

CHAPTER 117

SCHOOL DISTRICT REORGANIZATION

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117.01 General provisions. (1) JURISDICTION. (a) Except as provided in par. (b), jurisdiction of a reorganization authority to make an order of school district reorganization is acquired upon the filing of a petition with the reorganization authority or upon adoption of a resolution by the reorganization authority when it proceeds upon its own motion.

(b) Jurisdiction of a state appeal board is acquired upon the filing of a notice of appeal with the state superintendent under s. 117.03.

(c) Jurisdiction of a reorganization authority to act in a school district reorganization proceeding continues until the reorganization authority disposes of the matter before it, unless lost by:

1. Failure of the reorganization authority to substantially comply with the procedural steps required by law to be taken by it prior to the making and filing of an order in such proceeding.

2. Failure of the reorganization authority to take final action upon a proposed reorganization within the time prescribed therefor in this chapter.

3. The taking of an appeal from a reorganization authority pursuant to this chapter.

(d) While a reorganization proceeding is pending and until an order granting or denying school district reorganization made therein takes effect, any other reorganization proceeding commenced or order made, pertaining to any territory included in the reorganization proceeding or order, is void. A reorganization proceeding is pending:

1. Until an order of school district reorganization made in the reorganization proceeding takes effect.

2. Until the expiration of 30 days following the date of mailing by the secretary of the agency school committee of an order denying the reorganization proposed by a petition or by a resolution.

3. Until a school district clerk, county clerk or county board of election commissioners certifies a vote of nonapproval at a referendum of a proposed order of school district reorganization.

4. Until the expiration of the time within which an appeal from the failure of a reorganization authority to make an order may be taken under this chapter.

5. During the pendency of an appeal to a state appeal board.

6. During the pendency of an appeal to court until the filing with the clerk of the circuit court of final disposition therein by the circuit court or supreme court.

(e) All territory within the state shall be included in a school district operating elementary school grades and a school district operating high school grades or in a school district operating both elementary and high school grades. No territory may be detached from a school district unless by the same order it is included in another school district or included in the creation of a new school district. No territory may be detached from a school district which operates high school grades unless by the same order it is attached to another school district which operates high school grades. No territory may be detached from a union high school district so as to make parts of the school district non-contiguous. No common school district may be created having less than \$150,000 of assessed valuation.

(2) REORGANIZATION ORDER. (a) Every order of school district reorganization shall state the school districts from which any territory is detached, describe such territory and indicate the territory included within the reorganized school district. When the order creates a new school district, the order also shall number the reorganized school district, name the school district according to the municipalities in which it is located, designate

the number of school board members under s. 120.01, 120.42 or 120.72 and the method of election under s. 120.04, 120.05, 120.06 or 120.43 and fix the time and place for the first annual meeting if one is to be held. The secretary of the agency school committee with whom the order is filed shall give notice of the first annual meeting, if one is to be held, under s. 120.08 (1) (c) and shall act or designate a person to act as temporary chairman of the annual meeting until a chairman is elected.

(b) Every order of school district reorganization shall state the date on which it is to take effect, which date shall be not more than one year from the day it is filed nor less than 30 days from the date it is mailed to the proper officials by the secretary of the agency school committee. Unless a later date is specified therein, the effective date of an order on which a referendum is held shall be the date the referendum result is certified to the secretary of the agency school committee, if the referendum approves the order. An appeal to a state appeal board shall stay an order. Unless a later date is specified therein, the effective date of an order of school district reorganization appealed to the state appeal board shall be 30 days after mailing of the state appeal board order under par. (c), if there has been no appeal to the circuit court within such 30 days. An appeal to circuit court shall stay an order. Unless a later date is specified therein, the effective date of an order of school district reorganization appealed to the circuit court shall be 60 days after service of notice of entry of the circuit court order affirming the order, if there has been no appeal to the supreme court within such 60 days. An appeal to the supreme court shall stay an order. The effective date of an order appealed to the supreme court shall be the date on which the supreme court mandate holding the order valid is filed with the clerk of the circuit court. An order shall be presumptive evidence of the facts recited therein and of the validity of all proceedings preliminary thereto.

(c) A certified copy of any order reorganizing a school district or denying such reorganization shall be filed within 10 days after it is made with the secretary of the agency school committee in which the proposed reorganized school district lies. Upon receipt of the order, the secretary of the agency school committee immediately shall place thereon the date upon which it was received

and, within 5 days after receipt thereof, shall send by certified mail a certified copy of the order together with a certification of the date of mailing of the copy to the clerk of each school district, town, village, city and county affected and to the state superintendent. When the territory of a proposed reorganized school district lies within more than one cooperative educational service agency, the order shall be filed with the secretary of the agency school committee of the agency in which the largest area of the reorganized district lies and that secretary shall mail certified copies thereof to the state superintendent, the clerks named in this paragraph and the secretary of the agency school committee of each other agency affected.

