

Where we are with “the law” –

At the close of 123rd Legislative Session, LD 2323 was passed with House Amendment G, which is now known as Public Law 668 and has been signed by the Governor. It contains the original provisions of LD 1932 with both the DoE’s and the Education Committee’s proposals plus Amendment G, aka LD 2280, which was also referred to as the Education Committee’s “Bucket A” of non-controversial technical changes. The difference from the version of LD 1932 that was vetoed by the Governor are the missing floor amendments, most notably the Damon amendment that provided for super-unions and the Raye amendment that provided for withdrawal from and transferring among RSU’s. Public Law 668 also has a new provision allowing for school administrative units to form “alternative organizational structures” instead of RSU’s.

You will find at the end of this the summaries from LD 2323 and House Amendment G that outline the changes to last year’s consolidation law.

You will find the language concerning “alternative organization structures” on pp. 19-20 of Public Law 668. In summary, it allows school administrative units to come together with a lot of flexibility that does not exist for RSU’s. It provides for consolidation of system *administration* (the business functions, a core curriculum, consistent policies, calendars, and a plan for consistent collective bargaining agreements) while allowing for far greater local control of individual schools. It is true that this provision was created to accommodate MDI, and that the Commissioner has the power to approve to disapprove them, but the fact is that Union 92, if they choose to remain together, fits very well into this structure. The financial benefit is instead of requiring unified employment contracts by no more than three years in an RSU, one only need submit a plan to achieve this over any reasonable number of years, and there is no penalty for failing to do so.

The other enormously appealing part of this alternative is that it is created outside of Title 20-A, chapter 103A school law and falls under Title 30-A, chapter 115 municipal law for interlocal agreements. Furthermore, while school law does not have any provision for withdrawing from an RSU, the law for interlocal agreements specifies that the terms of the agreement must include the method used to partially or completely terminate it.

Other considerations –

Update on repeal – Perhaps by the time we meet we will know if the petitions with over 40,000 signatures will be valid or if this year’s legislative action has materially changed the law and will require a new petition and starting over with signature collections. Either way, there appears to be broad commitment statewide to see this process through. Additionally, the coalition for repeal will be aggressive in holding accountable all candidates for election to the legislature this November as to their stance on repeal. There will also be a campaign mounted to get the legislature to repeal the law in early January 2009. If this attempt to gain legislative overturn fails, the question will be up for public referendum in November 2009.

Timing – The deadline for holding the public referendum to vote on consolidation is now January 30, 2009. No date has been specified in law to file a notice of intent for an alternative organization structure, but it is expected that the DoE will set requirements.

Fixing the law – Consolidation law is by no means fixed and it would not be a surprise if more flaws are discovered. LD 2323 was passed with even less time to consider than last year’s consolidation law, and has not been test driven. Once the repeal petition signatures are accepted by the Secretary of State, which should be well ahead of when the 124th legislature convenes, no changes may be made to the law until it is either repealed or fails to gain the votes for repeal in November 2009. In other words, if the law survives, no changes are likely to be made until 2010.

While this year’s law restores the subsidy that minimum receivers would have lost in consolidating (affecting Surry and Otis), Union 92 has three other towns that likely will become minimum receivers in the near future and the current law does not provide for them to receive any state aid. This point must be made as a contingency in any plan Union 92 may file.

Cost of not complying with consolidation –

With the subsidy numbers out for 2008-2009 and a redefinition in the new law, computing the cost of the penalties now appears to be easy (we still want to get DoE confirmation of this computation, if they are amenable):

- If you are a minimum receiver, it appears the penalty is none. Your state minimum subsidy for 2008-2009 is 50% of what it should have been, and now appears to be equal to the 50% penalty.
- If you are not a minimum receiver:
 - Look at your 2008-2009 ED279 form, line 12F, for system administration. You would lose 50% of this as a penalty *plus*
 - On ED 279, line 48 D, you’ll find the calculation of your required town contribution. Increase it by 2%, and the resulting difference in the increased amount your town will pay is the second part of the penalty.

SUMMARY of LD 2323 (from the bill)

1. The bill corrects a cross-reference for the cost center summary budget format and the budget validation referendum process that school administrative districts and community school districts must comply with for budgets developed after January 1, 2008.

2. The bill articulates, without limitation, the core functions for which a regional school unit is responsible.

3. The bill provides regional school unit boards with the legal authority to receive and spend state and local funds, including funds for the election of regional school unit board members and to hire a superintendent prior to the operational date of the new regional school unit on July 1, 2009.

4. The bill clarifies the “Method B” apportionment process of weighted votes for regional school unit boards.

5. The bill provides for the election and staggered terms of the initial regional school unit board.

6. The bill replaces the law authorizing the formation of a local school committee for a member municipality and provides greater guidance in delegating functions and responsibilities to local school committees.

7. The bill clarifies the relationship between a regional school unit board and a local school committee that seeks to raise additional funds for an elementary school or a secondary school that is owned or managed by the member municipality.

8. The bill clarifies the authorization provided to regional planning committees to negotiate a cost-sharing agreement for those costs of a proposed regional school unit that are in addition to the local contribution required pursuant to the Maine Revised Statutes, Title 20-A, section 15690.

9. The bill clarifies the roles of the municipal officers and the school committee for municipal school units whose municipal charters give authority to approve the school budget to the municipal officers.

