

**ASSEMBLY BILL**

**No. 2278**

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**Introduced by Assembly Member Swanson**

February 24, 2012

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An act to amend Section 41326 of the Education Code, relating to school districts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2278, as introduced, Swanson. School districts: state administrators.

Existing law authorizes the governing board of a school district to request an emergency apportionment through the Superintendent of Public Instruction if the governing board of a school district determines during a fiscal year that its revenues are less than the amount necessary to meet its current year expenditure obligations. Existing law provides that if a school district accepts an emergency apportionment that exceeds an amount equal to 200% of the amount of the reserve recommended for that school district, as specified, the Superintendent must, among other things, assume all the legal rights, duties, and powers of the governing board of the qualifying school district, as defined, and, in consultation with the county superintendent of schools, appoint an administrator to act on the Superintendent's behalf. Existing law also provides that the governing board of a qualifying school district has no rights, duties, or powers for the period of time the Superintendent exercises the authority given to the Superintendent as a result of an emergency apportionment that exceeds an amount equal to 200% of the amount of the reserve recommended for the school district.

This bill would authorize the governing board of a qualifying school district to annually evaluate the administrator appointed by the

Superintendent. The bill would also require that the evaluation of the administrator be submitted to the Governor, the Legislature, the Superintendent, and the County Office Fiscal Crisis and Management Team.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

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

1 SECTION 1. Section 41326 of the Education Code is amended  
2 to read:

3 41326. (a) Notwithstanding any other provision of this code,  
4 the acceptance by a school district of an apportionment made  
5 pursuant to Section 41320 that exceeds an amount equal to 200  
6 percent of the amount of the reserve recommended for that *school*  
7 district under the standards and criteria adopted pursuant to Section  
8 33127 constitutes the agreement by the *school* district to the  
9 conditions set forth in this article. Prior to applying for an  
10 emergency apportionment in the amount identified in this  
11 subdivision, a *governing board of a school district* ~~governing board~~  
12 shall discuss the need for that apportionment at a regular or special  
13 meeting of the governing board and, at that meeting, shall receive  
14 testimony regarding the apportionment from parents, exclusive  
15 representatives of employees of the *school* district, and other  
16 members of the community. For purposes of this article,  
17 “qualifying school district” means a school district that accepts a  
18 loan as described in this subdivision.

19 (b) The Superintendent shall assume all the legal rights, duties,  
20 and powers of the governing board of a qualifying school district.  
21 The Superintendent, in consultation with the county superintendent  
22 of schools, shall appoint an administrator to act on his or her behalf  
23 in exercising the authority described in this subdivision in  
24 accordance with all of the following:

25 (1) The administrator shall serve under the direction and  
26 supervision of the Superintendent until terminated by the  
27 Superintendent at his or her discretion. The Superintendent shall  
28 consult with the county superintendent of schools before  
29 terminating the administrator.

30 (2) The administrator shall have recognized expertise in  
31 management and finance.

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

8 (4) Notwithstanding any other law, the Superintendent may  
9 appoint an employee of the state or the office of the county  
10 superintendent of schools to act as administrator for up to the  
11 duration of the administratorship. During the tenure of his or her  
12 appointment, the administrator, if he or she is an employee of the  
13 state or the office of the county superintendent of schools, is an  
14 employee of the *qualifying* school district, but shall remain in the  
15 same retirement system under the same plan that has been provided  
16 by his or her employment with the state or the office of the county  
17 superintendent of schools. Upon the expiration or termination of  
18 the appointment, the employee shall have the right to return to his  
19 or her former position, or to a position at substantially the same  
20 level as that position, with the state or the office of the county  
21 superintendent of schools. The time served in the appointment  
22 shall be counted for all purposes as if the administrator had served  
23 that time in his or her former position with the state or the office  
24 of the county superintendent of schools.

25 (5) Except for an individual appointed as an administrator by  
26 the Superintendent of ~~Public Instruction~~ pursuant to paragraph (4),  
27 the administrator shall be a member of the State Teachers'  
28 Retirement System, if qualified, for the period of service as  
29 administrator, unless he or she elects in writing not to become a  
30 member. A person who is a member or retirant of the State  
31 Teachers' Retirement System at the time of appointment shall  
32 continue to be a member or retirant of the system for the duration  
33 of the appointment. If the administrator chooses to become a  
34 member or is already a member, the administrator shall be placed  
35 on the payroll of the *qualifying* school district for the purposes of  
36 providing appropriate contributions to the system. The  
37 Superintendent may also require the administrator to be placed on  
38 the payroll of the *qualifying* school district for purposes of  
39 remuneration, other benefits, and payroll deductions.

1 (6) For the purposes of workers' compensation benefits, the  
2 administrator is an employee of the qualifying *school* district,  
3 except that an administrator appointed pursuant to paragraph (4)  
4 may be deemed an employee of the state or office of the county  
5 superintendent of schools, as applicable.

