

Assembly Bill No. 38

CHAPTER 1

An act relating to the West Fresno Elementary School District, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 6, 2003. Filed with
Secretary of State March 6, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

AB 38, Reyes. West Fresno Elementary School District.

(1) Existing law provides for emergency apportionments to school districts subject to specified conditions including, in certain circumstances, the repayment of an emergency loan over a period of no more than 10 years and the appointment by the Superintendent of Public Instruction of an administrator who would exercise the powers and responsibilities of the governing board of the school district.

This bill would require the Superintendent of Public Instruction to assume all the rights, duties, and powers of the governing board of the school district and to appoint an administrator to act on behalf of the Superintendent of Public Instruction in exercising the superintendent's authority over the school district. The bill would specify that the governing board of the school district is not to receive any compensation during the period of the superintendent's authority over the district. The bill would authorize the administrator to terminate the employment of certain district personnel, as provided.

The bill would continue the authority of the superintendent and the administrator over the school district until certain enumerated conditions are met, including the completion of assessment and improvement plans for the school district.

The bill would require the administrator to consider, on a monthly basis or more frequently if desired, information from one or more specified groups. The bill would require the County Office Fiscal Crisis and Management Assistance Team (FCMAT) to conduct comprehensive assessments and complete, by July 1, 2003, improvement plans regarding instruction, finance, facilities, personnel management, and community relations. The bill would require the FCMAT to determine at least every 6 months whether the school district is making substantial and sustained progress in the implementation of the plans. The bill would authorize the administrator, with the approval of the



superintendent, to enter into agreements on behalf of the district and to change any existing district rules, policies, or practices, as provided.

The bill would require the Fresno County Superintendent of Schools to submit quarterly reports to the Superintendent of Public Instruction, the Legislature, and the Office of the Secretary for Education on the implementation by the West Fresno Elementary School District of the fiscal and management recovery plans.

The bill, except as specified, would require the school district to bear 100% of all costs associated with implementing its provisions, thereby imposing a state-mandated local program. The bill would require the administrator to be deemed an employee of the school district for certain purposes.

The bill would appropriate the sum of \$2,000,000 from the General Fund for an emergency loan to the West Fresno Elementary School District.

(2) This bill would make a legislative finding and declaration of unique circumstances in this regard.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason and would provide that with regard to any other mandates, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that the West Fresno Elementary School District has been in chaos for more than a decade as illustrated, in part, by the following occurrences:

(a) According to the County Office Fiscal Crisis and Management Assistance Team, the school district closed its 2001–02 school year with a negative fund balance of at least one million fifty-eight thousand dollars (\$1,058,000) and has an expected general fund shortfall through June 30, 2003, of at least two million three hundred thousand dollars (\$2,300,000).



(b) The school district was unable to account for six million three hundred thousand dollars (\$6,300,000) in technology improvement funds.

(c) The school district faces numerous personnel related and other lawsuits.

(d) The school district used the Revolving Cash Fund without records of deposits or withdrawals.

(e) The school district abused charter school funds when no charter schoolsites or pupils existed.

(f) The school district allowed individuals not employed by the school district to receive fully paid health benefits.

(g) The school district withheld payments to vendors, causing the provider of milk for pupil meals to refuse to deliver milk due to nonpayment.

(h) The school district employed five separate superintendents and four business managers in a period of 18 months during 2001 and 2002, including a superintendent who pleaded guilty to grand theft in connection with false travel claims and was accused during his tenure of double billing expenses to the school district and a school administrators' organization and was fired.

(i) The school district used school district credit cards for illegal purposes and, after the county office of education canceled those credit cards, the school district obtained a new set of credit cards and continued using them for personal cash withdrawals, personal and family travel, gifts, and other personal uses.

(j) The school district was unable to meet its October 2002 payroll, resulting in the school district closing for three days in November of 2002.