(d) The appeal and referendum period shall run from the date the certified copies of the order are mailed by the secretary. When the results of a referendum have been canvassed, the proper clerk shall certify the results to the secretary of the agency school committee with whom the order was filed, and the secretary shall notify the officers who received a copy of the order of the results of the referendum.

(3) INTERIM SCHOOL BOARD. When a new school district is created, the school board of the district which was dissolved in the creation thereof or, if more than one school district was dissolved, the school board of that dissolved district having the highest equalized valuation as last certified under s. 121.06 (1) shall constitute the school board of the newly created district until a school board of the newly created district is elected and qualified, and shall have the care, custody and control of the property and affairs of the new school district for the sole purpose of preserving and protecting the same and making payment of any current bills or contractual obligations due and payable during such period.

(4) SCHOOL BOARD ELECTIONS. (a) The city clerk shall arrange for the election of a school board under s. 120.43 for any newly created city school district.

(b) The election of a school board for any newly created unified school district shall be conducted in accordance with s. 120.73 (2).

(c) In creating a new common or union high school district, the order of school district reorganization shall direct the election of a school board under s. 120.04, 120.05 or 120.06. If the order directs the election under s. 120.05 or 120.06, the clerk of the town, village or city lying wholly or partially with-

in the newly created school district in which the greatest number of electors reside shall act as clerk of the election and declarations of candidacy shall be filed with him. He shall have charge of the election and shall conduct the election in accordance with municipal election procedures. The cost of conducting the election shall become a charge upon the new school district, and the school board of the new district shall pay all costs of the election.

(d) If the order under par. (c) directs the election of a school board under s. 120.04, a petition may be filed in accordance with s. 120.05 (2) (a) with the secretary of the agency school committee of the co-operative educational service agency in which the school district lies. If such a petition is filed, the initial election of a school board shall be conducted under s. 120.05. For the purposes of such initial election only, the agency school committee shall perform functions assigned to the school board and the secretary of the agency school committee shall perform functions assigned to the school district clerk under s. 120.05. The secretary of the agency school committee may obtain assistance in accordance with par. (c) in conducting the election. The school district shall pay the costs of such election.

(5) STATE AID APPORTIONMENT. During the pendency of an appeal from or a referendum on an order, state aid shall be apportioned to the school districts affected as if the order had not been issued.

(6) VALIDITY OF ORDER. The failure of any officer to perform a duty imposed upon him by this section shall not affect the validity of any order otherwise lawfully made, but such officer shall be subject to s. 946.12.

(7) VALIDATION OF SCHOOL DISTRICTS. If a school district has exercised the rights and privileges of a school district for a period of 4 months, no appeal or other action attacking the legality of the formation of such district, either directly or indirectly, may be taken. This subsection shall be liberally construed to effect the legislative purpose to validate and make certain the legal existence of all school districts in this state, however created or reorganized, and to bar every right to question the existence thereof in any manner and to bar every remedy therefor notwithstanding any defects or irregularities, jurisdictional or otherwise, after the expiration of such 4-month period except where some action or proceeding has been commenced within such 4-month period.

History: 1967 c. 92.

Legislative Council Note, 1967: Sub. (1) based on s. 40.025 (1). The distinction is more clearly drawn between the time during which a reorganization proceeding is pending and during which a reorganization authority has jurisdiction. Sub. (1) (e) also incorporates the substance of present s. 40.035, the general requirement that all territory of the state be in a high school district. The bulk of s. 40.035 contains procedural detail which is deleted, since that requirement is now fully implemented.

Sub. (2) based on s. 40.025 (3), (4) and (5).

Sub. (3) like s. 40.025 (9).

Sub. (4) (a) based on s. 40.025 (6) (1st sentence). Sub. (4) (b) is new and makes it clear that a separate procedure is followed in the first election of a school board for a new unified school district. Sub. (4) (c) based on s. 40.025 (6) (2nd to last sentences). Sub. (4) (d) based on s. 40.27 (11). The somewhat varying provisions of s. 40.27 (11) (intro.) and (a) are combined and clarified.

Sub. (5) based on s. 40.025 (8).

Sub. (6) like s. 40.025 (7).

Sub. (7) restates s. 40.18 (1) and (1a).

Present s. 40.18 (2) deleted because it is unnecessary. (Bill No. 353-S)

The statute does not require that the record show that copies of a notice of hearing was mailed to board members. It is sufficient that the order recite that the statute was followed, since 40.025 (4) makes it presumptively valid and the presumption is supported by testimony that the copies were mailed. *Reinders v. Washington County School Comm.*, 15 W (2d) 517, 113 NW (2d) 141.

The prohibition in 40.025 (1) (e) of detaching territory from a union high school district so as to leave part of it noncontiguous does not apply to a reorganization order creating a new joint common district which included some noncontiguous territory. *Voelz v. Beck*, 22 W (2d) 1, 125 NW (2d) 33.

A school reorganization order or an appeal therefrom which affects only part of a district does not bar a further order as to parts not included in the first. *Olson v. Rothwell*, 28 W (2d) 233, 137 NW (2d) 86.

