

Merging Districts in Vermont: A Legal Overview

Act **46**
Implementation
Project

VSA, VSBA, VSBIT

Act 46: Creating PreK-12 Education Systems



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On or before July 1, 2019 educational opportunities in Vermont shall be provided through **“sustainable governance structures”** that provide PreK-12 educational opportunities at a reasonable cost.

Merging Districts in Vermont: A Legal Overview

- ▶ Chapter 11 of Title 16
- ▶ Act 153 of 2010
- ▶ Act 156 of 2012
- ▶ Act 46 of 2015

Chapter 11 of Title 16: Union School District Formation Process

- ▶ Create a study committee: (16 VSA 701 & 706)
 - ▶ Each member district board must vote to establish the committee, set a budget (not to exceed \$25,000), and appoint representatives
 - ▶ Representation is proportional to the equalized pupils from the member district town
 - ▶ Union high school districts do NOT vote to establish the committee (if a unified union district) and do not have formal members
 - ▶ Could appoint a member of the high school board as one of the member district representatives or have them serve on the study committee as ex officio members.

Chapter 11 of Title 16: Union School District Formation Process

- ▶ The study committee is a public body subject to open meeting laws and must elect a chair to preside over meetings.
- ▶ The committee should establish a charge to help guide its work, which includes an analysis of whether to form a union school district.
- ▶ “The study committee may determine that it is inadvisable to form a union school district or it may prepare a report in the form of an agreement between member districts for the government of the proposed union school district.” 16 VSA 706b(b)

Chapter 11 of Title 16: Union School District Formation Process

- ▶ Study committee report must address the following issues (also known as the “Articles of Agreement”): (16 VSA 706b)
 - ▶ Names of the school districts the committee considers to be necessary and/or advisable to form the new district
 - ▶ Grades that will be operated by the new district
 - ▶ A plan for the first year of operation re: transportation, assignment of staff, and curriculum
 - ▶ The indebtedness of the member districts that the new district will assume
 - ▶ The specific pieces of real property that the union shall acquire, their value, and how the new district will pay for them
 - ▶ Allocation of capital and operating expenses

Chapter 11 of Title 16: Union School District Formation Process

- ▶ Study committee report must address the following issues (cont'd):
 - ▶ Board composition and proportional representation; board shall have no more than 18 members, and each member district shall be entitled to at least one representative
 - ▶ Term of office for initial board of directors, which must include staggered terms
 - ▶ The date when the union school district proposal will be submitted to the voters
 - ▶ The date on which the union school district will begin operating schools and providing educational services
 - ▶ Any other matters the committee considers important

Chapter 11 of Title 16: Union School District Formation Process

- ▶ Once the report is complete, it is submitted to proposed member district boards for **review and comment** and is then sent to the Agency of Education for comment and State Board of Education for approval. (16 VSA 706c)
- ▶ If the SBE approves the report, the proposal goes to the electorate on the date set in the report; the vote **MUST** be by Australian ballot, at separate school district meetings held on the same day and during the same hours (16 VSA 706d). The required contents of the warning are spelled out in 16 VSA 706f.
- ▶ At the same election, the voters shall also elect directors by Australian ballot to represent the district on the union school board in the event the union is approved by the voters. (16 VSA 706e)

Chapter 11 of Title 16: Union School District Formation Process

- ▶ Within 45 days after the vote or 15 days after an unsuccessful vote to reconsider or rescind the original vote under 17 V.S.A. § 2661, whichever is later, the clerk of each district voting on the proposal to establish a union school district shall certify the results of the vote to the Secretary of Education. (16 VSA 706g)
- ▶ If the electorate of each "necessary" district votes in favor of the proposal, then a new union school district is created (includes any "advisable" districts that voted favorably) that is operational on the date specified in the report.

Chapter 11 of Title 16: Union School District Formation Process

- ▶ Articles of Agreement can be amended once approved by the electorate:
 - ▶ Any provision of the final report that was not set forth as a distinct subsection under Article 1 of the warning may be amended by a simple majority vote of the new union district board, or by any other majority of the board as is specified for a particular matter in the report. 16 VSA 706n(c)
 - ▶ A specific condition or agreement set forth as a distinct subsection under Article 1 of the warning at the vote held to establish the union school district may be amended only at a special or annual union district meeting. 16 VSA 706n(a)
 - ▶ Although the results shall be reported to the public by member district, an amendment is effective if approved by a majority of the electorate of the union district voting at that meeting. In other words, **the results of the votes are commingled.**

