

LEGISLATIVE BILL 468

Approved by the Governor May 13, 1971

Introduced by Wayne W. Ziebarth, 37th District; Harold D. Simpson, 46th District

AN ACT to amend sections 79-402.01, 79-402.02, and 79-404, Reissue Revised Statutes of Nebraska, 1943, and sections 79-402 and 79-403, Revised Statutes Supplement, 1969, relating to schools; to recodify, revise, and clarify provisions for the creation of new school districts from other districts and the changing of boundaries of districts; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 79-402, Revised Statutes Supplement, 1969, be amended to read as follows:

79-402. The county superintendent shall create a new district ~~as--hereinafter--provided~~ from other districts, or change the boundaries of any district upon petitions signed by sixty per cent of the legal voters of each district affected; Provided, that petitions must contain signatures of at least sixty-five per cent of the legal voters of each district affected ~~in--such instances--as--hereinafter--indicated~~ if the proposed change has been disapproved by both the state and county committees for school district reorganization; and provided further, that when area is added to a Class VI school district, or when a Class I school district, which is entirely within a Class VI school district, ~~of the-sixth--class,~~ is taken from a Class VI school district, it the Class VI district will be deemed to be an affected district, ~~within--the--meaning--of--this section.~~ Petitions proposing to create a new school district or to change the boundary lines of existing school districts shall, when signed by at least sixty per cent of the legal voters in each district affected, be submitted to the county committee for school district reorganization, ~~--established--under--sections--79-426-04 and-79-426-05.~~ The county committee shall, within forty days, review and approve or disapprove such proposal and submit it to the state committee for school district reorganization. The state committee shall, within forty days, review and approve or disapprove the proposal and return ~~said-proposal~~ it, with any recommendations deemed advisable, to the county committee. The county

committee shall, within fifteen days of receipt of the returned proposal, consider the action of the state committee, and determine whether to give final approval or disapproval to the proposal. The county committee shall also, within fifteen days of receipt of the returned proposal, advertise and hold a public hearing at which the recommendations and action of the state and county committees shall be presented to the legal voters in attendance. The county committee shall hold the petitions for ten days following the hearing, at the end of which time the committee shall file the petitions with the county superintendent. The county superintendent shall, within fifteen days, advertise and hold a hearing to determine the validity and sufficiency of the petitions. Upon determination, as a result of the hearing, that sufficient valid signatures of--at least-sixty-per-cent-of-the-qualified--legal--voters--of each-district are contained in the respective petitions, or-at-least-sixty-five-per-cent-if-the-proposal-has-been disapproved-by-both-the-state-and-county-committees; the county superintendent shall proceed to effect the changes in district boundary lines as set forth in the petitions; Provided, that any person adversely affected by the changes made by the county superintendent may appeal to the district court of any county in which the real estate, or any part thereof, involved in the dispute is located. ~~If-such-petitions-shall-provide-for the-creation-of-a-new-Class--VI--district;--they--shall designate--whether--such--district--shall--include--high school--grades--only--or--be--known--as---a---Class---VI junior-senior-high--school--district--as--described--in section-79-1409.~~ If the real estate is located in more than one county, the court in which an appeal is first perfected shall obtain jurisdiction to the exclusion of any subsequent appeal. A signing petitioner shall be permitted to withdraw his name therefrom and a legal voter shall be permitted to add his name thereto at any time prior to the end of the ten-day period when the county committee files such petitions with the county superintendent. Additions and withdrawals of signatures shall be by notarized affidavit filed with the county superintendent. ~~Such-officer-shall-annex-any-territory; not-organized-into-districts;--to-any--existing--district or-districts-within-ninety-days-after--March--27;--1963; Provided;--changes-affecting-Class-III;--IV;--V;--and--VI school-districts-and--districts--in--which--are--located cities-and-incorporated-villages-may-be--made--upon--the petition-of-the-school-board-or-the-board-of-education of-the-district-or-districts-affected;--provided-further; that--when--a--Class--I-or-Class--II-school-district petitions-the-school-board-or-the-board-of-education--of a-Class-I-or-Class-II-school-district-to-merge-in--whole~~

