

# A Primer for School Reorganization

*EDITOR'S NOTE: This article was prepared by Sue Bell and Kay Rand of Bernstein Shur Government Solutions (BSGS) and Linda McGill, Pat Peard and Pat Scully of Bernstein Shur. BSGS is the public and government relations subsidiary of Bernstein Shur. Bernstein Shur is legal counsel for the Maine Municipal Association on corporate and employment matters, and represents numerous state, county and municipal government entities in corporate and labor relations matters.*

The State's biennial budget just enacted by the Legislature for the two fiscal years that begin July 1, 2007 and July 1, 2008 contains a new law that creates a new term in the public lexicon – regional school units – and ultimately rids our lexicon of SADs (School Administrative Districts) and CSDs (Community School Districts). For the public policy wonks who have struggled for years trying to understand the difference between an SAD and a CSD versus a school union or a municipal school department, you can now turn your attention to trying to understand regional school units – how they're created and how your existing school administrative unit is dissolved.

The new law, sometimes called the School Administrative Reorganization Law, is significant public policy that will dramatically change how some of our schools are governed. It's important for municipal officials to understand this new law and to work in partnership with their school officials and community to implement it in a manner that hopefully yields the Legislature's intent – to create greater educational opportunity for Maine students in a more efficient manner.

What follows is a series of questions

and answers about the new School Administrative Reorganization Law. While this Q&A does not attempt to answer every question municipal officials might have about the new law, it should serve as a useful primer on this important legislation.

**1. Are all school units affected by the school reorganization legislation just enacted by the Legislature as part of the biennial state budget?**

Yes. The new law applies to all the existing types of school administrative units – SADs, CSDs, municipal school departments that are part of a school union, and other municipal school departments. However, the larger municipal school systems (over 2,500 students), and certain school systems that receive special exceptions (see question 3) are less affected, but still must comply with the budget validation process and will be subject to the overall EPS-based reduction in school administrative costs. The new law applies to all publicly supported schools, including private secondary schools approved to receive public funds that enroll 60% or more publicly funded students – the so-called 60/40 schools or the academies.

**2. What is the primary goal of the new school reorganization law and how will it directly impact my community?**

The law establishes a process for reorganizing the 288 school administrative units that exist in Maine today into 80 regional school units or a number of school units that may be greater than 80 as long as those school systems meet the minimum size and efficiency standards established by the new law. In those regions of the state that are not remarkably rural or geographically isolated, the goal is that the existing

school units will partner with other school systems to form a regional school unit of at least 2,500 resident students. Each regional school unit is required to provide comprehensive programming for all students from kindergarten to grade 12 and must include at least one publicly supported secondary school. Where reorganization into regional school units is made difficult for reasons of geography, demographics, transportation, economics or populations density, the existing school unit (except for tribal or off-shore island schools) is required to serve at least 1,200 students. Every school system is expected to reorganize its administrative structures to reduce costs, in line with the reduced state EPS allocation for school administrative costs.

**3. Are there exceptions in the law that would allow the school administrative unit in my municipality to stay the same?**

All school systems will be affected to some degree by the new law's reorganization requirements, although some will be affected in a greater way than others. Further, there are significant changes to adoption of school budgets that will affect all school administrative units.

School systems that are not directly required to consolidate are nonetheless required to file an alternative plan that addresses how the unit will save enough money by reorganizing its own internal administrative functions, duties and noninstructional personnel so that increased operational costs for 2008-2009 can be absorbed in the budget without any adverse impact on the instructional program.

Units that are permitted to con-

sider filing an alternative plan are:

- offshore islands;
- schools operated by a tribal school committee;
- a school administrative unit that serves more than 2,500 students, or 1,200 students where circumstances justify an exception to the 2,500 student requirement (see paragraph below);
- a school administrative unit that is unable to achieve the enrollment goal of 2,500 after performing “due diligence” to develop a regional plan and experiences rejection by all other surrounding districts will not be penalized (see Question 8, below) if their plan documents efforts to consolidate and the plan includes alternative ways of meeting efficiencies;
- a school administrative unit that is defined by the new law as an “efficient, high performing district”: There are six school systems that meet this fixed definition, which is:
  - a school system that contains at least 3 school facilities identified as “higher performing” in the May 2007 report by the Maine Education Policy Research Institute; and,
  - the school system’s reported 2005-2006 per-pupil expenditures for system administration represent less than 4% of its total per-pupil expenditures.

