1	DIVIDED SCHOOL DISTRICT ASSETS AND
2	LIABILITIES
3	2011 GENERAL SESSION
4	STATE OF UTAH
5	Chief Sponsor: Kenneth W. Sumsion
6	Senate Sponsor:
7 8	LONG TITLE
9	General Description:
10	This bill modifies provisions pertaining to the allocation of the assets and liabilities of
11	certain divided school districts.
12	Highlighted Provisions:
13	This bill:
14	 specifies how the assets and liabilities of a divided school district shall be allocated
15	between the new district and the remaining district when a school district is created
16	pursuant to a proposal made by a city or interlocal agreement participants; and
17	 eliminates provisions requiring disagreements about the allocation of assets and
18	liabilities to be resolved by binding arbitration.
19	Money Appropriated in this Bill:
20	None
21	Other Special Clauses:
22	None
23	Utah Code Sections Affected:
24	AMENDS:
25	53A-2-117, as last amended by Laws of Utah 2008, Chapters 92 and 236
26	53A-2-118.1 , as last amended by Laws of Utah 2010, Chapter 230



28	Be it enacted by the Legislature of the state of Utah:
29	Section 1. Section 53A-2-117 is amended to read:
30	53A-2-117. Definitions.
31	As used in Sections 53A-2-117 through 53A-2-121:
32	(1) "Allocation date" means:
33	(a) June 30 of the second calendar year after the [creation] local school board general
34	election date described in Subsection 53A-2-118.1(3)(a)(i); or
35	(b) another date that the transition teams under Section 53A-1-118.1 mutually agree to
36	(2) "Canvass date" means the date of the canvass of an election under Subsection
37	53A-2-118(5) at which voters approve the creation of a new school district under Section
38	53A-2-118.1.
39	(3) "Creation election date" means the date of the election under Subsection
40	53A-2-118(5) at which voters approve the creation of a new school district under Section
41	53A-2-118.1.
42	(4) "Divided school district, "existing district," or "existing school district" means a
43	school district from which a new district is created.
44	(5) "New district" or "new school district" means a school district created under
45	Section 53A-2-118 or 53A-2-118.1.
46	(6) "Remaining district" or "remaining school district" means an existing district after
47	the creation of a new district.
48	Section 2. Section 53A-2-118.1 is amended to read:
49	53A-2-118.1. Proposal initiated by a city or interlocal agreement participants to
50	create a school district Boundaries Election of local school board members
51	Allocation of assets and liabilities Startup costs Transfer of title.
52	(1) (a) After conducting a feasibility study, a city with a population of at least 50,000,
53	as determined by the lieutenant governor using the process described in Subsection 67-1a-2(3).
54	may by majority vote of the legislative body, submit for voter approval a measure to create a
55	new school district with boundaries contiguous with that city's boundaries, in accordance with
56	Section 53A-2-118.
57	(b) (i) The determination of all matters relating to the scope, adequacy, and other
58	aspects of a feasibility study under Subsection (1)(a) is within the exclusive discretion of the

59 city's legislative body.

- (ii) An inadequacy of a feasibility study under Subsection (1)(a) may not be the basis of a legal action or other challenge to:
 - (A) an election for voter approval of the creation of a new school district; or
 - (B) the creation of the new school district.
- (2) (a) By majority vote of the legislative body, a city of any class, a town, or a county, may, together with one or more other cities, towns, or the county enter into an interlocal agreement, in accordance with Title 11, Chapter 13, Interlocal Cooperation Act, for the purpose of submitting for voter approval a measure to create a new school district.
- (b) (i) In accordance with Section 53A-2-118, interlocal agreement participants under Subsection (2)(a) may submit a proposal for voter approval if:
- (A) the interlocal agreement participants conduct a feasibility study prior to submitting the proposal to the county;
- (B) the combined population within the proposed new school district boundaries is at least 50,000;
 - (C) the new school district boundaries:
 - (I) are contiguous;
- (II) do not completely surround or otherwise completely geographically isolate a portion of an existing school district that is not part of the proposed new school district from the remaining part of that existing school district, except as provided in Subsection (2)(d)(iii);
- (III) include the entire boundaries of each participant city or town, except as provided in Subsection (2)(d)(ii); and
 - (IV) subject to Subsection (2)(b)(ii), do not cross county lines; and
- (D) the combined population within the proposed new school district of interlocal agreement participants that have entered into an interlocal agreement proposing to create a new school district is at least 80% of the total population of the proposed new school district.
- (ii) The determination of all matters relating to the scope, adequacy, and other aspects of a feasibility study under Subsection (2)(b)(i)(A), including whether to conduct a new feasibility study or revise a previous feasibility study due to a change in the proposed new school district boundaries, is within the exclusive discretion of the legislative bodies of the interlocal agreement participants that enter into an interlocal agreement to submit for voter