Petition to detach an existing common school district from union high school district and create a new common school district is contrary to 40.025 (1) (e) and is null and void. 50 Atty. Gen. 122.

117.02 Reorganization by agency school committee. (1) PETITION; HEARING; ORDER.

(a) Upon the filing of a petition with the secretary of the appropriate agency school committee signed by 10% of the electors residing in the territory of a proposed reorganized school district or signed by 10% of the electors residing in territory proposed to be detached from one school district and attached to another, or upon adoption of a resolution on its own motion, the agency school committee, after a public hearing, may order the reorganization of school districts within the agency. The secretary of the agency school committee shall set a date for the public hearing by the agency school committee on the proposed reorganization which shall be held not more than 30 days after either the filing of the petition or the adoption of the resolution at a place within the school district proposed to be reorganized or within a reasonable distance of such school district. Notice of the public hearing shall be given as provided in sub. (3). Within 30 days after the hearing on any proposed re-

organization and before the making of any order thereon, the agency school committee shall hold a conference on the proposed reorganization with the school boards of the districts affected. The agency school committee shall reach its decision at this conference and an order conforming therewith shall be made within 10 days.

(b) If the agency school committee determines that a petition filed under this section is identical with or essentially similar to a petition on which it has acted during the past year, it may set the date for a public hearing approximately one year from the date on which it held its last hearing on the matter. The petitioners may require that the hearing be held as provided in par. (a) if they agree to pay all costs involved and post bond to cover the cost of the hearing.

(c) No union high school district may be created unless it meets the requirements set forth in s. 117.05 (1) as to valuation, potential enrollment and approval by the state superintendent following the submission of a map and legal description of the territory.

(2) JOINT AGENCY SCHOOL COMMITTEE. If the territory to be affected by a proposed reorganization lies within 2 or more co-operative educational service agencies, the agency school committees thereof shall act as a joint agency school committee. The secretaries of the agency school committees involved shall determine which secretary shall act as secretary of the joint agency school committee and also shall determine the time and place for a public hearing. Notice of the public hearing shall be given as provided in sub. (3). If the joint agency school committee cannot reach a decision on a proposed reorganization at the conference with the school boards, it shall appoint an additional member who shall be a resident of the state but not a resident of either agency affected. If the joint agency school committee cannot agree upon an additional member within 30 days after the conference, the secretary immediately shall notify the circuit court judge within whose circuit lies the largest area of the agencies involved, and within 15 days he shall appoint an additional member who does not reside in the agencies involved and who meets the requirements of s. 116.51 (1). Within 30 days after the appointment of the additional member, the joint agency school committee again shall hold a conference on the proposed reorganization with the school boards of the districts involved and shall reach its

decision on the proposed reorganization at this conference.

(3) NOTICE OF PUBLIC HEARINGS. Service of notice of a public hearing on a proposed reorganization under this section shall be made by the secretary of the agency school committee at least 10 days before the date of hearing. The notice shall be in writing, shall state the hour, day and place of such hearing and shall be served upon the clerk of each school district, town, village and city affected by the proposed reorganization. Such service shall be either by personal service or by certified mail with return receipt requested. The secretary also shall mail a copy of the notice to every member of the school board of each school district and of the governing body of each town, village and city affected by the proposed reorganization. The secretary shall publish notice of the hearing as a class 2 notice, under ch. 985, in the school districts affected by the proposed reorganization. When all other requirements of notice have been complied with, the presence of an official at a hearing waives the required service upon or mailing to him of notice thereof.

(4) REFERENDUM. (a) If within 30 days after the date of mailing of an order of school district reorganization issued under this section, a petition requesting a referendum on the order and signed by a sufficient number of the electors of the territory included in the proposed reorganized school district is filed under par. (c), the order shall not become effective until it has been approved at the referendum by both a majority of those electors voting at the referendum who reside within that portion of the proposed reorganized school district territory lying in cities and villages and by a majority of those electors voting at the referendum who reside within that portion of the proposed reorganized school district territory lying in towns. A sufficient number of petitioners is 500 of the electors who reside in the proposed reorganized school district, or 10% of such electors who reside in cities and villages or 10% of such electors who reside in towns. Upon its own motion at the time of issuing an order of school district reorganization or at any time after issuing the order and within 30 days after the order is mailed, the agency school committee may direct the holding of a referendum upon the order. By resolution adopted within 30 days after the order is mailed, the common council of any city affected by an order of school district reorganization issued under this section may

demand the holding of a referendum upon such order.

(b) When an order of school district reorganization either consolidates 2 or more common school districts operating high school grades or attaches territory to a common school district operating high school grades and 2 or more sites have been proposed for the high school in the proposed reorganized school district, the referendum petition may designate one of the proposed sites and, at the discretion of the agency school committee, the referendum may be upon approval of such site as well as upon approval of the order. In such case, the ballots shall contain a single question on the approval of the order and the site of the high school.