(NOTE: the new law directs the Commissioner of Education to promulgate rules by December 1, 2007 that further develop the definition of “efficient, high-performing” school systems so that additional school systems may become eligible in the future.)

The law recognizes the following circumstances as potential justification for forming a regional unit with less than 2,500 students although no quantifying standards or other guidelines are provided in the statute that might explain how these criteria might be applied by the Commissioner: geography, including physical proximity and the size of the current school administrative unit; demographics, including student enrollment trends and the composition and nature of communities in the regional school unit; economics, including existing collaborations to be preserved or enhanced and opportunities to deliver commodities and services to be maximized; transportation; population density; or other

unique circumstances, including the need to preserve existing or developing relationships, meet the needs of students, maximize educational opportunities for students and ensure equitable access to rigorous programs for all students.

**4. I’ve heard that implementation of this new law is immediate. What are the important dates that I should be aware of?**

**July 15, 2007:**

By this date, the Department of Education must conduct one or more meetings in each of the career and technical education regions in the State to present information about the requirements of this new law. The meetings have already been scheduled, beginning June 18, and can be found on the Department of Education’s web site. Notice of the meetings must be provided to municipal officials.

**August 31, 2007:**

Each school administrative unit must file with the Department of Education (DOE):

- A notice of intent to engage in planning and negotiations with other school administrative units for the purpose of developing a reorganization plan to form a regional school unit; OR
- A notice of intent to submit an alternate plan (see above).

**September, 2007 or even earlier:**

A reorganization planning committee needs to be formed in school units that intend to engage in planning or negotiation to create a regional school unit. DOE is directed to provide guidelines for the formation of the reorganization planning committees and the law states that the committees should include representation from all the units participating in the reorganization, as well as the member municipalities and community residents.

**December 1, 2007:**

The reorganization plan is to be submitted to DOE by December 1, 2007 by those units that filed a notice of intent to form a regional school unit and intend to get a consolidated school system up and running by July 1, 2008. For those school units that provided notice of intent to file an alternate plan, the alternate plan must also be filed by this date. This December 1 deadline may be interpreted by some to apply to all reorganization plans, re-

gardless of when the newly consolidated system is scheduled to begin operation. Changes were made to the bill just before enactment extending the time for voter approval of the reorganization plan which might provide some flexibility to the December 1 deadline.

**December 15, 2007:**

DOE must notify the municipalities and the school administrative units that file a plan by the December 1 deadline whether the reorganization or alternate plan meets the requirements of the law. If DOE finds the plan inconsistent with the law, the plan must be returned by this date with specific suggestions for modifications that will result in compliance as well as written findings identifying the specific reasons why the plan did not meet the requirements of the law..

**January 15, 2008:**

This deadline applies to those school consolidation plans that would have the new school system up-and-running by July 1, 2008 rather than July 1, 2009. On or before this date, a referendum must be held on the proposed reorganization plan in each municipality that will be part of the reorganized regional school unit. DOE will pay the cost of the referendum.

**June 10, 2008:**

A referendum must be held on this date for those plans that are designed to have the consolidated school systems up-and-running by July 1, 2009 rather than July 1, 2008. DOE will not pay for the cost of this referendum as it is already the date of a general election. Although the new law mandates a referendum vote on this date, a referendum vote to accomplish the same result that is held either later or earlier in 2008 would be just as effective. For example, if the school reorganization plan is not presented to the voters until the November 2008 election, the reorganization would be approved in time to be up-and-running by July 1, 2009 and the school system would experience none of the financial penalties described below.

**November 4, 2008:**

Any school administrative unit that fails to approve a reorganization plan on or before this date will be subject to penalties that are set forth in the law.

**5. DOE has offered a model for regional school units that proposes 62 regional school districts. What is the pur-**

## pose of the DOE model?

These alignments are suggestions only. Local units aren't required by the law to follow these suggestions. Local units should pursue regional alignments that make the most sense and that ultimately can be endorsed by a majority of voters at a referendum.

## 6. What is the process for re-submitting reorganization plans if: (1) our plan is not approved by the Commissioner; or (2) our plan is rejected by the voters at referendum?