(k) On November 4, 2002, James L. Quaschnick, a Fresno County Superior Court Judge, found that the governing board of the West Fresno Elementary School District refused to acknowledge the reality that the school district had been headed for insolvency for some time, mostly due to the governing board's mismanagement, and found the governing board, including current governing board president Mel Sanders, guilty of contempt of court for failure to obey numerous court orders, and fined each member of the governing board five hundred dollars (\$500) a day until they complied with the court orders.

SEC. 2. The Legislature finds and declares that because of the fiscal emergency in which the West Fresno Elementary School District finds itself and in order to ensure the district's return to fiscal solvency, it is necessary that the Superintendent of Public Instruction immediately assume all the rights, duties, and powers of the governing board of the West Fresno Elementary School District. The Superintendent of Public



Instruction, in consultation with the Fresno County Superintendent of Schools, shall appoint an administrator to act on behalf of the Superintendent of Public Instruction in exercising the authority described in this act. The state-appointed administrator may, on a short-term basis, employ at district expense any staff necessary to assist the administrator, including, but not limited to, a certified public accountant. The state-appointed administrator shall serve under the direction and supervision of the Superintendent of Public Instruction until terminated by the Superintendent of Public Instruction in consultation with the Fresno County Superintendent of Schools. The administrator shall have expertise in management and finance and shall do all of the following:

(a) Implement substantial changes in the fiscal policies and practices of the West Fresno Elementary School District, including, if necessary, the filing of a petition under Chapter 9 of the federal Bankruptcy Act for the adjustment of indebtedness of the district.

(b) Revise the educational program of the West Fresno Elementary School District to reflect realistic income projections, in response to the dramatic effect of the changes in fiscal policies and practices upon educational program quality and the potential for the success of all pupils.

(c) Encourage all members of the school community to accept a fair share of the burden of the fiscal recovery of the West Fresno Elementary School District.

(d) Consult, for the purposes described in this act, with the governing board of the West Fresno Elementary School District, the exclusive representatives of the employees of the district, parents, and the community.

(e) Consult with and seek recommendations from the Superintendent of Public Instruction and the County Office Fiscal Crisis and Management Assistance Team authorized pursuant to subdivision (a) of Section 42127.8 of the Education Code for the purposes described in this act.

SEC. 3. (a) (1) To facilitate the appointment of the administrator and the employment of any necessary staff, for the purposes of this section, the Superintendent of Public Instruction and county superintendent are exempt from the requirements of Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code and Part 2 (commencing with Section 10100) of the Public Contract Code.

(2) The salary and benefits of the state-appointed administrator shall be established by the Superintendent of Public Instruction and paid by the school district.



(3) During the time of appointment, the state-appointed administrator, if otherwise an employee of the state or of the county superintendent, shall be deemed an employee of the school district, but shall remain in the same retirement system under the same plan as if the state-appointed administrator had remained with the office of the county superintendent or any state office currently held by the state-appointed administrator. Upon the expiration or termination of the appointment, the state-appointed administrator shall have the right to return to his or her former position, or to a position at substantially the same level as that position, if that former position was with the state or the office of the county superintendent. The time served in the appointment shall be counted for all purposes as if the employee had served that time in his or her former position with the state or with the office of the county superintendent.

(b) For the period of time during which the Superintendent of Public Instruction exercises the authority described in Section 2 of this act, the governing board of the West Fresno Elementary School District has no rights, duties, or powers and is not entitled to any stipend, benefits, or other compensation.

(c) Notwithstanding any other provision of law, the state-appointed administrator may, after according the employee reasonable notice and opportunity for a hearing, terminate the employment of any district superintendent of schools, or deputy, associate, or assistant superintendent of schools, or other person employed in an equivalent capacity, whose duties include overseeing, managing, or otherwise directing the fiscal and budgetary operations of the West Fresno Elementary School District, and who is employed by the West Fresno Elementary School District under a contract of employment renewed after the effective date of this act if the employee fails to document, to the satisfaction of the state-appointed administrator, that before the effective date of this act he or she either advised the governing board of the district, or his or her superior, that actions contemplated or taken by the governing board could result in the fiscal insolvency of the district, or took other appropriate action to avert that fiscal insolvency.