or-in-part-with-such--district;--said--petition--of--the
petitioning-district-may-be-accepted-upon--the--petition
of-the-school-board-or-the-board-of-education--of--the
accepting-district; and-provided-further;--that--when--a
Class-I-school-district-petitions-the--school--board--or
the-board-of-education-of-a-Class-I-school-district-with
a-six-man--board--to--merge--with--such--district;--said
petition-of-the-petitioning->district--may--be--accepted
upon-the-petition-of-the-school-board-or--the--board--of
education-of-the-accepting-district;--When-it-shall-come
to-the-attention-of-the-county-superintendent--that--any
territory--located--wholly--within--his--county--is--not
included-in-any-organized-district;--he-shall--so--notify
the-county-committee-provided-for-by-section--79-426.05.
Within-fifteen-days-of-such-notice; the-county-committee
shall-set-a-date-for-a-hearing-on--the--question--of--to
which-district-or-districts--such--territory--should--be
attached-and-shall-give-fifteen-days⁴-notice; by--either
certified-or-registered-mail;--of--the--time--and--place
thereof-to-each-legal-voter-residing-in--such--territory
and-whose-mailing-address--is--known--and--also--to--the
school-board--or--board--of--education--of--each--school
district-in--the--county--adjacent--to--such--territory.
Notice-of-the-time-and-place-of-such-hearing-shall--also
be-given-by-publication-once-each-week-for-two-weeks--in
a--newspaper--of--general--circulation--in--the--county.
Following--such--hearing;--the--county--committee--shall
notify-the-county-superintendent-to--which--district--or
districts-such-territory-should-be-attached;--and--the
county-superintendent-shall-attach-such-territory-as--so
directed;--When-any-such-territory-not-in-any-organized
district-is-located-in-more-than-one-county;--notice--of
such-fact-shall-be-given-to-the-joint-committee-provided
for-in-section-79-426.09; whose-duty-it-shall-be-to-give
the-prescribed-notice-of-and-hold--the--hearing--on--the
question-of-to-which->organized--district--or--districts
such--territory--shall-be-attached;---Notice--of--the
decision-reached-by-the-joint-committee-shall-be-given
the-respective-county-superintendents; who-shall--attach
the-territory-in-accordance-with-such-decision;--If--the
county-or-joint-committee--cannot--or--does--not--agree;
within-sixty-days-after-being--notified--by--the--county
superintendent;--to--which--district--or--districts--the
territory--shall-be-attached;--the--matter--shall--be
referred-to-the--State--Board--of--Education--who--shall
attach-the-territory-to-the-district-or-districts-as--it
shall-determine-after-hearing-and-notice;--Notice--shall
be-given-in-the-same-manner-as-by--a--county--committee.
The-committee-or--joint--committee--in--determining--the
district-or-districts-to-which-such-territory--shall--be
attached--shall--consider--the--school--facilities;
transportation-facilities; and--distance--children--must

travel--to--school;---Territory--may--be--annexed--to--a district--from--an--adjoining--county--upon--joint--action--by special--committees--as--provided--in--section--79-426.09--with such--special--committee--performing--those--responsibilities as--herein--provided--for--the--county--committee;---Bonded indebtedness--incurred--prior--to--any--change--in--school district--boundary--lines--under--the--provisions--of--this section--shall--remain--the--obligation--of--the--school district--voting--such--bonds--unless--otherwise--specified--in the--petitions;---When--a--district--is--dissolved--by petitions;--and--the--area--is--attached--to--two--or--more districts--said--petitions--shall--specify--the--disposition to--be--made--of--assets--and--unbonded--indebtedness--of--the districts;--Provided;--when--a--portion--or--portions--of--a district--are--attached--to--another--district--or--districts the--remaining--portion--of--the--original--district--shall retain--the--identity;--assets;--and--unbonded--obligations--of the--original--district:

Sec. 2. In addition to the petitions of legal voters pursuant to section 79-402, changes in boundaries or the creation of a new district from other districts may be initiated and accepted by:

(1) The board of education of any Class III, IV, V, or VI district; and

(2) The board of education of any Class I or II district in which is located a city or incorporated village.

Sec. 3. When the legal voters of a Class I or II school district in which no city or village is located petition to merge in whole or in part with a Class I or Class II district, such merger may be accepted by petition of the board of education of the accepting district.

Sec. 4. When the legal voters of a Class I school district petition to merge with a Class I district with a six-member board of education, such merger may be accepted by petition of the board of education of the accepting district.

Sec. 5. Petitions presented pursuant to sections 2 to 4 of this act shall be subject to the same requirements for content, hearings, notice, review, and appeal as petitions submitted pursuant to section 79-402.

Sec. 6. That section 79-402.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read

as follows:

~~79-402.04.~~ When a new district is to be created from other districts as provided in section 79-402, the petition shall contain: (1) A description of the proposed boundaries of the reorganized districts; (2) a summary of the terms on which reorganization is to be made between the reorganized districts; and such terms may include a provision for initial school board districts or wards within the proposed district for the appointment of the first board of education and also for the first election as provided in section 79-426.19, such proposed initial school board districts or wards to be determined by the county committee taking into consideration population and valuation, and a determination of the term of the board members first appointed to membership of the board of the newly reorganized district; (3) a map showing the boundaries of established school districts and the boundaries proposed under any plan or plans of reorganization; and (4) such other matters as the petitioners shall determine proper to be included. Any petition for the creation of a new Class VI district shall designate whether such district shall include high school grades only or grades seven through twelve. The petition may contain provisions for the holding of school within existing buildings in the newly reorganized district and that a school constituted under the provisions of this section shall be maintained from the date of reorganization unless the legal voters served by the school vote by a majority vote for discontinuance of the school.

