

January 11, 2019

Act 46 Overview

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Goals and Structure

- Move to sustainable models of governance
- Goals
 - Equity in educational opportunities
 - Increase student achievement
 - Maximize operational efficiencies
 - Promote transparency and accountability
 - Deliver cost at value
- Voluntary mergers—Provided tax and other incentives for voluntary mergers
- Forced mergers—Directs State Board of Education to merge or realign districts and supervisory unions into more sustainable models of governance to the extent necessary to achieve the goals
- School districts cannot be forced to give up tuitioning or operating models
- Not the intent to close small schools

Voluntary Mergers

Accelerated Mergers—Preferred structure

- Unified PreK-12 district
- Serving more than 900 students
- Its own supervisory district (i.e., single-district supervisory union)
- Eligible for highest level of incentives
- Must be operational by July 1, 2017

Conventional Mergers

- Substantially the same as above, but must be operational after July 1, 2017 and by July 1, 2019
- Merging districts do not need to be contiguous or within same supervisory union
- Incentives similar to those for preferred structure (tax benefit slightly less)

REDs and RED Variations

- Act 46 incorporated the processes and incentives enacted by:
 - Act 153 of 2010 for Regional Education Districts (REDs); and
 - Act 156 of 2012 for Side-by-Side Mergers, Layered Mergers, and Modified Unified Union School Districts

- Further Side-by-Side structures authorized under Act 49 of 2017
- Must be operational by July 1, 2019

Alternative Structures

- Act 46 recognized that the preferred structure may not be possible or the best model to achieve the Act 46 goals in all regions of the State, and that a supervisory union composed of multiple member districts (alternative structure) may meet the goals, particularly if:
 - the member districts are responsible for the education of all students residing in the supervisory union;
 - the supervisory union operates in a manner that maximizes efficiencies;
 - the supervisory union has the smallest number of member school districts practicable, achieved wherever possible by the merger of districts with similar operating and tuitioning patterns and after consideration of greatly differing levels of debt among the member districts; and
 - the member districts serve more than 900 students.

- Act 46 required a district with an alternative governance structure to complete three tasks:
 - evaluate its current ability to meet or exceed the Act 46 goals;
 - meet with other districts in the area to discuss ways to promote improvement in the goals throughout the region; and
 - submit an alternative governance proposal to the Secretary of Education.

Statewide Governance Proposal and Final Plan

- **Secretary's Proposal**
 - Act 46 required the Secretary of Education to develop a proposal to realign unmerged districts into more sustainable models of governance
 - This proposal was presented to the State Board of Education on June 1, 2018
- **State Board's Final Statewide Plan**
 - Act 46 required the State Board to issue a final statewide plan by November 30, 2018. The State Board was given the authority to merge districts and realign supervisory unions in a manner that adheres to the goals of Act 46.

- Act 46 authorized the State Board to approve alternative structures only if the Board concluded that the alternative structure:
 - is the best means of meeting the goals of Act 46; and
 - ensures transparency and accountability for the member districts
- The State Board was prohibited from forcing districts to give up their tuitioning or operating models
- Act 46 exempted from the State Board Plan districts that voluntarily merged under the incentive programs, career technical center districts, and interstate school districts
- The State Board issued its plan dated November 28, 2018:
 - merging 42 districts located in 36 towns to form 11 new school districts;
 - enlarging an existing union school district by two new members;
 - merging one elementary school district into an existing district;

- conditionally requiring four further mergers (subject to approval by the receiving districts); and
 - retaining the current alternative governance structures for 47 districts.
- When the State Board's required mergers are added to the voluntary mergers, a total of 206 districts in 185 towns will have formed 50 new districts, for a net reduction of 156 districts
- **Act 46 Litigation**
 - On December 13, 2018, the Elmore-Morristown Unified Union School District et al. filed a civil action challenging the State Board of Education's Act 46 plan
 - On December 20, 2018, the Athens School District et al. filed a civil action challenging the State Board of Education's Act 46 plan
 - Nature of claims:
 - State Board process was arbitrary and capricious in violation of constitutional due process protections
 - State Board exceeded its authority under Act 46

- Unlawful delegation of authority from General Assembly to State Board in violation of constitutional separation of powers
- Unconstitutional taking of property
- Unequal treatment of school districts results in violation of Common Benefits clause of Vermont Constitution and Equal Protection clause of U.S. Constitution
- 1 V.S.A. § 213. Pending suits unaffected
 - “No act of the General Assembly shall affect a suit begun or pending at the time of its passage...”
- Masons’ Rule Sec. 111
 - “Any matter waiting adjudication in a court should not be debated or discussed in a legislative body.”