approval a measure to create a new school district.

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(iii) An inadequacy of a feasibility study under Subsection (2)(b)(i)(A) may not be the basis of a legal action or other challenge to:

- (A) an election for voter approval of the creation of a new school district; or
- (B) the creation of the new school district.
- (iv) For purposes of determining whether the boundaries of a proposed new school district cross county lines under Subsection (2)(b)(i)(C)(IV):
- (A) a municipality located in more than one county and entirely within the boundaries of a single school district is considered to be entirely within the same county as other participants in an interlocal agreement under Subsection (2)(a) if more of the municipality's land area and population is located in that same county than outside the county; and
- (B) a municipality located in more than one county that participates in an interlocal agreement under Subsection (2)(a) with respect to some but not all of the area within the municipality's boundaries on the basis of the exception stated in Subsection (2)(d)(ii)(B) may not be considered to cross county lines.
- (c) (i) A county may only participate in an interlocal agreement under this Subsection (2) for the unincorporated areas of the county.
 - (ii) Boundaries of a new school district created under this section may include:
 - (A) a portion of one or more existing school districts; and
 - (B) a portion of the unincorporated area of a county, including a portion of a township.
 - (d) (i) As used in this Subsection (2)(d):
- (A) "Isolated area" means an area that:
- (I) is entirely within the boundaries of a municipality that, except for that area, is entirely within a school district different than the school district in which the area is located; and
- (II) would, because of the creation of a new school district from the existing district in which the area is located, become completely geographically isolated.
- (B) "Municipality's school district" means the school district that includes all of the municipality in which the isolated area is located except the isolated area.
- 119 (ii) Notwithstanding Subsection (2)(b)(i)(C)(III), a municipality may be a participant in 120 an interlocal agreement under Subsection (2)(a) with respect to some but not all of the area

within the municipality's boundaries if:

- (A) the portion of the municipality proposed to be included in the new school district would, if not included, become an isolated area upon the creation of the new school district; or
- (B) (I) the portion of the municipality proposed to be included in the new school district is within the boundaries of the same school district that includes the other interlocal agreement participants; and
- (II) the portion of the municipality proposed to be excluded from the new school district is within the boundaries of a school district other than the school district that includes the other interlocal agreement participants.
- (iii) (A) Notwithstanding Subsection (2)(b)(i)(C)(II), a proposal to create a new school district may be submitted for voter approval pursuant to an interlocal agreement under Subsection (2)(a), even though the new school district boundaries would create an isolated area, if:
- (I) the potential isolated area is contiguous to one or more of the interlocal agreement participants;
- (II) the interlocal participants submit a written request to the municipality in which the potential isolated area is located, requesting the municipality to enter into an interlocal agreement under Subsection (2)(a) that proposes to submit for voter approval a measure to create a new school district that includes the potential isolated area; and
- (III) 90 days after a request under Subsection (2)(d)(iii)(A)(II) is submitted, the municipality has not entered into an interlocal agreement as requested in the request.
- (B) Each municipality receiving a request under Subsection (2)(d)(iii)(A)(II) shall hold one or more public hearings to allow input from the public and affected school districts regarding whether or not the municipality should enter into an interlocal agreement with respect to the potential isolated area.
 - (C) (I) This Subsection (2)(d)(iii)(C) applies if:
- (Aa) a new school district is created under this section after a measure is submitted to voters based on the authority of Subsection (2)(d)(iii)(A); and
 - (Bb) the creation of the new school district results in an isolated area.
- 150 (II) The isolated area shall, on July 1 of the second calendar year following the <u>local</u> 151 school board general election date described in Subsection (3)(a)(i), become part of the

