district, and new district.]

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

297 (ii) All costs and expenses of the transition team that represents a new district shall
298 initially be borne by:

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

301 (B) the interlocal agreement participants, if the transition team is appointed by the
302 legislative bodies of interlocal agreement participants.

303 (iii) The new district may, to a maximum of \$500,000, reimburse the city or interlocal
304 agreement participants for:

305 (A) transition team costs and expenses; and

306 (B) startup costs and expenses incurred by the city or interlocal agreement participants

307 on behalf of the new district.

308 (5) (a) As used in this Subsection (5):

309 (i) "Associated property" means furniture, equipment, or supplies located in or
310 specifically associated with a physical asset.

311 (ii) (A) "Discretionary asset or liability" means, except as provided in Subsection
312 (5)(a)(ii)(B), an asset or liability that is not tied to a specific project, school, student, or
313 employee by law or school district accounting practice.

314 (B) "Discretionary asset or liability" does not include a physical asset, associated
315 property, a vehicle, or bonded indebtedness.

316 (iii) (A) "Nondiscretionary asset or liability" means, except as provided in Subsection
317 (5)(a)(iii)(B), an asset or liability that is tied to a specific project, school, student, or employee
318 by law or school district accounting practice.

319 (B) "Nondiscretionary asset or liability" does not include a physical asset, associated
320 property, a vehicle, or bonded indebtedness.

321 (iv) "Physical asset" means a building, land, or water right together with revenue
322 derived from the lease or use of the building, land, or water right.

323 (b) Except as provided in Subsection (5)(c), the transition teams appointed under
324 Subsection (4)(a) shall allocate all assets and liabilities the existing district owns on the
325 allocation date, both tangible and intangible, real and personal, to the new district and
326 remaining district as follows:

327 (i) a physical asset and associated property shall be allocated to the school district in
328 which the physical asset is located;

329 (ii) a discretionary asset or liability shall be allocated between the new district and
330 remaining district in proportion to the student populations of the school districts;

331 (iii) a nondiscretionary asset shall be allocated to the school district where the project,
332 school, student, or employee to which the nondiscretionary asset is tied will be located;

333 (iv) vehicles used for pupil transportation shall be allocated:

334 (A) according to the transportation needs of schools, as measured by the number and
335 assortment of vehicles used to serve transportation routes serving schools within the new
336 district and remaining district; and

337 (B) in a manner that gives each school district a fleet of vehicles for pupil

338 transportation that is equivalent in terms of age, condition, and variety of carrying capacities;
339 and

340 (v) other vehicles shall be allocated:

341 (A) in proportion to the student populations of the school districts; and

342 (B) in a manner that gives each district a fleet of vehicles that is similar in terms of age,
343 condition, and carrying capacities.

344 (c) By mutual agreement, the transition teams may allocate an asset or liability in a
345 manner different than the allocation method specified in Subsection (5)(b).

346 [~~5~~] (6) (a) As used in this Subsection [~~5~~] (6):

347 (i) "New district startup costs" means:

348 (A) costs and expenses incurred by a new district in order to prepare to begin providing
349 educational services on July 1 of the second calendar year following the local school board
350 general election date described in Subsection (3)(a)(i); and

351 (B) the costs and expenses of the transition team that represents the new district.

352 (ii) "Remaining district startup costs" means:

353 (A) costs and expenses incurred by a remaining district in order to:

354 (I) make necessary adjustments to deal with the impacts resulting from the creation of
355 the new district; and

356 (II) prepare to provide educational services within the remaining district once the new
357 district begins providing educational services within the new district; and

358 (B) the costs and expenses of the transition team that represents the remaining district.

359 (b) (i) By January 1 of the year following the local school board general election date
360 described in Subsection (3)(a)(i), the existing district shall make half of the undistributed
361 reserve from its General Fund, to a maximum of \$9,000,000, available for the use of the
362 remaining district and the new district, as provided in this Subsection [~~5~~] (6).

363 (ii) The existing district may make additional funds available for the use of the
364 remaining district and the new district beyond the amount specified in Subsection [~~5~~] (6)(b)(i)
365 through an interlocal agreement.

366 (c) The existing district shall make the money under Subsection [~~5~~] (6)(b) available
367 to the remaining district and the new district proportionately based on student population.

368 (d) The money made available under Subsection [~~5~~] (6)(b) may be accessed and spent

369 by:

370 (i) for the remaining district, the local school [~~district~~] board of the remaining district;

371 and

372 (ii) for the new district, the local school [~~district~~] board of the new district.

373 (e) (i) The remaining district may use its portion of the money made available under
374 Subsection [~~(5)~~] (6)(b) to pay for remaining district startup costs.

375 (ii) The new district may use its portion of the money made available under Subsection
376 [~~(5)~~] (6)(b) to pay for new district startup costs.

377 [~~(6)~~] (7) (a) The existing district shall transfer title or, if applicable, partial title of
378 property to the new school district in accordance with the allocation of property by~~[-(i)]~~ the
379 transition teams, as stated in the report under Subsection (4)(c)[~~(i)(A)(H); and~~](ii).

380 [~~(ii) the arbitration panel, if applicable.~~]

381 (b) The existing district shall complete each transfer of title or, if applicable, partial
382 title to real property and vehicles by July 1 of the second calendar year following the local
383 school board general election date described in Subsection (3)(a)(i), except as that date is
384 changed by the mutual agreement of:

385 (i) the local school [~~district~~] board of the existing district;

386 (ii) the local school [~~district~~] board of the remaining district; and

387 (iii) the local school [~~district~~] board of the new district.

388 (c) The existing district shall complete the transfer of all property not included in
389 Subsection [~~(6)~~] (7)(b) by November 1 of the second calendar year after the local school board
390 general election date described in Subsection (3)(a)(i).

391 [~~(7)~~] (8) Except as provided in Subsections [~~(5)~~] (6) and [~~(6)~~] (7), after the creation
392 election date an existing school district may not transfer or agree to transfer title to district
393 property without the prior consent of:

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

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

398 [~~(8) This section applies to and governs all actions and proceedings relating to and~~
399 following the creation of a new district, whether the election under Subsection 53A-2-118(5)

400 ~~on the proposal to create a new school district occurs before or after May 5, 2008, including:]~~

401 ~~[(a) the election of school district board members; and]~~

402 ~~[(b) transition team duties and responsibilities, whether the transition team is appointed~~
403 ~~before or after May 5, 2008.]~~

404 (9) This section does not apply to the creation of a new district initiated through a
405 citizens' initiative petition or at the request of a local school board under Section 53A-2-118.

Legislative Review Note
as of 1-19-11 10:16 AM

Office of Legislative Research and General Counsel