If DOE returns a plan that was submitted on December 1 or thereafter, without approval, the school administrative unit must revise the reorganization plan and submit a revised plan not more than 30 days after DOE returns the original plan. DOE has a maximum of 14 days to act on the revised plan. This process can repeat itself until the plan meets with DOE approval. The plan must ultimately be approved by DOE and sent to referendum by November 4, 2008.

If a plan is rejected at referendum, regardless of when it is held, a school administrative unit can restart the process with the same or other school administrative units and may seek assistance from DOE to prepare another reorganization plan. Penalties apply to any school administrative unit that fails to approve a reorganization plan at referendum on or before November 4, 2008 for implementation by July 1, 2009.

## 7. How will the votes at the referendum be tallied? May one municipality that votes not to approve a plan kill the entire plan?

The referendum must be held in all the municipalities in all the school administrative units that are part of the proposed regional school district. The reorganization plan will be considered to have been approved if a majority of votes cast in each of the pre-existing districts votes in favor of approval of the plan. A single municipality within an existing school administrative unit that votes no cannot sway the vote in that direction if a majority of the voters in all the municipalities within the district vote yes. However, if the majority of voters in one of the school administrative units that is being merged into the regional school unit votes no, the plan is not approved.

## 8. What penalties will be applied

## starting July 1, 2009 to those municipalities that have not formed regional school units by November 4, 2008?

The penalty provisions provided in the law are:

a. for those so-called "low receiver" school systems that are provided only a specially-calculated "minimum subsidy" under current law, a 50% reduction in their "minimum subsidy".

b. For all other non-compliant school systems, a 50% reduction in state financial support for "system administration", which represents the costs associated with the superintendent's office as calculated by the EPS school funding model.

c. less favorable consideration for approval and funding for school construction pursuant to rules that need to be developed by the state board of education; and

d. The percentage of state General Purpose Aid for units that "opt out" will never go to 55% state share but will be frozen at 53.86%. The net effect will be that those units that choose not to reorganize will be subject to a higher local contribution (that is, a higher "maximum mill rate effort") than those who do reorganize.

## 9. How will the new regional school units be governed? How will new regional school board directors be chosen?

The regional school unit board will be composed of elected directors and will be the governing entity responsible for authorizing and overseeing the operation of schools within the regional school unit. Decisions on how municipalities will be represented – including the size and composition of the board and the method of voting will be detailed in the reorganization plan submitted to the Commissioner of Education for approval.

The law provides the following four methods of apportionment:

*Method A:* Directors represent sub-districts that must, as far as practicable, be whole municipalities. If municipalities are divided into sub-districts, then they must be divided into sub-districts of equal size. If this option is selected, an election must be held within 60 days, but no earlier than 45 days after notification of the approval of the reorganization plan, the municipal officers shall call a special election to elect directors to serve under the

plan for the regional school unit.

*Method B:* Directors cast "weighted votes". 1,000 votes are apportioned among all members of the board. The ratio of the number of votes cast by the directors representing a municipality in relation to the number 1,000 must be the same ratio to the nearest whole number as the population of the municipality is in relation to the population of all municipalities in the regional school unit.

*Method C:* Directors are elected at large by all of the voters in the regional school unit. Nominations for directors must be made circulating petitions. The petitions must be signed as provided in Title 30-A, Section 2528, Subsection 4. If a candidate is a voting resident in a municipality having a population of less than 200, the petitions must be signed by at least 20% of the registered voters of that municipality.

*Method D:* Directors are elected by any method other than those set forth that meets the requirements of the one-person, one-vote principle.

## 10. My municipality belongs to an SAD or a CSD. What happens to the cost-sharing agreement that is now in existence?

All cost sharing agreements that were adopted according to the provisions of LD 1 or pursuant to a private and special law and that were still in effect on June 7, 2007 will remain in effect unless all of the parties to the agreement agree to modify or terminate the agreement. The existence of such cost sharing agreements may not be used as reason to preclude the formation of a regional school unit.

## 11. The new law makes fairly dramatic changes to the way school budgets are adopted. What are they and do they apply to those schools that remain municipal departments?

The regional school unit board must propose a budget based on "transparency" which means that all budgets will be based on the same format which is set forth in the law. The new budget format is based on six specific "cost centers", including, for example, "expenditures" which in turn has 11 specific subparts and "revenue sources" which has three specific subparts. A public warrant will be issued before the regional school unit budget meeting.