152	municipality's school district.
153	(III) Unless the isolated area is the only remaining part of the existing district, the
154	process described in Subsection (4) shall be modified to:
155	(Aa) include a third transition team, appointed by the <u>local</u> school [district] board of
156	the municipality's school district, to represent that school district; and
157	(Bb) require allocation of the existing district's [property] assets and liabilities among
158	the new district, the remaining district, and the municipality's school district[;].
159	[(Cc) require each of the three transition teams to appoint one member to the
160	three-member arbitration panel, if an arbitration panel is established; and]
161	[(Dd) require the municipality's school district to bear 1/3 of the costs of arbitration.]
162	(IV) The existing district shall continue to provide educational services to the isolated
163	area until July 1 of the second calendar year following the <u>local</u> school board general election
164	date described in Subsection (3)(a)(i).
165	(3) (a) If a proposal under this section is approved by voters:
166	(i) an election shall be held at the next regular general election to elect:
167	(A) members to the <u>local school</u> board of the existing school district whose terms are
168	expiring;
169	(B) all members to the <u>local school</u> board of the new school district; and
170	(C) all members to the <u>local school</u> board of the remaining district;
171	(ii) the assets and liabilities of the existing school district [property] shall be divided
172	between the [existing] remaining school district and the new school district as provided in
173	Subsection $[\frac{(4)}{(5)}]$ (5) and Section 53A-2-121;
174	(iii) transferred employees shall be treated in accordance with Sections 53A-2-116 and
175	53A-2-122;
176	(iv) (A) an individual residing within the boundaries of a new school district at the
177	time the new school district is created may, for six school years after the creation of the new
178	school district, elect to enroll in a secondary school located outside the boundaries of the new
179	school district if:
180	(I) the individual resides within the boundaries of that secondary school as of the day
181	before the new school district is created; and
182	(II) the individual would have been eligible to enroll in that secondary school had the

new school district not been created; and

- (B) the school district in which the secondary school is located shall provide educational services, including, if provided before the creation of the new school district, busing, to each individual making an election under Subsection (3)(a)(iv)(A) for each school year for which the individual makes the election; and
- (v) within one year after the new district begins providing educational services, the superintendent of each remaining district affected and the superintendent of the new district shall meet, together with the Superintendent of Public Instruction, to determine if further boundary changes should be proposed in accordance with Section 53A-2-104.
- (b) (i) The terms of the initial members of the <u>local</u> school [district] board of the new district and remaining district shall be staggered and adjusted by the county legislative body so that approximately half of the <u>local school</u> board is elected every two years.
- (ii) The term of a member of the existing <u>local</u> school board, including a member elected under Subsection (3)(a)(i)(A), terminates on July 1 of the second year after the <u>local</u> school board general election date described in Subsection (3)(a)(i), regardless of when the term would otherwise have terminated.
- (iii) Notwithstanding the existence of a <u>local school</u> board for the new district and a <u>local school</u> board for the remaining district under Subsection (3)(a)(i), the <u>local school</u> board of the existing district shall continue, until the time specified in Subsection 53A-2-118(5)(b)(ii)(A), to function and exercise authority as a <u>local school</u> board to the extent necessary to continue to provide educational services to the entire existing district.
- (iv) A person may simultaneously serve as or be elected to be a member of the <u>local</u> school board of an existing district and a member of the <u>local school</u> board of:
 - (A) a new district; or
 - (B) a remaining district.
- (4) (a) Within 45 days after the canvass date for the election at which voters approve the creation of a new district:
- (i) a transition team to represent the remaining district shall be appointed by the members of the existing [district] local school board who reside within the area of the remaining district, in consultation with:
- (A) the legislative bodies of all municipalities in the area of the remaining district; and