6 (7) The qualifying *school* district shall add the administrator as  
7 a covered employee of the *qualifying* school district for all purposes  
8 of errors and omissions liability insurance policies.

9 (8) The salary and benefits of the administrator shall be  
10 established by the Superintendent of ~~Public Instruction~~ and paid  
11 by the qualifying school district.

12 (9) The Superintendent or the administrator may, on a short-term  
13 basis, employ at ~~district expense~~ *the expense of the qualifying*  
14 *school district* any staff necessary to assist the administrator,  
15 including, but not limited to, a certified public accountant.

16 (10) The administrator may do all of the following:

17 (A) Implement substantial changes in the fiscal policies and  
18 practices of the *qualifying school* district, including, if necessary,  
19 the filing of a petition under Chapter 9 (commencing with Section  
20 901) of Title 11 of the United States Code for the adjustment of  
21 indebtedness.

22 (B) Revise the educational program of the *qualifying school*  
23 district to reflect realistic income projections and pupil performance  
24 relative to state standards.

25 (C) Encourage all members of the school community to accept  
26 a fair share of the burden of the fiscal recovery of the *qualifying*  
27 *school* district.

28 (D) Consult, for the purposes described in this subdivision, with  
29 the governing board of the *qualifying* school district, the exclusive  
30 representatives of the employees of the *qualifying school* district,  
31 parents, and the community.

32 (E) Consult with, and seek recommendations from, the  
33 Superintendent, county superintendent of schools, and the County  
34 Office Fiscal Crisis and Management Assistance Team authorized  
35 pursuant to subdivision (c) of Section 42127.8 for the purposes  
36 described in this article.

37 (F) With the approval of the Superintendent, enter into  
38 agreements on behalf of the *qualifying school* district and, subject  
39 to any contractual obligation of the *qualifying school* district,  
40 change any existing *school* district rules, regulations, policies, or

1 practices as necessary for the effective implementation of the  
2 recovery plans referred to in Sections 41327 and 41327.1.

3 (c) (1) ~~For~~ *Except as provided in paragraph (2), for the period*  
4 *of time during which the Superintendent of Public Instruction*  
5 *exercises the authority described in subdivision (b), the governing*  
6 *board of the qualifying school district shall serve as an advisory*  
7 *body reporting to the state-appointed administrator, and has no*  
8 *rights, duties, or powers, and is not entitled to any stipend, benefits,*  
9 *or other compensation from the qualifying school district.*

10 (2) *The governing board of a qualifying school district may*  
11 *annually evaluate an administrator for the duration of the*  
12 *administration. An evaluation of an administrator conducted*  
13 *by the governing board of a qualifying school district shall be*  
14 *submitted to the Governor, the Legislature, the Superintendent,*  
15 *and the County Office Fiscal Crisis and Management Assistance*  
16 *Team.*

17 ~~(2)~~

18 (3) Upon the appointment of an administrator pursuant to this  
19 section, the district superintendent of schools is no longer an  
20 employee of the *qualifying school* district.

21 ~~(3)~~

22 (4) A determination of the severance compensation for the  
23 district superintendent *of schools* shall be made pursuant to  
24 subdivision (j).

25 (d) Notwithstanding Section 35031 or any other law, the  
26 administrator may, after according the employee reasonable notice  
27 and the opportunity for a hearing, terminate the employment of  
28 any deputy, associate, assistant superintendent of schools, or any  
29 other *school* district level administrator who is employed by a  
30 *qualifying* school district under a contract of employment signed  
31 or renewed after January 1, 1992, if the employee fails to  
32 document, to the satisfaction of the administrator, that ~~prior to~~  
33 *before* the date of the acceptance of the apportionment he or she  
34 either advised the governing board of the *qualifying school* district,  
35 or his or her superior, that actions contemplated or taken by the  
36 governing board *of the qualifying school district* could result in  
37 the fiscal insolvency of the *qualifying school* district, or took other  
38 appropriate action to avert that fiscal insolvency.

39 (e) The authority of the Superintendent, and the administrator,  
40 under this section shall continue until all of the following occur:

1 (1) (A) After one complete fiscal year has elapsed following  
 2 the *qualifying school* district’s acceptance of a loan as described  
 3 in subdivision (a), the administrator determines, and so notifies  
 4 the Superintendent and the county superintendent of schools, that  
 5 future compliance by the school district with the recovery plans  
 6 approved pursuant to paragraph (2) is probable.

7 (B) The Superintendent may return power to the governing  
 8 board of a *qualifying school district* for any area listed in  
 9 subdivision (a) of Section 41327.1 if performance under the  
 10 recovery plan for that area has been demonstrated to the satisfaction  
 11 of the Superintendent.