(d) With the approval of the Superintendent of Public Instruction, the state-appointed administrator may enter into agreements on behalf of the school district and, subject to any contractual obligation of the school district, change any existing school district rules, regulations, policies, or practices as necessary for the effective implementation of the improvement plans specified in Section 5 of this act.

(e) The authority of the Superintendent of Public Instruction and the state-appointed administrator under this act shall continue until all of the following conditions occur:



(1) Two complete fiscal years have elapsed following the appointment of the administrator or, at any time after one complete fiscal year has elapsed following that appointment, if the state-appointed administrator determines, and so notifies the Superintendent of Public Instruction, that future compliance by the West Fresno Elementary School District with the improvement plans is probable.

(2) The County Office Fiscal Crisis and Management Assistance Team (FCMAT) completes the assessment and improvement plans specified in Section 5 of this act.

(3) FCMAT, after consultation with the state-appointed administrator, determines that for at least the immediately previous six months the school district made substantial and sustained progress in implementation of the plans in the major functional area.

(4) The state-appointed administrator certifies that all necessary collective bargaining agreements have been negotiated and ratified, and that the agreements are consistent with the terms of the recovery and improvement plans.

(5) The district completes all reports required by the Superintendent of Public Instruction and the state-appointed administrator.

(6) The Superintendent of Public Instruction concurs with the assessment of the state-appointed administrator and FCMAT that future compliance by the West Fresno Elementary School District with the improvement plans described in Section 5 and the multiyear financial recovery plan described in paragraph (2) of subdivision (a) of Section 41327 of the Education Code is probable.

(f) If all of the conditions specified in subdivision (e) occur, the governing board of the West Fresno Elementary School District shall regain all of its rights, duties, and powers.

(g) Notwithstanding subdivision (f), if the West Fresno Elementary School District violates any provision of the recovery plans, after the governing board of the school district regains all of its rights, powers, and duties pursuant to subdivision (f), the Superintendent of Public Instruction, in consultation with the Fresno County Superintendent of Schools, may reassume, in accordance with this section, all of the rights, duties, and powers of the governing board of the school district. The Superintendent of Public Instruction shall subsequently return to the governing board of the school district all of its rights, duties, and powers reassumed under this subdivision if he or she determines that the conditions of subdivision (e) are satisfied.

SEC. 4. The state-appointed administrator shall consider, on a monthly basis, or more frequently if so desired by the administrator, information from one or more of the following groups:

(a) The governing board of the school district.



- (b) Any advisory council of the school district.
- (c) Any parent-teacher organization of the school district.
- (d) Representatives from the community in which the school district is located.
- (e) The County Office Fiscal Crisis and Management Assistance Team.

SEC. 5. (a) The County Office Fiscal Crisis and Management Assistance Team (FCMAT) shall conduct comprehensive assessments and shall complete, by July 1, 2003, the following improvement plans for the West Fresno Elementary School District:

(1) An instructional improvement plan that includes special education and programs for English language learners and is consistent with the financial improvement plan required by paragraph (2). The plan shall specify pupil outcomes that reflect significant improvement in pupil achievement, particularly in the areas of reading, writing, and mathematics. Among the areas addressed by the plan shall be the alignment between the written, taught, and tested curriculum consistent with the state adopted instructional standards, and the use of assessment data to make appropriate pupil placements and allocate district resources. Included in the plan shall be a clear link between professional development for all instructional staff and pupil achievement objectives, including the need for ongoing analysis and use of assessment results to tailor instruction to meet the needs of all pupils.

(2) A financial improvement plan that is consistent with the instructional improvement plan required by paragraph (1) and that includes the current and future projected solvency and fiscal integrity of the school district. The financial improvement plan shall also include, but not be limited to, specific strategies to fund the full implementation of the improvement plans specified in this section and to improve the following:

- (A) Management information systems.
- (B) Accounting and internal control procedures.
- (C) Attendance accounting procedures.

(3) A facilities improvement plan that is consistent with the financial improvement plan required by paragraph (2), and that includes, but is not limited to, specific strategies for improving the following:

- (A) Protection and safety for pupils, employees, and district property.
- (B) Ongoing maintenance of district property.
- (C) Management control and procedures for managing all construction and modernization projects.