10. The bill establishes the requirements for calling a budget meeting and the procedures for the budget meeting.

11. The bill clarifies the assumption of existing debt that is transferred from an original education unit to a new regional school unit that is formed after July 1, 2008.

12. The bill removes references to “elementary” schools in the school closure provisions to clarify that secondary schools are also subject to these requirements.

13. The bill authorizes a municipal school committee to expand its membership from 5 members to as many as 7 members.

14. The bill clarifies the provisions governing tuition when there is no elementary school or no secondary school in a school administrative unit.

15. The bill clarifies the content and timing of the audit provisions.

16. The bill repeals a unit of law, and corrects a cross-reference to it, regarding the requirement that each municipality that is a member of a new regional school unit contribute a minimum of 2 mills of the municipality’s property fiscal capacity to the total cost of education of the new regional school unit.

17. The bill grandfathers the special education adjustment for so-called minimum subsidy receivers.

18. The bill permits the Commissioner of Education to authorize so-called “doughnut hole” school units that have 1,200 or fewer students and no other available reorganization partners to form a regional school unit that serves at least 1,000 students if these isolated, rural school units meet certain criteria.

19. The bill authorizes the Commissioner of Education to approve plans for alternative organizational structures under the school reorganization law. To approve a plan for an alternative organizational structure, the commissioner must find that the plan will satisfy the purposes of the school reorganization law including: consolidation of system administration; consolidation of administration of special education, transportation and business functions; adoption of a core curriculum; and adoption of consistent school policies, school calendars and collective bargaining agreements.

SUMMARY OF AMENDMENT “G” (FROM THE AMENDMENT)

This amendment strikes the emergency preamble and emergency clause and incorporates the following changes to clarify and improve the laws governing the formation of regional school units or alternative organizational structures.

1. It provides that a kindergarten-to-grade-12 school administrative district that is reformulated as a regional school unit without dissolving the school administrative district may continue to use the same name and operate as the same legal entity; and it amends the definition of "school administrative unit" to clarify that community school districts and kindergarten-to-grade-8 school administrative districts that do not join a regional school unit may remain in operation after July 1, 2009. The current law reformulates all kindergarten-to-grade-12 school administrative districts as regional school units by July 1, 2009 but is silent on the ability of community school districts and kindergarten-to-grade-8 school administrative districts to remain operational after that date.

2. It changes the deadline by which a referendum must be held to January 30, 2009 and changes dates that are linked to the referendum date by the same amount of time. The current law governing the reorganization of school administrative units requires that a referendum must be held on a proposed reorganization on or before November 4, 2008.

3. It provides consistent language across the allocated and unallocated provisions in the law to clarify the budget referendum ballot question to be placed before the voters at a budget validation referendum vote.

4. It clarifies and amends the budget approval and validation process provisions to:

A. Increase the number of days from the legislative body meeting to the referendum validation from 10 days to 14 days;

B. Provide that absentee ballots may not be distributed until the day after the regional school unit budget meeting;

C. In the event that a regional school unit budget has not been approved and validated prior to the start of the fiscal year, authorize municipalities to levy taxes based on the most recent school budget approved at the regional school unit budget meeting until a budget is validated by voters; and

D. Eliminate the need for 2 separate ballot questions for the budget validation referendum vote and combine information on 2 votes into one document provided with the warrant for the referendum vote.

5. It clarifies the debt liability of the school administrative units that are members of a career and technical education region, including the disposition of debt incurred for a school construction or renovation project at a career and technical education region by the school administrative units that are members of the career and technical education region.

6. It clarifies the financial responsibility for the preservation of school choice in a new regional school unit when a member municipality continues to provide tuition for students to attend a school outside of the new regional school unit. The provision provides that the member municipality is responsible for providing appropriations for any additional expense above the sending regional school unit tuition rate for students who are educated outside of the regional school unit.

7. It clarifies the rights and obligations of regional school units concerning the reassignment of teachers and other employees of the regional school unit in the transitional period from the

operational date of the regional school unit until the completion of negotiations for a regional school unit-wide collective bargaining agreement.

8. It replaces the so-called "53.86% penalty" for any school administrative unit that fails to approve a reorganization plan on or before January 30, 2009 and to implement that plan by July 1, 2009 with a penalty that provides that the school administrative unit's full-value education mill rate pursuant to the Maine Revised Statutes, Title 20-A, section 15671-A is increased by 2% for the purpose of calculating the school administrative unit's required contribution to meet the local share of education costs established pursuant to Title 20-A, section 15688, subsection 3-A.

9. It directs the Department of Education to conduct a review of the results of referenda votes on proposed reorganization plans and the status of the reorganization of school administrative units as regional school units consistent with the July 1, 2009 implementation timeline. It also directs the department to develop recommendations related to the circumstances and criteria under which the Commissioner of Education could grant a waiver to a school administrative unit that has not complied with the implementation timelines, including any necessary flexibility that would provide the commissioner with the authority to adjust the timelines for complying with the law, to waive penalties or to approve an alternative plan submitted by a reorganization planning committee. It further directs the department to clarify what happens if voters of an individual school administrative unit fail to approve a reorganization plan that results in the school administrative unit's not meeting the implementation timeline for reorganization.

10. It provides that the sections of the Act that amend the Maine Revised Statutes, Title 20-A, sections 1305-C, 1701-C and 2307 apply retroactively to January 1, 2008 as long as the retroactivity application does not affect the validity of a budget meeting or budget validation referendum called or conducted in accordance with prior law before the effective date of this Act.