214	(B) the legislative body of the county in which the remaining district is located, if the
215	remaining district includes one or more unincorporated areas of the county; and
216	(ii) another transition team to represent the new district shall be appointed by:
217	(A) for a new district located entirely within the boundaries of a single city, the
218	legislative body of that city; or
219	(B) for each other new district, the legislative bodies of all interlocal agreement
220	participants.
221	(b) The <u>local</u> school [district] board of the existing school district shall, within 60 days
222	after the canvass date for the election at which voters approve the creation of a new district:
223	(i) prepare an inventory of the existing district's:
224	(A) [property] assets, both tangible and intangible, real and personal; and
225	(B) liabilities; and
226	(ii) deliver a copy of the inventory to each of the transition teams.
227	(c) [(i) (A)] The transition teams appointed under Subsection (4)(a) shall[, subject to
228	Subsection (4)(c)(iii)]:
229	[(1)] (i) determine the allocation of the existing district's [property] assets and, except
230	for indebtedness under Section 53A-2-121, liabilities between the remaining district and the
231	new district in accordance with Subsection $[(4)(e)(ii)]$ (5);
232	[(H)] (ii) prepare a written report detailing how the existing district's [property] assets
233	and, except for indebtedness under Section 53A-2-121, liabilities are to be allocated[,
234	including:]; and
235	[(Aa) a designation of the property that should be transferred to the new district;]
236	[(Bb) a designation of any property that should be shared between the remaining
237	district and the new district; and]
238	[(Cc) a designation of any property that will need to be allocated by arbitration under
239	Subsection (4)(d); and]
240	[(HH)] (iii) deliver a copy of the written report to:
241	[(Aa)] (A) the local school [district] board of the existing district;
242	[(Bb)] (B) the local school [district] board of the remaining district; and
243	[(Ce)] (C) the <u>local</u> school [district] board of the new district.
244	[(B)] (d) The transition teams shall determine the allocation under Subsection

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245	$(4)(c)(1)[\frac{(A)(1)}{(A)(1)}]$ and deliver the report required under Subsection $(4)(c)[\frac{(1)(A)(11)}{(11)}]\frac{(11)}{(11)}$ before
246	August 1 of the year following the election at which voters approve the creation of a new
247	district, unless that deadline is extended by the mutual agreement of:
248	[(1)] (i) the local school [district] board of the existing district; and
249	[(II) (Aa)] (ii) (A) the legislative body of the city in which the new district is located,
250	for a new district located entirely within a single city; or
251	[(Bb)] (B) the legislative bodies of all interlocal agreement participants, for each other
252	new district.
253	[(ii) Subject to Subsection (4)(c)(iii), all property, assets, and liabilities that the
254	existing district owns on the allocation date, both tangible and intangible, real and personal,
255	shall be allocated between the remaining district and the new district in a way that is fair and
256	equitable to both the remaining district and the new district, taking into account:]
257	[(A) the relative student populations between the remaining district and new district;]
258	[(B) the relative assessed value of taxable property between the remaining district and
259	the new district;]
260	[(C) the historical amount of property used to deliver educational services to students
261	in the remaining district and the new district;]
262	[(D) any money made available for the use of the new district under Subsection (5);
263	and]
264	[(E) any other factors that the transition teams consider relevant in dividing the
265	property in a fair and equitable manner.]
266	[(iii) (A) The transition teams shall allocate each school building and associated
267	property used primarily to provide educational services to local residents and not serving
268	district-wide purposes to the school district that would best serve the existing student
269	population of that school building and associated property.]
270	[(B) Except as provided in Subsection (4)(c)(iii)(A), nothing in this Subsection (4)(c)
271	may be construed to limit the ability of the transition teams to:]
272	[(I) provide that an existing district's property be shared by a remaining district and
273	new district;]
274	[(II) determine, by mutual agreement, that the value of the school buildings and
275	associated property described in Subsection (4)(c)(iii)(A) may be excluded from consideration

