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No. 1322

H.P. 946

House of Representatives, April 3, 2013

**An Act To Amend the Laws Governing the Withdrawal of a
Municipality from a Regional School Unit**

(EMERGENCY)

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative LUCHINI of Ellsworth.
Cosponsored by Senator LANGLEY of Hancock and
Representatives: HUBBELL of Bar Harbor, MALABY of Hancock, Senator: YOUNGBLOOD
of Penobscot.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** since January 1, 2012, the residents of a municipality that has been a
4 member of a regional school unit for at least 30 months have been allowed to petition to
5 withdraw from the regional school unit pursuant to the Maine Revised Statutes, Title
6 20-A, section 1466; and

7 **Whereas,** certain withdrawal committees established subsequent to successful
8 petitions to withdraw from regional school units have not been able to submit withdrawal
9 agreements to the voters in the petitioning municipalities because the regional school unit
10 boards have not been negotiating in good faith with the withdrawal committees; and

11 **Whereas,** it is necessary to amend the provisions of the Maine Revised Statutes,
12 Title 20-A, section 1466 to permit the residents of a municipality that has been a member
13 of a regional school unit for at least 30 months a legitimate opportunity to seek voter
14 approval to withdraw from the regional school unit; and

15 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
16 the meaning of the Constitution of Maine and require the following legislation as
17 immediately necessary for the preservation of the public peace, health and safety; now,
18 therefore,

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

20 **Sec. 1. 20-A MRSA §1466, sub-§4, ¶E** is enacted to read:

21 E. If an agreement is not submitted to the commissioner within 90 days after the
22 withdrawal committee is formed or within 15 days after an extension of time is
23 granted by the commissioner upon the request of the withdrawal committee pursuant
24 to paragraph A, it is presumed that there is a dispute regarding the agreement for
25 withdrawal and the commissioner shall provide an alternative dispute resolution
26 process for resolving the dispute between the withdrawal committee and the directors
27 of the regional school unit board regarding the agreement for withdrawal. This
28 process applies only to consideration of the provisions to be contained in the
29 agreement for withdrawal as set forth in paragraph A, subparagraphs (1) to (11). For
30 the purposes of this paragraph, "party" means the withdrawal committee or the
31 directors of the regional school unit board.

32 (1) Within 15 calendar days following the last meeting of the parties that
33 occurred prior to the 90-day deadline described under paragraph A, either party
34 may notify the commissioner that it believes that an agreement for withdrawal in
35 accordance with paragraph A, subparagraphs (1) to (11) will not be reached by
36 the parties. All consideration of preparing the agreement for withdrawal must
37 cease, and each party shall submit in writing to the commissioner a final offer
38 consisting, at a minimum, of the party's final offer, a draft of the proposed
39 provisions to be contained in the agreement for withdrawal as set forth in
40 paragraph A, subparagraphs (1) to (11) and any other pertinent material. The

1 commissioner shall provide copies of each party's written final offer to the
2 arbitrator selected pursuant to this paragraph.

3 (2) Not later than 45 calendar days following the last meeting of the parties that
4 occurred prior to the 90-day deadline described under paragraph A, the
5 commissioner or the commissioner's representative shall meet with the parties
6 and shall present a list with the names of 3 proposed neutral arbitrators. Each
7 party may strike from the list one name peremptorily. The parties shall strike
8 names alternately, and the party entitled to strike the first name must be chosen
9 by lot. The one name remaining after each party has struck one name is the
10 arbitrator. The withdrawal committee and the directors of the regional school
11 unit board are equally responsible for compensating the arbitrator and for any
12 reasonable expenses incurred by the arbitrator in fulfilling the responsibilities
13 described in subparagraph (3).

14 (3) The arbitrator may hold hearings, administer oaths, examine witnesses and
15 documents, take testimony, receive evidence and issue subpoenas to compel the
16 attendance of witnesses and the production of records. The arbitrator may
17 petition the District Court to enforce the arbitrator's order compelling the
18 attendance of witnesses and the production of records. The arbitrator may at no
19 time engage in an effort to mediate or otherwise settle the dispute in any manner
20 other than that prescribed in this section. Not later than 90 days following the
21 last meeting of the parties that occurred prior to the 90-day deadline described
22 under paragraph A, the arbitrator shall choose the final offer of one party. The
23 arbitrator shall prepare the agreement language for that offer, submitted pursuant
24 to subparagraph (1), in a written proposal that contains the provisions of the
25 agreement for withdrawal as set forth in paragraph A, subparagraphs (1) to (11).
26 The agreement language prepared by the arbitrator must be presented to the
27 parties and to the commissioner.

