

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

SECOND REGULAR SESSION-2010

Legislative Document

No. 1732

H.P. 1230

House of Representatives, January 11, 2010

An Act To Allow a Municipality To Withdraw from a Regional School Unit

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND
Clerk

Presented by Representative MILLER of Somerville.

Cosponsored by Senator ROSEN of Hancock and

Representatives: CAIN of Orono, CONNOR of Kennebunk, MacDONALD of Boothbay, MILLETT of Waterford, NUTTING of Oakland, SCHATZ of Blue Hill, Senator: RAYE of Washington.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 20-A MRSA §1466** is enacted to read:

3 **§1466. Withdrawal of a single municipality from a regional school unit**

4 **1. Petition.** The residents of a municipality that has been a member of a regional
5 school unit for at least 3 years may petition to withdraw from the regional school unit in
6 accordance with this subsection.

7 A. Ten percent of the number of voters in the municipality who voted at the last
8 gubernatorial election must sign the petition to withdraw from the regional school
9 unit.

10 B. At least 10 days before the special election called pursuant to this paragraph, the
11 municipal officers of the municipality within the regional school unit shall hold a
12 posted or otherwise advertised public hearing on the petition. The municipal officers
13 shall call and hold a special election in the manner provided for the calling and
14 holding of town meetings or city elections to vote on the withdrawal from the
15 regional school unit.

16 C. The petition to withdraw from the regional school unit must be approved by secret
17 ballot by a majority vote of the voters present and voting before it may be presented
18 to the regional school unit board and the commissioner. Voting in towns must be
19 conducted in accordance with Title 30-A, sections 2528 and 2529, even if the towns
20 have not accepted the provisions of Title 30-A, section 2528, and voting in cities
21 must be conducted in accordance with Title 21-A.

22 **2. Form.** The article to be voted upon must be in substantially the following form:

23 "Article: Do you favor filing a petition for withdrawal with the board of
24 directors of regional school unit (name of regional school unit) and with the
25 Commissioner of Education, authorizing the withdrawal committee to expend \$
26 (insert amount) and authorizing the (municipal officers; i.e., selectpersons, town
27 council, etc.) to issue notes in the name of the (name of the municipality) or
28 otherwise pledge the credit of the (name of the municipality) in an amount not to
29 exceed \$ (insert amount) for this purpose?

30 Yes No"

31 **3. Notice of vote.** If residents of the municipality vote favorably on a petition for
32 withdrawal, the clerk shall immediately give written notices, by registered mail, to the
33 secretary of the regional school unit and the commissioner that must include:

34 A. The petition adopted by the voters, including the affirmative and negative votes
35 cast; and

36 B. An explanation by the municipal officers, stating to the best of their knowledge
37 the reason or reasons why the municipality seeks to withdraw from the regional
38 school unit.

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4. Agreement for withdrawal; notice; changes in agreement; final agreement.

The agreement for withdrawal must comply with this subsection.

A. The commissioner shall direct the municipal officers of the petitioning municipality to select representatives to a withdrawal committee as follows: one member from the municipal officers, one member from the general public and one member from the group filing the petition. The commissioner shall also direct the directors of the regional school unit board representing the petitioning municipality to select one member of the regional school unit board who represents that municipality to serve on the withdrawal committee. The municipal officer and the member of the regional school unit board serve on the withdrawal committee only so long as they hold their respective offices. Vacancies must be filled by the municipal officers and the regional school unit board. The chair of the regional school unit board shall call a meeting of the withdrawal committee within 30 days of the filing of the notice of the vote in subsection 3. The chair of the regional school unit board shall open the meeting by presiding over the election of a chair of the withdrawal committee. The responsibility for the preparation of the agreement rests with the withdrawal committee, subject to the approval of the commissioner. The withdrawal committee may draw upon the resources of the department for information not readily available at the local level and employ competent advisors within the fiscal limit authorized by the voters. The agreement must be submitted to the commissioner within 90 days after the withdrawal committee is formed. Extensions of time may be granted by the commissioner upon the request of the withdrawal committee.

(1) The agreement must contain provisions to provide educational services for all students of the petitioning municipality within the regional school unit. The agreement must provide that during the first year following the withdrawal, students may attend the school they would have attended if the petitioning municipality had not withdrawn. The allowable tuition rate for students sent from one municipality to another in the former regional school unit must be determined under section 5805, subsection 1, except that it is not subject to the state per pupil average limitation in section 5805, subsection 2.

(2) The agreement must establish the withdrawal to take effect at the end of the regional school unit's fiscal year.

(3) The agreement must establish that the withdrawal will not cause a need within 5 years from the effective date of withdrawal for school construction projects that would be eligible for state funds. This limitation does not apply when a need for school construction existed prior to the effective date of the withdrawal or when a need for school construction would have arisen even if the municipality had not withdrawn.

(4) The agreement must establish how transportation services will be provided.

(5) The agreement must provide for administration of the new administrative unit, which should not include the creation of new supervisory units if at all possible.