(4) A personnel management improvement plan that is consistent with the financial improvement plan required by paragraph (2), and that



includes, but is not limited to, specific strategies for improving the following:

(A) The recruitment, retention, screening, assessment, and hiring procedures for all district staff.

(B) The training of members of the governing board of the school district in the subjects about which members of the governing board shall have knowledge in order to discharge their duties as board members effectively.

(C) The assessment of the administrative practices of the school district and staff development to ensure that staff have the knowledge and skills required to manage effectively the educational programs, finances, safety, and facilities maintenance of the school district.

(D) The calculation and maintenance of appropriate and efficient full-time equivalent staffing ratios for all school district staff.

(E) The governance structure of the school district in relation to board policy development, operational effectiveness, and responsiveness to the community.

(F) In addition, the personnel management improvement plan shall provide data and analysis on the number of district certificated personnel who are serving on credential waivers or emergency permits. The district shall develop plans for providing monitoring and support for personnel in their daily instructional duties and in completing subject matter and professional preparation requirements through a traditional, university-based program, alternative certification program, or training to pass the CBEST exam.

(5) A community relations improvement plan that is consistent with the financial improvement plan required by paragraph (2), and that includes, but is not limited to, specific strategies for improving the communication among the governing board, personnel of the school district, pupils, and parents.

(b) Based upon its progress reports, FCMAT shall recommend to the Superintendent of Public Instruction those designated functional areas of school district operation that it determines are appropriate for the governing board of the school district to assume.

(c) Commencing in December 2003, and each six months thereafter until June 2004, FCMAT shall file a written status report with the appropriate fiscal and policy committees of the Legislature, including any special committees created for the purpose of reviewing the reports, and with the Members of the Legislature who represent the West Fresno Elementary School District, any advisory council of the school district, the Superintendent of Public Instruction, the Director of Finance, and the Secretary for Education. The reports shall include the progress that the West Fresno Elementary School District is making in meeting the



recommendations of the improvement plans developed pursuant to this section.

SEC. 6. (a) The West Fresno Elementary School District shall bear 100 percent of all costs associated with implementing this act, except for the activities of the County Office Fiscal Crisis and Management Team specified in Section 5 of this act.

(b) The state-appointed administrator shall be deemed an employee of the West Fresno Elementary School District for all purposes of errors and omissions liability insurance policies.

SEC. 7. (a) The sum of two million dollars (\$2,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for apportionment to the West Fresno Elementary School District for the purpose of an emergency loan. In order to qualify for the loan, the district shall comply with Article 2 (commencing with Section 41320) and Article 2.5 (commencing with Section 41325) of Chapter 3 of Part 24 of the Education Code to the extent those provisions are consistent with the conditions stipulated in this act. The state-appointed administrator is not required to prepare or obtain the management review and recovery plan required pursuant to paragraph (1) of subdivision (a) of Section 41327 of the Education Code. The improvement plans completed pursuant to Section 5 are to replace that management review and recovery plan.

(b) Funds may be disbursed from the proceeds of the loan only if the state-appointed administrator and the County Office Fiscal Crisis and Management Assistance Team jointly determine that the disbursement is necessary.

(c) Based on the needs of the district to meet its obligations, the Superintendent of Public Instruction may direct the Controller to disburse, on a monthly basis, specific amounts of the emergency loan before the approval of all of the conditions established by this act.

(d) For the fiscal year in which the apportionments are disbursed and each fiscal year thereafter, the Controller, or his or her designee, shall cause an audit to be conducted of the books and accounts of the district, instead of the audit required by Section 41020 of the Education Code. At the discretion of the Controller, the audit may be conducted by the Controller, his or her designee, or an auditor selected by the county superintendent and approved by the Controller. The costs of these audits shall be borne by the district. These audits are required until the Superintendent of Public Instruction, in consultation with the County Office of Education, determines that the district is financially solvent, but may not cease being required earlier than one year following the implementation of the plan nor later than the time the apportionment, including interest, is repaid. In addition, the Controller shall conduct



quality control reviews pursuant to subdivision (c) of Section 14504.2 of the Education Code.