(c) The petition, resolution or demand for a referendum shall be filed with the county clerk of the county having the largest equalized valuation in the proposed reorganized school district. The county clerk shall notify the clerk of each city, village and town affected that a referendum will be held on the order. The referendum shall be called by the county clerk for a date not more than 30 days from the date the petition, resolution or demand is filed, but if the spring or general election is to be held within 90 days from the date of filing, the referendum shall be held on the date of the spring or general election. The county clerk shall cause notice of the purpose, time and place of holding the referendum and the hours of opening and closing of the polls to be published as a class 2 notice, under ch. 985, in the territory included in the order.

(d) Electors shall vote at the polling places at which they would be required to vote at a general election, except when the municipal clerk deems it feasible to designate other polling places. In such case, he shall so inform the county clerk immediately upon being notified by the county clerk that a referendum will be conducted, and the county clerk shall thereupon include in the notice only those polling places where the referendum will be conducted.

(e) The election officials shall be selected by the governing body of the municipality where the polling place is located. Each municipality shall compensate the election officials and shall provide the necessary ballot boxes and voting booths. The county clerk shall provide for the printing and distribution of ballots and other election supplies at county expense. The form of the ballot shall correspond, so far as possible, to form "D" an-

nexed to s. 5.64. The referendum shall be conducted and the votes canvassed and the results returned to the county clerk as at a general election.

(f) If a proposed reorganized school district lies in more than one county, the county clerk of the county having the largest equalized valuation within the proposed reorganized school district shall be responsible for conducting the referendum, but the cost of ballots and other election supplies shall be borne by each of the counties in such proportion as the equalized valuation of the property in each county affected by the referendum bears to the total equalized valuation of the property in the proposed reorganized school district. If the proposed reorganized school district lies in more than one county, the referendum shall be conducted and the vote counted and canvassed in each county separately and a tabulation of the vote in each county shall be forwarded to the county clerk of the county having the largest equalized valuation within the proposed reorganized school district for a final consolidated tabulation and determination of the result.

(g) The cost to the county under this subsection shall be ascertained by the county clerk and certified for payment by him to the clerk of each school district affected by the referendum in the county in such proportion as the equalized valuation of that portion of the proposed reorganized school district lying in each such school district bears to the total equalized valuation of the proposed reorganized school district. Such payments shall be made by the school boards to the county. When necessary, such charge shall be included in the succeeding budget and become part of the next school district tax levy.

(h) In any county which has a county board of election commissioners such board shall act in all matters pertaining to a referendum in lieu of the county clerk.

(5) CITIES OF THE FIRST CLASS. In cities of the 1st class, the notice of public hearing under sub. (3) shall be served upon the secretary-business manager of the board of school directors, who shall cause it to be published as a class 2 notice under ch. 985. In such cities a referendum held pursuant to sub. (4) shall be called and conducted by the municipal board of election commissioners. Within 90 days after the date of issuance of an order of school district reorganization under this section electors may file a referendum petition. The referendum may not be

held prior to 40 days after the filing of the referendum petition or prior to 40 days after the date the agency school committee upon its own motion directs the holding of a referendum. Such referendum shall be held on the date of the spring or general election.

(6) EFFECT OF DISAPPROVAL. If a proposed reorganization is not approved at the referendum, the agency school committee may not reconsider the proposed reorganization within one year. With the advice of the school boards of the districts affected, the agency school committee, within that year, may prepare a different proposed reorganization and order the establishment of one or more proposed reorganized school districts. Such order is subject to a referendum under sub. (4). If the 2nd referendum does not approve such order, the agency school committee with the advice of the school boards shall continue its work and issue orders, subject to sub. (4), so long as the need for reorganization continues to exist, but after the 2nd referendum at least one year shall elapse between referenda.

(7) LOCAL BODIES; ADVICE AND RECOMMENDATIONS. Within 30 days after receipt of a written request from an agency school committee, the governing body of any town, village or city of the 2nd, 3rd or 4th class or, in cities of the 1st class, the board of school directors shall advise and make recommendations in writing to the agency school committee concerning a proposed reorganization of a school district having territory which lies in that municipality.

(8) STATE SUPERINTENDENT; ADVICE AND RECOMMENDATIONS. The state superintendent shall advise and consult with the agency school committees. If in his opinion one or more school districts should be created, altered, consolidated or dissolved, he may make his recommendations to the agency school committee of each co-operative educational service agency within which the territory affected lies.

History: 1967 c. 92, 313.