Sec. 7. That section 79-404, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~79-404.~~ A list or lists of all the legal voters in each district or territory affected, made under the oath of a resident of each district or territory, shall be given to the county superintendent when the petition is presented.

Sec. 8. That section 79-402.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~79-402.02.~~ Within thirty days after the creation of the a new district pursuant to sections 1 to 7 of this act, the county reorganization committee shall appoint from among the qualified electors of the new district created the number of members necessary to

constitute a ~~school-board-or~~ board of education of the class in which the new district has been classified. If the new district involves territory lying in the jurisdiction of two or more counties, the ~~school-board or~~ board of education shall be appointed by the joint action of the county reorganization committees of the counties involved. ~~In-appointing Members of the first board by the-reorganization-committee,-the-members shall be appointed so that two-members-shall-have--a--term--of--one-year,-two-members-shall-have-a-term--of--two--years, and-two-members-shall-have-a-term-of-three-years,-and-as the-terms-of-the-members-expire,-their-successors--shall thereafter-be-elected-for-a-term-of-three-years; their terms will expire in accord with provisions of law governing districts of the class involved.~~ The ~~school board-or~~ board of education so appointed shall proceed at once to organize in the manner prescribed by law. At the next annual school meeting or election following the establishment of said ~~the~~ new districts ~~district~~ and at subsequent annual meetings or elections, successors shall be elected in the manner provided by law for election of board members of the class to which the district belongs.

Sec. 9. (1) When it shall come to the attention of the county superintendent that any territory located wholly within his county is not included in any organized district, he shall notify the county committee for school district reorganization. Within fifteen days of such notice, the county committee shall set a date for a hearing on the question of to which district or districts such territory should be attached, and shall give fifteen days' notice by certified or registered mail of the time and place of hearing to each legal voter residing in such territory and whose mailing address is known, and also to the board of education of each school district in the county adjacent to such territory. Notice of the hearing also shall be given by publication once each week for two weeks in a newspaper of general circulation in the county. Following such hearing, the county committee shall notify the county superintendent to which district or districts such territory should be attached, and the county superintendent shall attach such territory.

(2) When any such territory not in any organized district is located in more than one county, notice shall be given to the joint committee provided for in section 79-426.09, whose duty it shall be to give the prescribed notice of and hold the hearing on the question of to which district or districts such territory shall be attached. Notice of the decision

reached by the joint committee shall be given the respective county superintendents, who shall attach the territory in accordance with such decision.

(3) If the county or joint committee cannot or does not agree to which district or districts the territory shall be attached, within sixty days after being notified by the county superintendent, the matter shall be referred to the State Board of Education, which shall attach the territory after notice and hearing. Notice shall be given in the same manner as by the county committee.

(4) In determining the district or districts to which such territory shall be attached, consideration shall be given to the school facilities, transportation facilities, and distance children must travel to school.

(5) Territory may be annexed to a district from an adjoining county upon joint action by special committees as provided in section 79-426.09 with such special committees performing the responsibilities required by this section.

Sec. 10. Bonded indebtedness incurred prior to any change in school district boundary lines under the provisions of sections 1 to 9 of this act shall remain the obligation of the school district voting such bonds unless otherwise specified in the petitions. When a district is dissolved by petitions, and the area is attached to two or more districts, the petitions shall specify the disposition of assets and unbonded obligations of the original district.

Sec. 11. That section 79-403, Revised Statutes Supplement, 1969, be amended to read as follows:

79-403. (1) Any freeholder or freeholders, person in possession or constructive possession as vendee pursuant to a contract of sale of the fee, holder of a school land lease under section 72-232, or entrant upon government land who has not yet received a patent therefor may file a petition with a board consisting of the county superintendent, county clerk, and county treasurer, asking to have any tract of land described therein set off from a Class I or Class II district in which it is situated and attached to some other district. The petition shall state the reasons for the proposed change and shall show with reference to the land of each petitioner: (a) That the land therein described is either owned by the petitioner or petitioners or that he or they hold a school land lease