- 1 (6) The agreement must make provision for the distribution of financial
2 commitments arising from outstanding bonds, notes and any other contractual
3 obligations that extend beyond the proposed date of withdrawal.
- 4 (7) The agreement must provide appropriately for the distribution of any
5 outstanding financial commitments to the superintendent of the regional school
6 unit.
- 7 (8) The agreement must provide for the continuation and assignment of
8 collective bargaining agreements as they apply to the new or reorganized regional
9 school unit for the duration of those agreements and must provide for the
10 continuation of representational rights.
- 11 (9) The agreement must provide for the continuation of continuing contract
12 rights under section 13201.
- 13 (10) The agreement must provide for the disposition of all real and personal
14 property and other monetary assets.
- 15 (11) The agreement must provide for the transition of administration and
16 governance of the schools to properly elected governing bodies of the newly
17 created administrative unit and must provide that the governing body may not be
18 elected simultaneously with the vote on the article to withdraw unless the
19 commissioner finds there are extenuating circumstances that necessitate
20 simultaneous elections.
- 21 B. Within 60 days of the receipt of the agreement, the commissioner shall either give
22 it conditional approval or recommend changes. The changes must be based upon the
23 standards set forth in paragraph A and the commissioner's findings of whether the
24 contents of the agreement will provide for appropriate educational and related
25 services to the students of the petitioning municipality and for the orderly transition
26 of assets, governance and other matters related to the petitioning municipality and the
27 regional school unit.
- 28 C. If the commissioner gives conditional approval of the agreement, the
29 commissioner shall notify the regional school unit board and the municipal officers
30 by registered mail of the time and place of a public hearing at least 20 days prior to
31 the date set for the hearing to discuss the merits of the proposed agreement of
32 withdrawal. The chair of the regional school unit board shall conduct the hearing.
- 33 (1) The regional school unit board shall post a public notice in each municipality
34 of the time and location of the hearing at least 10 days before the hearing.
- 35 (2) Within 30 days following the hearing under this paragraph, the withdrawal
36 committee shall forward the final agreement to the commissioner.
- 37 D. If the commissioner recommends changes to the agreement, the commissioner
38 shall:
- 39 (1) Send the agreement back to the withdrawal committee for necessary
40 corrections;
- 41 (2) Establish a maximum time within which to make the corrections; and

1 A. A municipal vote on a petition for withdrawal if the petition received less than
2 45% of the votes cast; or

3 B. A municipal vote on a withdrawal agreement if the agreement received less than
4 60% of the votes cast.

5 **10. Cost of advisors.** The expense of employing competent advisors by the
6 municipality petitioning to withdraw must be borne by the municipality, and the expense
7 of employing competent advisors by the regional school unit must be borne by the
8 regional school unit with the municipality bearing its share according to the regional
9 school unit's cost-sharing agreement.

10 **11. Determination of vote.** The town clerk or city clerk shall, within 24 hours of
11 determination of the result of the vote in the municipality, certify the total number of
12 votes cast in the affirmative and the total number of votes cast in the negative on the
13 article to the commissioner.

14 **12. Determination of results; execution of agreement.** If the commissioner finds
15 that a majority of the voters voting on the article have voted in the affirmative, the
16 commissioner shall notify the municipal officers and the regional school unit board to
17 take steps for the withdrawal in accordance with the terms of the agreement for
18 withdrawal.

19 **13. Recount; checklists and ballots; disputed ballots.** This subsection applies to
20 recounts, checklists, ballots and disputed ballots.

21 A. If, within 7 days of the computation and recording of the results of the voting, the
22 municipality requests to the commissioner in writing a recount of the votes, the
23 commissioner shall immediately cause the checklists and all the ballots cast in the
24 municipality to be collected and kept at the commissioner's office so they may be
25 recounted by the municipality.

26 B. The town clerk or city clerk of the municipality is authorized to deliver the
27 checklists and ballots to the commissioner, notwithstanding any other provision of
28 law to the contrary.

29 C. The commissioner shall resolve any question with regard to disputed ballots.

30 **14. Execution of agreement; certified record; certificate of withdrawal.** When
31 the agreement for withdrawal has been put into effect by the municipality, the municipal
32 officers shall notify the commissioner by certified mail that the agreement of withdrawal
33 has been executed.

34 **15. Indebtedness.** This subsection applies to outstanding indebtedness.

35 A. Whenever a municipality withdraws from a regional school unit having
36 outstanding indebtedness, the regional school unit remains intact for the purpose of
37 securing and retiring the indebtedness. The withdrawal agreement may provide for
38 alternate means for retiring outstanding indebtedness.

39 B. For the purposes of this subsection, "outstanding indebtedness" means bonds or
40 notes for school construction projects issued by the regional school unit board

1 pursuant to the authorization established under chapter 609 or Title 20, sections 3457
2 to 3460 or obligations to the Maine School Building Authority pursuant to any
3 contract, lease or agreement made by the regional school unit board pursuant to
4 approval of the contract, lease or agreement in a meeting of the regional school unit,
5 but does not include any indebtedness of the municipality assumed by the regional
6 school unit at the time of formation nor any contract, lease or agreement of the Maine
7 School Building Authority to which by operation of law the regional school unit has
8 become the assignee.