Once the regional School unit's

budget is approved at the prescribed budget meeting, the new law states that a validation referendum of the voters in the municipalities in the regional school unit must be held within 10 days (not including weekends and holidays) of that budget meeting. The regional school unit board must provide the voters with written information specifically prescribed in the law to assist them that will be posted in the polling places. There is no requirement for a public hearing before the vote. The voters may only vote up or down on the entire budget. The specific language that must be used in the referendum vote is set forth in the law.

Every three years the voters in the regional school unit will consider if they wish to continue using the validation referendum procedures for another three years.

If the voters do not approve the budget as presented, the regional school unit Board must conduct another budget meeting within 10 days and resubmit a budget for validation referendum by the voters. If a budget is not approved by July 1 of that year, the most recent budget proposed by the regional school unit board and adopted at a budget meeting will become the effective budget until another budget is validated by the voters.

These provisions apply to all school units including the larger municipalities that remain departments.

**12. As existing school administrative units are dissolved, what happens to their property and assets?**

The regional school unit board will decide what specific school property of the school units in existence before the formation of the regional school unit is "necessary" for the new consolidated unit to carry out its functions and will make a written request to the previous school unit or municipality that title to the property and/or buildings be transferred to the regional school unit board. Once the written request is made the transfers of title must be made.

Any balance remaining in any school account maintained by a school unit before the creation of the new regional school unit must be transferred to the treasurer of the new regional school unit. These transferred funds must be used to reduce that previous school unit or municipality's local con-

tribution to the regional school unit.

**13. What happens to the outstanding indebtedness of the existing school administrative unit once the regional school unit is formed?**

The new regional school unit will assume the indebtedness for state approved school construction project of the previous school unit. The regional school unit may use any sinking funds or other accounts previously earmarked for this debt to pay off the assumed indebtedness. The regional school units are not required to assume any "local" debt, but the assumption of this debt is an issue that may be negotiated between the previous school unit and the regional school unit board.

As a result, bonds, notes, loan agreements or other debt instruments issued to previous school units before July 1, 2008 will remain the obligation of the previous school unit unless the new regional school unit agrees to pay this existing debt. Even if the new regional school unit does agree to pay the debt the previous school unit still retains responsibility if the new regional school unit fails to pay the debt.

An original education unit may not be finally dissolved while any existing debt held by the original education unit remains outstanding.

**14. Do all teachers and school personnel get transferred to the new regional school unit?**

All teachers and school employees employed by a school unit on the day before the effective date of the new regional school unit which is set by the formal approval of the regional school unit by the state board of education will be transferred to and employed by the regional school unit. The rights and benefits of these transferred employees will not be increased or decreased by the transfer.

The new regional school unit also is required to honor any agreements or contracts entered into by the previous school unit for the benefit of their retirees and former employees.

Employees who are transferred and are still in a probationary period at the time of transfer will have the length of their probationary period measured from the date of their most recent date of employment by the previous school unit.

**15. What happens to the contract of a superintendent who will lose his/her**

**job as superintendent?**

A new regional school unit assumes all obligations for a superintendent's contract that applied to the school administrative unit with which the superintendent negotiated and executed his or her contract. Therefore, if a superintendent's job is terminated after the formation of the regional school unit but during the term of his or her contract, the provisions of his or her individual contract that apply to termination will control. If a superintendent's contract is terminated by the school administrative unit before merger, the termination will similarly be controlled by the terms of the individual contract. In general, unless there is language in an individual contract that is contrary, superintendents' contracts will not be cancelled or modified simply by virtue of the creation of the regional school unit.

**16. Do existing collective bargaining contracts stay in effect?**

The rights and obligations contained in existing collective bargaining contracts will be assumed by the new regional school unit and will stay in full effect until the expiration date, unless the regional school unit and the bargaining agent agree on early termination. Once a contract expires, a new contract will be negotiated that will apply to the new, merged bargaining unit.

**17. How will new bargaining units be formed?**

New bargaining units must be structured on a regional school unit-wide basis and must maintain the groupings of employee classifications that existed prior to reorganization to the extent possible. In general, new units may be formed in one of two ways: either by mutual agreement between the existing bargaining agent and the regional school unit board of directors or, if there is no mutual agreement, by a unit determination process supervised by the Maine Labor Relations Board. The unit determination process may involve hearings to take evidence on the appropriate unit formation. The formation of new bargaining units is not subject to the approval or disapproval of the affected employees.