Proportional Representation on Union District Boards

- ▶ § 706b(9) - the articles of agreement must indicate “the method apportioning the representation that each proposed member district shall have on the union school board.”
 - ▶ method must be consistent with proportional representation requirements
 - ▶ no more than 18 members
 - ▶ each member must have at least one representative

Proportional Representation on Union District Boards

- ▶ § 706k(c) - “In a union district that elects one or more at-large directors by Australian ballot, a nomination shall be made ... by at least 60 voters from one or more member districts ...”
 - ▶ A union school district can (but is not required to) have one, or several, all, or no members voted at-large - which means it can have one, or several, all, or no members NOT voted at-large
 - ▶ Nominations can be made by voters in only one member town OR from several member towns
- ▶ § 707(c) - “A union school district may establish a system of weighted voting in its school board to reflect the principle of one person, one vote. If weighted voting is used, members of the board holding a majority of the total number of weighted votes shall constitute a quorum, and a majority of the weighted votes cast shall be necessary and sufficient for board action.”

Proportional Representation: Some Possible Models

- ▶ **Weighted Voting** – Each member town has the same number of representatives (or some other number they have agreed upon in the Articles), but each representative's vote is assigned a weight that corresponds to the member town's proportional voting strength.
- ▶ **At-Large Voting** – Each member town is assigned a certain, proportional number of representatives and each member town nominates the candidates from its own town, but all member towns vote on all candidates and the votes are commingled.
- ▶ **District-by-District Voting** – This is similar to the description of at-large voting above, but each member district votes only for its own proportionally-assigned number of representatives.

Act 153 of 2010: Regional Education Districts (RED)

- ▶ School districts that merge to create a union school district are eligible for incentives if they result in a district that has:
 - ▶ 1,250 ADM (unless waiver granted) OR
 - ▶ Was created by merging four school districts
- ▶ Districts do not need to be members of the same supervisory union in order to create a RED
- ▶ A RED shall not close any school within its boundaries during the first four years after the effective date of merger unless the electorate of the town in which the school is located consents to closure.
- ▶ The plan for merger presented to the electorate for approval shall include structures and processes that provide opportunities for local participation in the creation of RED policy and budget development.
- ▶ Approved by the electorate prior to July 1, 2017.

Act 156 of 2012: Side-by-Sides

► The Side-by Side:

1. Each new district is formed by the merger of at least two existing districts;
 2. Each new district meets all criteria for RED formation other than the size criterion;
 3. One of the new districts provides education in all elementary and secondary grades by operating one or more schools and the other new district or districts pay tuition for students in one or more grades;
 4. Each new district has the same effective date of merger;
 5. The new districts, when merged, are members of one supervisory union; and
 6. The new districts jointly satisfy the RED size criterion (1,250 ADM or four districts).
- Approved by the electorate prior to July 1, 2017.

Act 156 of 2012: MUUSDs

- ▶ The Modified Unified Union School District:
 1. If ALL local elementary school districts in the member towns of an existing union high school district vote whether to establish a unified union school district providing prekindergarten or kindergarten through grade 12; and
 2. If a **majority but not all** of the elementary school districts votes in favor of establishing the unified union school district; then
 3. A new modified union school district shall be established that shall: (A) provide to the students residing in the member towns of the union high school district education in the grades provided by the union high school district; and (B) provide elementary education **to the students residing in the current elementary school districts that voted in favor of the unified union school district.**
- ▶ Approved by the electorate prior to July 1, 2017.

Act 46 of 2015: Sustainable Governance Structures

Any new structure is expected to be designed to achieve the following outcomes:

- ▶ Provide **equity** in the quality and variety of educational opportunities
- ▶ Lead students to **meet or exceed the Education Quality Standards**
- ▶ **Maximize operational efficiencies** through greater flexibility to manage, share, and transfer resources, with a goal of increasing district-level student-to-staff ratios
- ▶ Promote **transparency and accountability**
- ▶ **At a cost taxpayers, parents, and other stakeholders value.**

Any plan submitted to the SBE should address each of these goals.

Act 46 of 2015: Preferred Structures

- ▶ A single PreK-12 district
- ▶ Serving at least 900 students
- ▶ That has one of the four most common structures:
 - ▶ Operates all grades PreK-12;
 - ▶ Operates PreK-8 and tuitions 9-12;
 - ▶ Operates PreK-6 and tuitions 7-12; or
 - ▶ Pays tuition for all students grades PreK-12.