Legislative Council Note, 1967: Sub. (1) (a) based on s. 40.13 (1) (a). Sub. (1) (b) like s. 40.13 (1) (b). Sub. (1) (c) like s. 40.025 (10). Sub. (2) based on s. 40.02 (3). Sub. (3) revises s. 40.025 (2). Sub. (4) (a) based on s. 40.13 (5) (a). References to "incorporated" and "unincorporated" villages have been deleted. Section 990.01 (45) states that "village" means incorporated village. Sub. (4) (b) revises s. 40.13 (5) (b). Sub. (4) (c) based on s. 40.13 (5) (c). Sub. (4) (d) restates s. 40.13 (5) (d) (1st and 2nd sentences). Sub. (4) (e) restates and rearranges s. 40.13 (5) (d) (3rd, 4th and 5th sentences) and s. 40.13 (5) (e) (2nd and 3rd sentences). Sub. (4) (f) restates s. 40.13 (5) (f) and s. 40.13 (5) (e) (4th sentence). Sub. (4) (g) restates s. 40.13 (5) (g). Sub. (4) (h) like s. 40.13 (5) (e) (1st sentence). Sub. (5) revises s. 40.13 (6). Sub. (6) revises s. 40.13 (7). Sub. (7) restates s. 40.05. Sub. (8) restates s. 40.055. (Bill No. 353-S)

The description of territory in the notice of hearing need not be a legal description. *Reinders v. Washington County School Comm.* 15 W (2d) 517, 113 NW (2d) 141.

Where in a school-reorganization proceeding all the requirements of 40.025 (2) pertaining to the giving of notice of the public hearing were complied with except for the giving of actual notice to the clerk of one of the towns affected by the reorganization, the school-district reorganization order was not void because of such irregularity, inasmuch as it appeared the town was not prejudiced thereby; and thus there was substantial compliance with the provisions of the statute. *Joint School Dist. v. Joint County School Comm.* 26 W (2d) 437, 132 NW (2d) 549.

The fact that an order of detachment leaves a district with so small a tax and population base as to make operation of a school impractical does not indicate that the committee acted capriciously. *Iron R. G. S. Dist. v. Bayfield C. S. Comm.* 31 W (2d) 7, 142 NW (2d) 227.

A petition for dissolution and attachment of a whole district is not essentially similar to a later petition for partial detachment. Even if it were similar, the committee is not required to delay hearing for one year. The fact that the order removes so much territory that the remainder cannot operate a school does not prove that the order was arbitrary or an abuse of discretion. *Shadow Lawn S. Dist. v. Walworth Co. S. Comm.* 33 W (2d) 333, 147 NW (2d) 227.

117.03 State appeal board. (1) (a) Any person aggrieved by an order of an agency school committee granting or denying a proposed reorganization may appeal to a state appeal board by filing a notice of appeal with the state superintendent within 30 days following the mailing of the order under s. 117.01 (2) (c).

(b) Any person aggrieved by the failure of an agency school committee to make an order granting or denying a proposed reorganization within 90 days after the filing of a petition or the adoption of a resolution by an agency school committee acting on its own motion may appeal to a state appeal board within 30 days following the expiration of said 90 days.

(c) No appeal to a state appeal board may be withdrawn.

(2) Upon receipt of a notice of appeal filed under sub. (1), the state superintendent shall promptly appoint a state appeal board composed of the presidents of 4 agency school committees of agencies which have no territory included in the order under appeal. The state superintendent or his designated representative shall act as chairman, shall have the right to vote and shall furnish secretarial services. Each agency school committee president on a state appeal board shall receive \$15 for each day spent in the performance of his duties, and shall be reimbursed 8 cents per mile traveled to and from meetings by the usual traveled route and for his actual and necessary expenses. Expense account vouchers shall be filed with the state superintendent and paid out of the appropriation under s. 20.255 (1) (a).

(3) The state superintendent shall set a time and place for the state appeal board to meet. The state appeal board by a majority vote of its members shall make such order as it deems proper under the circumstances to affirm, reverse or modify the order appealed from under sub. (1) (a) or shall make an order granting or denying school district reorganization upon an appeal under sub. (1) (b). The order shall be filed pursuant to s. 117.01 (2) (c). Failure of a state appeal board to make an order within 120 days after notice of appeal is filed under sub. (1) shall constitute a denial of the appeal.

(4) Any person aggrieved by an order of a state appeal board which provides school district reorganization may appeal therefrom to a circuit court of any county in which any territory of the proposed reorganized school district lies. Within 30 days after the date the copies of the order of a state appeal board are mailed under s. 117.01 (2) (c), a written notice of appeal stating specifically the grounds upon which the appeal is based shall be served on the state superintendent as chairman of the state appeal board and filed with the clerk of court.

(5) Any party to the circuit court appeal may secure a review of the final order of the circuit court by appeal to the supreme court. Such appeal shall be taken as provided by law for appeals from the circuit court in other civil cases, except that the time for appeal shall be limited to 60 days from the notice of entry of the order.

History: 1967 c. 92, 291 s. 14.

Legislative Council Note, 1967: Sub. (1) revises s. 40.13 (3) and contains the substance of s. 40.135 (1). It also permits appeal upon failure of an agency school committee to act.

Sub. (2) based on s. 40.13 (4) (intro.) and (a) and s. 40.135 (2).

Sub. (3) revises s. 40.13 (4) (b) and clarifies the types of orders that a state appeal board may issue. Sub. (3) also adds the implicit requirement for the state superintendent to call a state appeal board meeting.