276	in the property allocation process under this Subsection (4)(c); or]
277	[(III) provide for any other arrangement with respect to existing district property that is
278	beneficial to and in the best interests of the remaining district and new district.]
279	[(d) (i) Each disagreement between the transition teams about the proper allocation of
280	property between the districts shall be resolved by binding arbitration to a three-member
281	arbitration panel.]
282	[(ii) Each transition team shall, no later than September 1 of the year after the creation
283	election date, appoint one qualified, independent arbitrator to an arbitration panel under this
284	Subsection (4)(d), and those two arbitrators shall, within 15 days after their appointment,
285	appoint a third qualified, independent arbitrator.]
286	[(iii) In the process of resolving a dispute between the transition teams, the arbitration
287	panel may engage the services of one or more professionals to provide technical advice to the
288	panel.]
289	[(iv) The costs of arbitration shall initially be borne entirely by the existing district, but
290	the new district shall reimburse the existing district half of those costs within one year after the
291	new district begins providing educational services.]
292	[(e) Each decision of the transition teams and of the arbitration panel resolving a
293	disagreement between the transition teams is final and binding on the boards of the existing
294	district, remaining district, and new district.]
295	[(f)] (e) (i) All costs and expenses of the transition team that represents a remaining
296	district shall be borne by the remaining district.
297	(ii) All costs and expenses of the transition team that represents a new district shall
298	initially be borne by:
299	(A) the city whose legislative body appoints the transition team, if the transition team
300	is appointed by the legislative body of a single city; or
301	(B) the interlocal agreement participants, if the transition team is appointed by the
302	legislative bodies of interlocal agreement participants.
303	(iii) The new district may, to a maximum of \$500,000, reimburse the city or interlocal
304	agreement participants for:
305	(A) transition team costs and expenses; and
306	(B) startup costs and expenses incurred by the city or interlocal agreement participants

307	on behalf of the new district.
308	(5) (a) As used in this Subsection (5):
309	(i) "Associated property" means furniture, equipment, or supplies located in or
310	specifically associated with a physical asset.
311	(ii) (A) "Discretionary asset or liability" means, except as provided in Subsection
312	(5)(a)(ii)(B), an asset or liability that is not tied to a specific project, school, student, or
313	employee by law or school district accounting practice.
314	(B) "Discretionary asset or liability" does not include a physical asset, associated
315	property, a vehicle, or bonded indebtedness.
316	(iii) (A) "Nondiscretionary asset or liability" means, except as provided in Subsection
317	(5)(a)(iii)(B), an asset or liability that is tied to a specific project, school, student, or employee
318	by law or school district accounting practice.
319	(B) "Nondiscretionary asset or liability" does not include a physical asset, associated
320	property, a vehicle, or bonded indebtedness.
321	(iv) "Physical asset" means a building, land, or water right together with revenue
322	derived from the lease or use of the building, land, or water right.
323	(b) Except as provided in Subsection (5)(c), the transition teams appointed under
324	Subsection (4)(a) shall allocate all assets and liabilities the existing district owns on the
325	allocation date, both tangible and intangible, real and personal, to the new district and
326	remaining district as follows:
327	(i) a physical asset and associated property shall be allocated to the school district in
328	which the physical asset is located;
329	(ii) a discretionary asset or liability shall be allocated between the new district and
330	remaining district in proportion to the student populations of the school districts;
331	(iii) a nondiscretionary asset shall be allocated to the school district where the project,
332	school, student, or employee to which the nondiscretionary asset is tied will be located;
333	(iv) vehicles used for pupil transportation shall be allocated:
334	(A) according to the transportation needs of schools, as measured by the number and
335	assortment of vehicles used to serve transportation routes serving schools within the new
336	district and remaining district; and
337	(B) in a manner that gives each school district a fleet of vehicles for pupil