Act 46 of 2015: Supervisory Unions

- ▶ A group of districts may propose a plan to achieve quality and cost objectives through changes in the SU operation and configuration and submit a plan for consideration to the Secretary by November 30, 2017 (this could be accomplished through a side-by-side).
- ▶ Ideally, the SU should be able to demonstrate:
 - ▶ ADM of 1,100
 - ▶ Has the smallest number of districts practicable
 - ▶ Operates in a manner that maximizes efficiencies through economies of scale and the flexible management, transfer, and sharing of nonfinancial resources among the member districts
 - ▶ Member districts consider themselves to be collectively responsible for the education of all PReK-12 students in the SU

Act 46 of 2015: Accelerated Mergers

- ▶ By **July 1, 2016**, the electorate of each member district within a supervisory union approves a plan to merge all member districts into a single PreK-12 district. This could also include merger with a neighboring supervisory district.
- ▶ New district must have a minimum ADM of 900, be operational on or before July 1, 2017, and agree to provide data to the Secretary of Education in order to evaluate the impact of the merger on quality and cost.
- ▶ Intended to support supervisory unions that have previously undertaken significant planning activities related to merger or those that are configured in a manner that lends itself to an expedited merger process.

Act 46 of 2015: Accelerated Merger Incentives

- ▶ Homestead tax rate reduction of \$.10/\$.08/\$.06/\$.04/\$.02 in the first five years of operation. Every district can realize the full reduction in the first five years. Tax rates cannot increase by more than 5% a year.
- ▶ New district will keep receiving in perpetuity any small schools grants currently received by any of the merging districts.
- ▶ Transition facilitation grant of \$150,000, or 5% of the base education amount multiplied by the new district's ADM, whichever is less.
- ▶ Keep the 3.5% hold-harmless protection for declining enrollment, which otherwise will be eliminated in FY 2021.
- ▶ Exempt from the requirement to repay a portion of state construction aid upon sale of a school building.

Act 46 of 2015: Conventional Mergers

- ▶ The law provides incentives for action if a merger plan that meets the Act 153 RED criteria or one of the RED variations of Act 156 (MUUSD, or “side-by-side” district) is approved by the electorate by July 1, 2017.
- ▶ Districts that are able to merge into a “preferred structure” that is operational by July 1, 2019 are also able to obtain incentives - there is no deadline for a vote of the electorate.
- ▶ Incentives are the same for both as for the Accelerated model, except homestead tax rate reduction of \$.08/\$.06/\$.04/\$.02 in the first **four years** of operation. Note: \$150,000 transition funds may not be available for “preferred model” approved after July 1, 2016.

Act 46 of 2015: Financial Consequences

- ▶ Districts that do not engage in voluntary structural changes will not be able to secure tax incentives.
- ▶ After July 1, 2019 these districts will only be able to retain their small schools grants if the State Board determines they are geographically isolated or can demonstrate academic excellence and operational efficiency.
- ▶ After July 1, 2020 these districts will also lose any 3.5% ADM hold-harmless protection.
- ▶ July 1, 2017 supervisory unions found to be out of compliance with centralization provisions required by 16 VSA 261a will see a 5% tax penalty.

Act 46 of 2015: Statewide Plan

- ▶ Secretary to develop a proposed plan in the spring of 2018.
- ▶ Final statewide plan will be developed and adopted by the State Board on November 30, 2018. Implementation of the transition effective July 1, 2019.
- ▶ Statewide plan **will not** require districts to lose choice or require districts to pay tuition.
- ▶ The statewide plan does not apply to the following districts:
 - ▶ Interstate school districts
 - ▶ Regional career tech center school districts
 - ▶ Districts that voluntarily merge into the preferred governance structure or a structure eligible to receive RED incentives by July 1, 2019

Act 46 of 2015: Tuitioning and Operating Districts

- ▶ Section 4 provides that statewide action cannot force a district to lose or change current operating/tuition status.
- ▶ Section 4 DOES NOT allow a single district to offer choice to some students and not to others based on historical patterns.
 - ▶ Districts could choose to grandfather current students as part of a transition plan to a new district, but that is a temporary arrangement.
- ▶ Act 46 does not change current law with respect to public high school choice, payment of tuition, or designation, EXCEPT:
 - ▶ Districts that do not operate a high school can now **choose** to designate up to three high schools, rather than one.

Act 46 of 2015: Collective Bargaining Provisions

- ▶ Within 90 days after the approval of the union school district plan of merger and the election of the new union school district board, negotiations shall commence.
- ▶ If a new agreement is not ratified by both parties prior to the day the new district becomes operational, then:
 - ▶ The parties shall comply with the existing agreements in place;
 - ▶ The parties shall adhere to the provisions of an agreement among the employees regarding how provisions under the existing contracts regarding issues of seniority, reduction in force, layoff, and recall will be reconciled during the period prior to ratification of a new agreement;
 - ▶ Any new hire will be covered by the agreement covering the largest bargaining unit

QUESTIONS?



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