under section 72-232, are in possession or constructive possession as vendee under a contract of sale of the fee simple interest, or have made an entry on government land but have not yet received a patent therefor; (b) that the land is located in a district that adjoins the district to which it is to be attached; (c) that the land proposed to be attached has children of school age who have resided thereon with their parents or guardians for not less than forty days; and (d) either that they are each more than two miles from the schoolhouse in their own district, and at least one half mile nearer to the schoolhouse or a school bus route of the adjoining district, which distance shall be measured by the shortest route possible upon section lines or traveled roads open to the public or that the route to the schoolhouse in the adjoining district is more practicable and, for at least half its distance, over hard-surfaced roads and the distance to the schoolhouse in the adjoining district does not exceed the distance to the schoolhouse in their own district by more than six miles or that they have personally paid tuition for one or more of their children to attend school in the other district over a period of two or more consecutive years, or that they reside in a Class I or Class II district and own, or lease under section 72-232, have possession or constructive possession under a contract of sale as vendee or have made entry on government land but have not yet received a patent therefor, not less than eighty acres of land in an adjoining Class II, III, IV, or V district to which they wish to transfer additional land. For purposes of this subsection, children of school age shall mean children who are attending a public school in the school district from which the land is to be set off or children who are not attending a public school in such district but who will attend a public school in the district to which the land will be attached, except children whose parents or guardians have personally paid tuition for such children to attend school in the other district for two or more consecutive years. Failure of such children to attend a public school in the district to which the land is attached shall invalidate the transfer from the date of approval. ~~If the land sought to be transferred pursuant to this subsection is also situated in a Class VI school district, the land shall not be set off from such Class VI district unless the requirements of subsection (2) of this section have also been met.~~ The petition shall be verified by the oath of the petitioner or petitioners. The board may, after a public hearing on the petition, thereupon change the boundaries of the districts so as to set off the land described in the petition and attach it to such adjoining district as is called for in the

petition whenever they deem it just and proper and for the best interest of the petitioner or petitioners so to do. Notice of the filing of the petition and hearing thereon before the board shall be given at least ten days prior to the date of such hearing, by one publication in a legal newspaper of general circulation in each district, and by posting a notice on the outer door of the schoolhouse in each district affected thereby, which notice shall designate the territory to be transferred. Petitions requesting transfers of property across county lines shall be addressed jointly to the county superintendents of the counties concerned, and the petitions shall be acted upon by the county superintendents, county clerks, and county treasurers of the counties involved as one board, with the county superintendent of the county from which the real estate is sought to be transferred acting as chairman of the board. Appeals may be taken from the action of such board, or when such board fails to agree, to the district court of the county in which the real estate is located within twenty days after entry of such action on the records of the board by the county clerk of the county in which the real estate is located or within twenty days after March 15 if the board fails to act upon such petition as provided in section 79-1103.05, in the same manner as appeals are now taken from the action of the county board in the allowance or disallowance of claims against the county.

(2) Any freeholder or freeholders, person in possession or constructive possession as vendee pursuant to a contract of sale of the fee, holder of a school land lease under section 72-232, or entrant upon government land who has not yet received a patent therefor may file a petition with a board consisting of the county superintendent, county clerk, and county treasurer, asking to have any tract or tracts of land described therein set off from a nonaccredited Class I, II, III or VI district in which it is situated and attached to an accredited district in the county of the residence of the petitioner or an adjoining county thereto, and when such petition is for transfer of land from a Class I district which is part of a Class VI district, the petitioner shall be allowed to have such land attached to an adjoining accredited Class II, III, IV or V district. The petition shall state the reasons for the proposed change and shall show with reference to the land of each petitioner: (a) That the land therein described is either owned by the petitioner or petitioners or that he or they hold a school land lease under section 72-232, are in possession or constructive possession as vendee under a contract of sale of the fee

simple interest, or have made an entry on government land but have not yet received a patent therefor; (b) that the land proposed to be attached has children of school age who have resided thereon with their parents or guardians for not less than forty days prior to filing the petition; (c) that the land described therein is located in a Class I, II, III or VI school district as provided in this subsection (2), and is to be attached to an accredited school district in the county of the residence of the petitioner or an adjoining county thereto; and (d) that such petition is approved by a majority of the members of the school board or board of education of the district to which such land is sought to be attached. If the land sought to be transferred pursuant to this subsection is to be set off from a Class I, II, III or VI district and attached to an accredited Class VI district, the land shall not be set off and attached to such Class VI district unless the petition states that the land is to be attached to a Class I district located within the boundaries of such Class VI district, and a majority of the members of the school board or board of education of both such Class VI and Class I districts approve such petition. All procedures as provided in subsection (1) of this section including provisions for the transfer of property across county lines shall apply to this subsection except that the board shall in this instance change the boundaries where it is found that all provisions as herein set forth have been met. For purposes of this subsection, children of school age shall mean children who are attending public school or children who are not attending a public school in such district but who will attend a public school in the district to which the land will be attached. Failure of such children to attend a public school in the district to which the land is attached shall invalidate the transfer from the date of approval.

Sec. 12. That original sections 79-402.01, 79-402.02, and 79-404, Reissue Revised Statutes of Nebraska, 1943, and sections 79-402 and 79-403, Revised Statutes Supplement, 1969, are repealed.