9 **16. General purpose aid.** When a municipality withdraws from a regional school
10 unit, the general purpose aid for the municipality must be computed in accordance with
11 chapter 606-B.

12 **17. Committee recall.** If the commissioner determines that the withdrawal
13 committee has failed to comply with the requirements of this section, the commissioner
14 may authorize the municipal officers to appoint new representatives to the withdrawal
15 committee.

16 **18. Transfer of property.** The regional school unit board may negotiate with the
17 withdrawal committee regarding an equitable division of the regional school unit's
18 property between the regional school unit and the municipality represented by the
19 withdrawal committee and transfer title of the property to the municipality following
20 withdrawal. The regional school unit board shall determine that the regional school unit's
21 educational program will not be disrupted solely because of the transfer of any given
22 property before it may complete the transfer.

23 **19. Reorganization.** A municipality that withdraws from a regional school unit
24 under this section shall join the same or another regional school unit using the procedures
25 provided in section 1465 within 2 years after withdrawing from the regional school unit.
26 A municipality that does not join a regional school unit within 2 years of withdrawal is
27 subject to the penalties applicable to a nonconforming school administrative unit under
28 section 15696.

29 **Sec. 2. 20-A MRSA §1467** is enacted to read:

30 **§1467. Transfer of a municipality from one regional school unit to another**

31 **1. Petition to commissioner.** Two regional school unit boards may petition the
32 commissioner by joint resolution to permit a municipality to transfer from one regional
33 school unit to the other, as long as that municipality is being transferred to a regional
34 school unit contiguous to the municipality.

35 **2. Transfer agreement.** The 2 regional school unit boards and the municipal
36 officers of the municipality involved shall form a committee to prepare a transfer
37 agreement within 60 days after being authorized by the commissioner to prepare the
38 agreement. Extensions of time may be granted by the commissioner.

39 A. The committee shall consider the standards set forth in section 1466, subsection 4,
40 paragraph A in preparing the agreement.

1 B. The approval process for the agreement must follow the steps set forth in section
2 1466, subsections 4 to 16.

3 C. The following article must appear on the ballot when the transfer of a
4 municipality is considered under paragraph B.

5 "Article: Do you favor permitting the (name of municipality) to transfer
6 from regional school unit (name of regional school unit) into regional
7 school unit (name of regional school unit) as a participating municipality of
8 that regional school unit subject to the terms and conditions of the
9 agreement of transfer approved by the Commissioner of Education dated
10 (insert date)?

11 Yes No"

12 A copy of the agreement must be posted with each warrant that directs the citizens to
13 vote upon the question.

14 D. The article must be approved by a majority of votes cast in both regional school
15 units and by a majority of votes cast in the municipality to be transferred before the
16 agreement may take effect.

17 E. A complete certified record of the transaction involved in the transfer must be
18 filed with the commissioner. The commissioner shall issue immediately a certificate
19 of transfer to the secretaries of the regional school units by registered mail to be filed
20 with the regional school unit boards involved and shall file a copy of the certificate of
21 transfer in the office of the Secretary of State.

22 **3. Outstanding indebtedness.** Whenever a municipality is detached from a regional
23 school unit having outstanding indebtedness, the municipality remains as part of the
24 regional school unit from which it was detached for the purposes of paying its proper
25 portion of the indebtedness until the indebtedness is redeemed. The municipality is not
26 part of the regional school unit from which it was detached for the purpose of any
27 outstanding indebtedness incurred subsequent to the date of the certificate of transfer.

28 For purposes of this subsection, "outstanding indebtedness" means bonds or notes for
29 school construction projects issued by the regional school unit board pursuant to the
30 authorization established under chapter 609 or Title 20, sections 3457 to 3460 or
31 obligations to the Maine School Building Authority pursuant to any contract, lease or
32 agreement made by the regional school unit board pursuant to approval of the contract,
33 lease or agreement in a meeting of the regional school unit, but does not include any
34 indebtedness of the municipality assumed by the regional school unit at the time of
35 formation nor any contract, lease or agreement of the Maine School Building Authority to
36 which by operation of law the regional school unit has become the assignee.

37 **Sec. 3. 20-A MRSA §1468** is enacted to read:

38 **§1468. State board review of commissioner's decisions**

39 A regional school unit or other interested party may request that the state board
40 reconsider decisions made by the commissioner under this subchapter. The state board

1 has the authority to overturn decisions made by the commissioner. In exercising this
2 power, the state board is limited by this subchapter.

3 **SUMMARY**

4 This bill enacts into law provisions regarding the reorganization of regional school
5 units. The new provisions are similar to the Maine Revised Statutes, Title 20-A, former
6 sections 1405 and 1406 and allow the withdrawal from a regional school unit of a
7 municipality and the transfer of a municipality out of one regional school unit and into
8 another. A municipality that wishes to withdraw from a regional school unit must have
9 been a member of that regional school unit for at least 3 years and must become a
10 member of a regional school unit within 2 years of withdrawal or be subject to the
11 penalties that apply to nonconforming school administrative units. The bill also includes
12 provisions that formerly applied in this area of law authorizing the State Board of
13 Education to review decisions of the Commissioner of Education.