**18. How will new bargaining agents be chosen?**

The process for choosing a bargaining agent for new or combined units depends on the situation that existed

prior to reorganization. If each of the units that have been merged to form the new unit had the same state-wide bargaining agent prior to reorganization, the merged unit will have the same bargaining agent. If the merged units formerly had the same state-wide agent but different local affiliates, the bargaining agent will select a single affiliate to represent the merged unit. If the merged units have been represented by different bargaining agents, an election will be held to determine, by a majority vote of employees in the unit, which agent will represent the new unit or whether no representation is desired. When employees who have not been unionized are merged with employees in the same classification who are represented by a bargaining agent, an election will be held to determine whether the bargaining agent will represent the merged group or whether the group will be unrepresented.

**19. When must new collective bargaining agreements be negotiated?**

There is no deadline for completing negotiations. Negotiations must begin after the merger and after new units are determined. The goal of negotiations for the new merged units is to achieve uniformity and consistency in policies, practices, salary schedules, hours and working conditions as soon as practicable.

**20. What happens when there are collective bargaining agreements with different expiration dates?**

Collective bargaining contracts will be honored until their expiration dates, unless the bargaining agent and the regional school unit board agree on earlier termination. When contracts covering employees in a merged group expire at different times, the regional school unit and the bargaining agent may negotiate an interim contract for employees covered by a contract that has already expired, so that all contracts expire on the same date.

**21. \$36.5 million was deappropriated from Essential Programs and Services in the state fiscal year that begins July 1, 2008. How was that done?**

All school units will have reduced state allocation for system administration, transportation, special education and facilities and maintenance for the 2008-2009 school year, as follows:

- System Administration: The per-

pupil amount for “system administration” will be based on the EPS-based average system administration expenditures in school year 2005-2006 divided by the average October and April enrollment counts for the fiscal year, reduced by 50% and adjusted for inflation;

- Operation and Maintenance of plant: The allocation for the per pupil amount for “operations and maintenance of plant” will be reduced by 5%;

- Special education: The allocation for special education costs will be reduced by 5%; and

- Transportation: The allocation for transportation costs will be reduced by 5%.

The 36.5 million is the state’s share of these allocation adjustments.

**22. Will reorganization result in school closings?**

Local schools cannot be closed unless the regional school unit board votes by a 2/3rds vote AND the municipality where the school is located votes by referendum to approve the closure. If the municipality votes to keep open a school that the regional school unit board votes to close, the municipality is responsible for the additional operating and transportation costs for keeping the school open or the amount that would be saved if the school were closed. If a school proposed for closure is an elementary school that serves students from more than one municipality, an election must be held in each of the municipalities that sent all elementary students from that municipality to the school. If the majority of voters in each of the municipalities votes to keep the school open, the school is not closed and the municipalities share in the costs in the same proportion as they share current operating expenses.

**23. Students in my municipality can choose between a number of high schools. Will they now be forced to attend the high school that is part of the regional school unit?**

Under current law, a student who resides in a school administrative district that does not maintain schools for grades from kindergarten to grade 12, and that does not enter into a contract for the education of these students with another entity, has the option of attending a public school in another school administrative unit or private school approved for tuition purposes.

Students who have school choice now will continue to have school choice after reorganization, even if they live in a town that joins a regional school unit that has its own high school. Additional expenses must be paid by the sending regional school unit or municipality in which the student resides.

**24. What financial and technical resources are available to facilitate school reorganization requirements?**

The Department of Education’s budget includes resources to assist in the following ways:

- \$1.7 million in each of the next two years to provide assistance and implementation services, upon request, to the governing bodies of the school administrative units in existence to ensure the ability to fill the terms of the new reorganization law;

- \$3.5 million is available in the state fiscal year that begins on July 1, 2008 to provide resources for software and other tools to assist in achieving efficiencies in transportation, procurement and needed other services; and

- The commissioner is required to establish a recommendation to support the start-up costs associated with the reorganization of regional school units that are approved on or before January 15, 2008 and begin implementation on July 1, 2008.