338	transportation that is equivalent in terms of age, condition, and variety of carrying capacities;
339	<u>and</u>
340	(v) other vehicles shall be allocated:
341	(A) in proportion to the student populations of the school districts; and
342	(B) in a manner that gives each district a fleet of vehicles that is similar in terms of age,
343	condition, and carrying capacities.
344	(c) By mutual agreement, the transition teams may allocate an asset or liability in a
345	manner different than the allocation method specified in Subsection (5)(b).
346	$[\underbrace{(5)}]$ (6) (a) As used in this Subsection $[\underbrace{(5)}]$ (6):
347	(i) "New district startup costs" means:
348	(A) costs and expenses incurred by a new district in order to prepare to begin providing
349	educational services on July 1 of the second calendar year following the <u>local</u> school board
350	general election date described in Subsection (3)(a)(i); and
351	(B) the costs and expenses of the transition team that represents the new district.
352	(ii) "Remaining district startup costs" means:
353	(A) costs and expenses incurred by a remaining district in order to:
354	(I) make necessary adjustments to deal with the impacts resulting from the creation of
355	the new district; and
356	(II) prepare to provide educational services within the remaining district once the new
357	district begins providing educational services within the new district; and
358	(B) the costs and expenses of the transition team that represents the remaining district.
359	(b) (i) By January 1 of the year following the <u>local</u> school board general election date
360	described in Subsection (3)(a)(i), the existing district shall make half of the undistributed
361	reserve from its General Fund, to a maximum of \$9,000,000, available for the use of the
362	remaining district and the new district, as provided in this Subsection $[(5)]$ (6) .
363	(ii) The existing district may make additional funds available for the use of the
364	remaining district and the new district beyond the amount specified in Subsection [(5)] (6) (b)(i)
365	through an interlocal agreement.
366	(c) The existing district shall make the money under Subsection [(5)] (6)(b) available
367	to the remaining district and the new district proportionately based on student population.
368	(d) The money made available under Subsection [(5)] (6)(b) may be accessed and spent

309	by:
370	(i) for the remaining district, the <u>local</u> school [district] board of the remaining district;
371	and
372	(ii) for the new district, the <u>local</u> school [district] board of the new district.
373	(e) (i) The remaining district may use its portion of the money made available under
374	Subsection [(5)] (6)(b) to pay for remaining district startup costs.
375	(ii) The new district may use its portion of the money made available under Subsection
376	$[\frac{(5)}{(6)}]$ (6) to pay for new district startup costs.
377	[(6)] (7) (a) The existing district shall transfer title or, if applicable, partial title of
378	property to the new school district in accordance with the allocation of property by[: (i)] the
379	transition teams, as stated in the report under Subsection $(4)(c)[\frac{(i)(A)(II)}{(i)(A)(II)};$ and $\underline{(ii)}$.
380	[(ii) the arbitration panel, if applicable.]
381	(b) The existing district shall complete each transfer of title or, if applicable, partial
382	title to real property and vehicles by July 1 of the second calendar year following the <u>local</u>
383	school board general election date described in Subsection (3)(a)(i), except as that date is
384	changed by the mutual agreement of:
385	(i) the <u>local</u> school [district] board of the existing district;
386	(ii) the <u>local</u> school [district] board of the remaining district; and
387	(iii) the <u>local</u> school [district] board of the new district.
388	(c) The existing district shall complete the transfer of all property not included in
389	Subsection [(6)] (7)(b) by November 1 of the second calendar year after the <u>local</u> school board
390	general election date described in Subsection (3)(a)(i).
391	[(7)] (8) Except as provided in Subsections $[(5)]$ (6) and $[(6)]$ (7), after the creation
392	election date an existing school district may not transfer or agree to transfer title to district
393	property without the prior consent of:
394	(a) the legislative body of the city in which the new district is located, for a new district
395	located entirely within a single city; or
396	(b) the legislative bodies of all interlocal agreement participants, for each other new
397	district.
398	[(8) This section applies to and governs all actions and proceedings relating to and
399	following the creation of a new district, whether the election under Subsection 53A-2-118(5)

400	on the proposal to create a new school district occurs before or after May 5, 2008, including:]
401	[(a) the election of school district board members; and]
402	[(b) transition team duties and responsibilities, whether the transition team is appointed
403	before or after May 5, 2008.]
404	(9) This section does not apply to the creation of a new district initiated through a
405	citizens' initiative petition or at the request of a local school board under Section 53A-2-118.

Legislative Review Note as of 1-19-11 10:16 AM

Office of Legislative Research and General Counsel

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FISCAL NOTE

H.B. 262

SHORT TITLE: Divided School District Assets and Liabilities

SPONSOR: Sumsion, K.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d)) Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.

2/3/2011, 10:37 AM, Lead Analyst: Leishman, B./Attorney: AOS

Office of the Legislative Fiscal Analyst