SEC. 8. (a) Notwithstanding subparagraph (A) of paragraph (2) of subdivision (a) of Section 41327 of the Education Code, the West Fresno Elementary School District shall repay the debt incurred pursuant to Section 7 of this act as a straight line loan amortized over a 10-year term. This amount shall be repaid by the school district, plus interest calculated at a rate equal to the rate earned by the Pooled Money Investment Account on the date this act becomes effective, for a period not to exceed 10 years.

(b) If payment is not made within 60 days after the scheduled date, the Controller shall pay the defaulted loan payment of principal and interest by withholding that amount from the next available payment that would otherwise be made to the county treasurer on behalf of the district pursuant to Section 14041 of the Education Code. However, subject to the approval of the Department of Finance, the amount withheld may be in monthly amounts as determined by an agreement between the West Fresno Elementary School District and the Controller during the period beginning with the next available apportionment through the month preceding the next scheduled payment.

(c) The Director of Finance may amend the payment schedule set forth in subdivision (a) if the director concludes that the amendment is warranted and is in the best interests of both the state and the West Fresno Elementary School District education program. Upon that determination, the director shall notify the Joint Legislative Budget Committee that the payment scheduled will be changed on the date that is 90 days from the date of notification if the Legislature is in session. If the 90-day period ends during a recess of the Legislature or while the Legislature is not in session, the 90-day period shall be extended until the Legislature reconvenes. Amendments to the payment schedule shall defer the unpaid portion of a repayment of the earliest fiscal year in which no other repayment is scheduled. Interest shall accrue on the unpaid portion of a repayment from the scheduled due date until the time the payment is actually made. The interest charge shall be the rate equal to the daily investment rate of the Pooled Money Investment Account on the date the pay schedule is changed.

(d) The school district may repay its loan obligation without incurring any prepayment penalties.

SEC. 9. (a) The Fresno County Superintendent of Schools maintains the responsibility to superintend school districts under its jurisdiction. This act does not remove any statutory or regulatory rights, duties, or obligations from the county superintendent of instruction.



(b) Commencing three months after this act is enacted, the Fresno County Superintendent of Schools shall submit quarterly reports to the Superintendent of Public Instruction, the appropriate subcommittees of the Senate and Assembly, the chairpersons and vice chairpersons of the appropriate policy and fiscal committees of the Senate and Assembly, the Department of Finance, and the Office of the Secretary for Education. The reports shall document the fiscal and administrative status of the West Fresno Elementary School District, particularly in regard to the implementation of fiscal and management recovery plans pursuant to this act. Each report shall also include a determination of whether or not the revenue streams of the West Fresno Elementary School District appear to be consistent with its expenditure plan, according to the most recent data available at the time of the report. These reports shall cease being required six months after all rights, duties, and powers are returned to the school district pursuant to subdivision (e) of Section 3 of this act.

SEC. 10. The Department of Finance is authorized to redirect funds appropriated in Item 6110-107-0001 of Section 2.00 of the Budget Act of 2002 for the purposes of funding activities of the County Office Fiscal Crisis and Management Assistance Team specified in Section 5 of this act.

SEC. 11. (a) Any allegation of fraud or criminal misuse of district funds on the part of a current or former employee of the West Fresno Elementary School District shall be thoroughly investigated by the appropriate law enforcement agency.

(b) Notwithstanding the repayment schedules provided pursuant to Section 41327 of the Education Code, any district funds, property, or other assets recovered pursuant to subdivision (a) of this section shall be immediately directed toward repayment of the loan made pursuant to subdivision (a) of Section 7 of this act.

SEC. 12. The Legislature finds and declares that due to the unique circumstances regarding the West Fresno Elementary School District, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

SEC. 14. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of



Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address the fiscal emergency in which the West Fresno Elementary School District finds itself and to ensure that it meets its cash obligations for this fiscal year, it is necessary that this act take effect immediately.