Sub. (4) based on s. 40.13 (4) (c).

Sub. (5) restores language formerly in s. 40.03 (5), 1961 stats., which was inadvertently deleted in a 1963 act. (Bill No. 353-S)

117.04 Unified school districts; creation.

(1) Except as to school districts operating under ch. 119 or subch. II of ch. 120, an agency school committee, under s. 117.02, may create or alter a unified school district in any territory containing 1,000 or more electors. An order of school district reorganization made under this subsection shall become effective as provided in s. 117.01 (2).

(2) The electors in a joint city school district may petition to change the school district into a unified school district. So far as

possible, s. 9.20 shall be applicable to this section. The required number of signatures on such a petition shall be determined in accordance with s. 115.01 (13). The petition shall meet the requirements of s. 117.01 (2) (a). The petition shall be submitted to the city clerk and referred by him to the fiscal board under s. 120.50 in lieu of the common council for either adoption without alteration or referral without alteration to a vote of the electors of the school district at a referendum. If a referendum is held, the proposed reorganization shall become effective if it is approved at the referendum by a majority of those electors voting at the referendum who reside within that portion of the proposed unified school district territory lying in each city and village and a majority of those electors voting at the referendum who reside within that portion of the proposed unified school district territory lying in towns. Adoption by the fiscal board or approval at a referendum shall constitute the making of an order of school district reorganization, which shall be effective the next following July 1.

(3) Sections 120.58 and 120.71 (1) apply to this section.

History: 1967 c. 92, 313.

Legislative Council Note, 1967: Sub. (1) based on s. 40.095 (1) (1st and 4th sentences). Sub. (2) based on s. 40.095 (1) (2nd, 3rd and 5th sentences) and sets forth the effective date of the order. Sub. (3) based on a portion of s. 40.095 (2) (2nd sentence). The remainder of s. 40.095 (2) is deleted, since with the creation of agency school committees it covers the same material as s. 40.095 (1). Present s. 40.095 (1) (last sentence) is transferred to s. 120.50 (6) because it relates only to orders under that section. (Bill No. 353-S)

117.05 Union high school district; establishment. (1) (a) Ten per cent of the electors residing in any territory having an equalized valuation of \$9,000,000 or more may file a petition with the clerk of any city, village or town in which such territory lies requesting a referendum on the establishment of a union high school district in such territory. The petition may request that the referendum also be upon approval of the location for a school building. At the time of filing the petition, the petitioners shall submit to the state superintendent and to the clerk of each town, village or city in which territory in the proposed union high school district lies a legal description and map of the territory proposed to be included in the union high school district.

(b) No union high school district may be established unless the petitioners give evidence satisfactory to the state superintendent that at least 200 persons of school age who are residents of the proposed school district

are prepared and desire to attend the public high school.

(c) No referendum on the establishment of a union high school district may be held unless the state superintendent, after considering all relevant factors, has approved it as a proper school district to provide high school education. If the state superintendent approves the establishment of the proposed union high school district, he shall transmit a copy of the legal description and map, with his approval indorsed thereon, to the clerk of each town, village and city in which territory in the proposed union high school district lies.

(2) If the state superintendent gives his approval under sub. (1) (c) and the territory lies entirely in one municipality, the municipal clerk, within 5 days of receipt of such approval, shall set a time for the referendum and shall give notice of the referendum as a class 2 notice, under ch. 985. The referendum shall be conducted and the votes canvassed as for a municipal election.

(3) If the state superintendent gives his approval under sub. (1) (c) and the territory lies in more than one municipality, the municipal clerk with whom the petition was filed, within 5 days of receipt of such approval, shall set a date and place for a meeting with the clerks of all other municipalities in which the territory lies to fix the time and place for holding the referendum. The clerks shall fix the time and place for holding the referendum at the meeting and shall give notice of the referendum in accordance with sub. (2).

(a) If the proposed union high school district does not contain a city or village, the referendum shall be conducted by the town board of the town in which the referendum is held.

(b) If the proposed union high school district contains a city or village, the referendum for such city or village shall be held therein and the referendum for any territory in a town may be held in a city or village or any other convenient place. The referendum for the city or village shall be conducted and the votes canvassed as for a city or village election, and the referendum for the town territory shall be conducted and the votes canvassed as for a town election. If such territory lies in more than one town, the referendum for the territory in each town shall be conducted separately. The union high school district shall not be established unless it is approved at the referendum by both a ma-

ajority of those electors voting at the referendum who reside within that portion of the proposed district territory lying in cities and villages and by a majority of those electors voting at the referendum who reside within that portion of the proposed district territory lying in towns.

(4) The ballots shall be provided by the municipal clerks and shall plainly indicate the question before the voters. The result of the referendum shall be certified immediately to the clerk of each city, village and town affected. The result of the referendum shall be certified to the state superintendent by each such clerk within 6 days after the referendum. If the proposal is adopted, the state superintendent shall issue an order of school district reorganization creating the union high school district and file it as provided in s. 117.01 (2) (c).