28 (4) The final offer selected by the arbitrator presented to the parties and the
29 commissioner pursuant to subparagraph (3) is not binding on the parties unless it
30 is approved by a majority vote of the municipality pursuant to subsection 9. The
31 commissioner shall give conditional approval to the final offer selected by the
32 arbitrator, which must be presented to the voters of the petitioning municipality at
33 a district meeting held pursuant to section 1301, subsection 3, paragraph D.

34 **Sec. 2. 20-A MRSA §1466, sub-§9**, as repealed and replaced by PL 2011, c. 678,
35 Pt. J, §1, is amended to read:

36 **9. Required vote.** Before the municipality may withdraw from the regional school
37 unit, the withdrawal agreement must be approved by a majority vote of those casting
38 valid votes in the municipality, ~~and the total number of votes cast for and against~~
39 ~~withdrawal at the municipal vote must equal or exceed 50% of the total number of votes~~
40 ~~east in the municipality for Governor at the last gubernatorial election.~~

41 ~~This subsection is repealed January 1, 2015.~~

42 **Sec. 3. 20-A MRSA §1466, sub-§9-A**, as enacted by PL 2011, c. 678, Pt. J, §2,
43 is amended to read:

1 **9-A. Required vote; exception for a municipality of a school administrative**
2 **district that was reformulated as a regional school unit.** A 2/3 vote of those casting
3 valid votes in the municipality is required before a municipality that is a member
4 municipality of a school administrative district that was reformulated as a regional school
5 unit pursuant to Public Law 2007, chapter 240, Part XXXX, section 36, subsection 12
6 may withdraw from the regional school unit.

7 ~~This subsection is repealed January 1, 2015.~~

8 **Sec. 4. 20-A MRSA §1466, sub-§9-B,** as enacted by PL 2011, c. 678, Pt. J, §3, is
9 repealed.

10 **Sec. 5. 20-A MRSA §1466, sub-§10,** as enacted by PL 2009, c. 580, §9, is
11 repealed.

12 **Sec. 6. 20-A MRSA §1466, sub-§13,** as amended by PL 2011, c. 678, Pt. J, §4, is
13 further amended to read:

14 **13. Determination of results; execution of agreement.** If the commissioner finds
15 that a majority of the voters voting on the article has voted in the affirmative ~~and the total~~
16 ~~number of votes cast for and against the article equal or exceed 50% of the total number~~
17 ~~of votes cast in the municipality for Governor at the last gubernatorial election,~~ the
18 commissioner shall notify the municipal officers and the regional school unit board to
19 take steps for the withdrawal in accordance with the terms of the agreement for
20 withdrawal.

21 ~~This subsection is repealed January 1, 2015.~~

22 **Sec. 7. 20-A MRSA §1466, sub-§13-A,** as enacted by PL 2011, c. 678, Pt. J, §5,
23 is repealed.

24 **Emergency clause.** In view of the emergency cited in the preamble, this
25 legislation takes effect when approved.

26 SUMMARY

27 This emergency bill provides for a process of so-called final offer arbitration as a
28 means to resolving a dispute between a withdrawal committee and the directors of the
29 regional school unit board regarding an agreement for withdrawal for a municipality that
30 seeks to withdraw from a regional school unit. The bill proposes to require that, in the
31 event that a withdrawal committee and the directors of the regional school unit board are
32 unable to reach agreement on the provisions of an agreement for withdrawal, the
33 Commissioner of Education, in consultation with the parties, shall appoint an arbitrator to
34 assist the parties in the settlement of the dispute related to the agreement for withdrawal
35 between the parties.

36 Current law requires that the total number of votes cast for and against the
37 withdrawal agreement must equal or exceed 50% of the municipal votes cast for a
38 candidate for Governor in the last gubernatorial election. This bill eliminates that

1 requirement while still maintaining the requirement that the withdrawal agreement is
2 approved by a majority vote.

3 Finally, the bill removes changes made by Public Law 2011, chapter 678, Part J that
4 would have reinstated the 2/3 vote requirement for approving a withdrawal agreement on
5 January 1, 2015.