(5) Upon the establishment of a union high school district, any school district operating high school grades whose territory is wholly included in the new union high school district territory shall cease to exist and the property and liabilities thereof shall become the property and liabilities of the new union high school district.

(6) An order creating a union high school district becomes inoperative 3 years after the effective date of the order unless the union high school district is operating a high school or is in the process of constructing a high school building at the expiration of the 3-year period.

(7) The territory comprising a newly created union high school district shall continue to furnish high school opportunity on the same basis and under the same conditions as prevailed prior to the creation of the union high school district until such time as adequate building facilities are provided by the new union high school district. The school board of the newly created union high school district shall perform all of the duties pertaining to the negotiation of loans for buildings, letting of contracts for construction of buildings, noticing and conducting meetings of the school district for the purpose of securing authorization of loans for building purposes and all other necessary powers and duties delegated by law to school boards of union high school districts.

History: 1967 c. 92.

Legislative Council Note, 1967: Sub. (1) based on s. 40.12 (1) and (8) and part of (2). Sub. (2) based on part of s. 40.12 (2). Sub. (3) (intro.) revises s. 40.12 (3) (1st and 2nd sentences). Sub. (3) (a) based on s. 40.12 (3) (3rd sentence). Sub. (3) (b) based on s. 40.12 (4) (a) and (b) (2nd sen-

tence). Sub. (4) based on s. 40.12 (4) (b) (1st sentence) and (c). Sub. (5) based on s. 40.12 (5). Sub. (6) based on s. 40.12 (3a). Sub. (7) restates s. 40.12 (7).

Present s. 40.12 (6) deleted because it is obsolete. Present s. 40.14 deleted because it applies only to territory not in a high school district.

Present s. 40.15 deleted because the Wisconsin supreme court in *Fleming v. Barry*, 21 Wis. 2d 259, held that present s. 40.035 impliedly repealed s. 40.15. (Bill No. 353-S)

117.06 Consolidation of school districts.

(1) When 10% of the electors in each of 2 or more common school districts or in each of 2 or more union high school districts file a petition requesting a consolidation of their school districts, the school boards of the districts affected shall meet at a time and place designated by the school board of the most populous school district to fix a time for a referendum to determine whether the school districts shall be consolidated. Each school board receiving a petition under this section immediately shall send notice of the filing of the petition to the secretary of the agency school committee of each co-operative educational service agency in which the school district lies. The referendum shall be not less than 2 nor more than 4 weeks from the date of such meeting. The referendum shall be called for 8 p.m. at the regular places for holding the school district meetings. The school district clerks shall give notice of the referendum as notice of an annual school district meeting is given. The referendum shall be conducted by the respective school boards, and the vote shall be by ballot. Within 3 days after the referendum, each school board shall report the result of the referendum in its school district to the clerk of the school district in which the meeting was held to fix the time of the referendum. One week after the referendum the school boards shall meet at said place, shall canvass the returns and shall file a report of the results with the state superintendent and the secretary of each such agency school committee.

(2) If a majority of the votes cast in each school district is in favor of consolidation, the school districts shall be consolidated into a single school district, and the school boards at the time of canvassing the returns shall make and file an order of school district reorganization creating a new school district comprised of the area of the former school districts, as provided in s. 117.01 (2).

(3) When a consolidation under this section takes effect, the school districts which were consolidated shall cease to exist, and title to all property and the assets of such school districts shall become vested in the consolidated school district and claims, obli-

gations and contracts of such school districts shall become claims, obligations and contracts of the consolidated school district.

History: 1967 c. 92.

Legislative Council Note, 1967: Revises s. 40.07. A 1953 act [ch. 599, laws 1953] changed references to "common school district" to "school district" in s. 40.07, but did not alter the language referring to "annual school district meetings." This draft clarifies that this section may be used only for the consolidation of 2 or more common school districts or for the consolidation of 2 or more union high school districts. It adds a requirement that agency school committees be informed of petitions. (Bill No. 353-S)

117.07 Change of common or union high school district to unified school district; change of unified school district to common school district.

(1) A common school district operating elementary and high school grades or a union high school district may be changed into a unified school district if the school district has 1,000 or more electors. If, at least 30 days prior to the annual school district meeting, a petition requesting such a change is filed with the school district clerk signed by 10% of the electors residing in the school district, the school district clerk shall include in the notice of the annual school district meeting a statement that the electors present at such meeting will vote on the change requested by the petition. Within 7 days after the petition is filed, the school district clerk shall publish a class 1 notice, under ch. 985, of the filing of the petition. If a majority of the electors present and voting at the annual school district meeting vote in favor of the change, the school board shall issue an order of school district reorganization making the change effective immediately. The order shall designate the number of school board members under s. 120.72. A certified copy of the order shall be filed as provided in s. 117.01 (2) (c). Within 30 days after the date of the annual school district meeting, the school board shall arrange for a special election of the new school board members under s. 120.73.

(2) A unified school district may be changed into a common school district operating elementary and high school grades. Upon the filing of a petition requesting such a change with the secretary of an agency school committee signed by 10% of the electors residing in a unified school district, the agency school committee shall proceed under s. 117.02.

History: 1967 c. 92.

Legislative Council Note, 1967: Based on s. 40.078. (Bill No. 353-S)

117.08 Attachment of small parcels. The owner of an individual parcel of property ad-

joining the boundaries of 2 school districts may file a written petition with the school boards of the districts requesting that such parcel be detached from its present school district and attached to the adjoining school district. Each school district receiving a petition under this section immediately shall send a copy of the petition to the secretary of the agency school committee of each co-operative educational service agency in which the school district lies. At least 20 days before any such transfer is authorized, notice of the proposed transfer, with a description of the property proposed to be transferred, shall be published as a class 1 notice, under ch. 985, in the school districts affected by the proposed transfer. The school boards may detach the property from its present school district and attach it to the adjoining school district by a resolution adopted by a majority of the members of each school board. The resolution shall constitute an order of school district reorganization, shall describe the territory transferred, shall be filed as required by s. 117.01 (2) (c) and shall take effect on July 1 next following its adoption. Failure to act on the petition within 60 days after its filing constitutes denial of the petition.

History: 1967 c. 92.

Legislative Council Note, 1967: Based on s. 40.032 and adds a requirement that agency school committees be notified of petitions. (Bill No. 353-S)

117.09 Attachment upon failure to operate school. (1) If a school district for 2 or more successive years has failed to operate a school as required by law, the territory of such school district shall be attached to one or more school districts that do operate schools by the appropriate agency school committee pursuant to s. 117.02. Within 60 days of the date on which a school district becomes subject to this section, the state superintendent shall so notify the school district clerk, the clerk of each municipality in which part of the school district lies and the secretary of the agency school committee of each co-operative educational service agency in which the school district lies. Prior to August 30 of the year in which the school district becomes subject to this section, the agency school committee shall issue an order of school district reorganization attaching the school district to one or more operating school districts. Notwithstanding s. 117.01 (2) (b), orders issued under this section shall take effect upon being filed as provided in s. 117.01 (2) (c). The school board of each district to which any territory is attached under this

section shall levy and collect a special tax against the property in the territory so attached for such amount as is payable for tuition and transportation, at the time of the attachment, by the school district in which the attached territory was located prior thereto, in the proportion that the equalized valuation of the attached territory bears to the total equalized valuation of the school district in which such territory was located prior to such attachment.

(2) Section 117.02 (4) shall not apply to orders issued under this section.

(3) If an order issued under this section is voided, the nonoperating school district shall arrange for the attendance of its pupils at the schools of one or more other school districts on a nonresident tuition basis, and shall provide transportation to and from such schools by the methods provided in s. 121.55 for all of its pupils who reside 2 miles or more from the school they attend. Until a valid order has been issued, the nonoperating school district may use such funds on hand as have been raised or appropriated for operation and maintenance or levy taxes to pay for such tuition and transportation. If an order is voided, the agency school committee shall issue new orders of school district reorganization within the succeeding year.

History: 1967 c. 92.

Legislative Council Note, 1967: Sub. (1) based on s. 40.08 (1). Reference to s. 117.06 [present s. 40.07] deleted because that section applies generally and need not be mentioned here. Sub. (2) restates s. 40.08 (3) (a). Sub. (3) revises s. 40.08 (3) (b).

Present s. 40.08 (2) is deleted because it is unnecessary. (Bill No. 353-S)

117.10 High school establishment in common school district. (1) A common school district operating only elementary grades and having an assessed valuation of \$2,500,000 or more may establish a high school if evidence satisfactory to the state superintendent is given that at least 75 persons of school age who are residents of the school district are prepared and desire to attend a high school.

(2) Upon the filing of a petition with the school board signed by 10% of the electors residing in the school district or upon adoption by the school board of a resolution requesting the establishment of a high school in the school district, the school board shall submit the question to the annual or a special school district meeting. Notice that the annual or special school district meeting will vote on the question of establishment of a high school shall be given by the school district clerk as notice of an annual meeting is given.

(3) The vote on the question shall be by ballot. The ballots shall be worded "For High School" and "Against High School." If the question is adopted, the school district clerk shall report the action to the state superintendent for his approval. If the state superintendent approves, he shall issue a certificate of establishment of a high school; otherwise he shall disapprove the action. The certificate for establishment of a high school

shall become void unless the school functions within 3 years from the date of the vote.

History: 1967 c. 92.

Legislative Council Note, 1967: Sub. (1) based on s. 40.10 (1). Sub. (2) based on s. 40.10 (2) and (3). Sub. (3) based on s. 40.10 (4) and (6). Present s. 40.10 (5) is deleted because its provisions have become meaningless. Present s. 40.10 (7) and (8) deleted, because they were made obsolete by the enactment of the requirement that all territory in the state be in a high school district. Present s. 40.11 deleted because it is obsolete. (Bill No. 353-S)