12 (2) The Superintendent has approved all of the recovery plans  
 13 referred to in subdivision (a) of Section 41327 and the County  
 14 Office Fiscal Crisis and Management Assistance Team completes  
 15 the improvement plans specified in Section 41327.1 and has  
 16 completed a minimum of two reports identifying the *qualifying*  
 17 *school* district’s progress in implementing the improvement plans.

18 (3) The administrator certifies that all necessary collective  
 19 bargaining agreements have been negotiated and ratified, and that  
 20 the agreements are consistent with the terms of the recovery plans.

21 (4) The *qualifying school* district has completed all reports  
 22 required by the Superintendent and the administrator.

23 (5) The Superintendent determines that future compliance by  
 24 the *qualifying school* district with the recovery plans approved  
 25 pursuant to paragraph (2) is probable.

26 (f) When the conditions stated in subdivision (e) have been met,  
 27 and at least 60 days after the Superintendent of ~~Public Instruction~~  
 28 has notified the Legislature, the Department of Finance, the  
 29 Controller, and the county superintendent of schools that he or she  
 30 expects the conditions prescribed pursuant to this section to be  
 31 met, the *governing board of the qualifying school district* ~~governing~~  
 32 ~~board~~ shall regain all of its legal rights, duties, and powers, except  
 33 for the powers held by the trustee provided for pursuant to Article  
 34 2 (commencing with Section 41320). The Superintendent shall  
 35 appoint a trustee under Section 41320.1 to monitor and review the  
 36 operations of the *qualifying school* district until the conditions of  
 37 subdivision (b) of that section have been met.

38 (g) Notwithstanding subdivision (f), if the *qualifying school*  
 39 district violates any provision of the recovery plans approved by  
 40 the Superintendent pursuant to this article within five years after

1 the trustee appointed pursuant to Section 41320.1 is removed, the  
2 Superintendent may reassume, either directly or through an  
3 administrator appointed in accordance with this section, all of the  
4 legal rights, duties, and powers of the governing board of the  
5 *qualifying school* district. The Superintendent shall return to the  
6 *governing board of the qualifying school* district ~~governing board~~  
7 all of its legal rights, duties, and powers reassumed under this  
8 subdivision when he or she determines that future compliance with  
9 the approved recovery plans is probable, or after a period of one  
10 year, whichever occurs later.

11 (h) Article 2 (commencing with Section 41320) shall apply  
12 except as otherwise specified in this article.

13 (i) It is the intent of the Legislature that the legislative budget  
14 subcommittees annually conduct a review of each qualifying school  
15 district that includes an evaluation of the financial condition of the  
16 *qualifying school* district, the impact of the recovery plans upon  
17 the *qualifying school* district's educational program, and the efforts  
18 made by the state-appointed administrator to obtain input from the  
19 community and the governing board of the *qualifying school*  
20 district.

21 (j) (1) The district superintendent *of schools* is entitled to a due  
22 process hearing for purposes of determining final compensation.  
23 The final compensation of the district superintendent *of schools*  
24 shall be between zero and six times his or her monthly salary. The  
25 outcome of the due process hearing shall be reported to the  
26 Superintendent ~~of Public Instruction~~ and the public. The  
27 information provided to the public shall explain the rationale for  
28 the compensation.

29 (2) This subdivision applies only to a contract for employment  
30 negotiated on or after June 21, 2004.

31 (k) (1) When the Superintendent assumes control over a school  
32 district pursuant to subdivision (b), he or she shall, in consultation  
33 with the County Office Fiscal Crisis and Management Assistance  
34 Team, review the fiscal oversight of the *qualifying school* district  
35 by the county superintendent of schools. The Superintendent may  
36 consult with other fiscal experts, including other county  
37 superintendents of schools and regional fiscal teams, in conducting  
38 this review.

39 (2) Within three months of assuming control over a qualifying  
40 *school* district, the Superintendent shall report his or her findings

1 to the Legislature and shall provide a copy of that report to the  
2 Department of Finance. This report shall include findings as to  
3 fiscal oversight actions that were or were not taken and may include  
4 recommendations as to an appropriate legislative response to  
5 improve fiscal oversight.

6 (3) If after performing the duties described in paragraphs (1)  
7 and (2), the Superintendent determines that the county  
8 superintendent of schools failed to carry out his or her  
9 responsibilities for fiscal oversight as required by this code, the  
10 Superintendent may exercise the authority of the county  
11 superintendent of schools who has oversight responsibilities for a  
12 qualifying school district. If the Superintendent finds, based on  
13 the report required in paragraph (2), that the county superintendent  
14 of schools failed to appropriately take into account particular types  
15 of indicators of financial distress, or failed to take appropriate  
16 remedial actions in the qualifying *school* district, the  
17 Superintendent shall further investigate whether the county  
18 superintendent of schools failed to take into account those  
19 indicators, or similarly failed to take appropriate actions in other  
20 *school* districts with negative or qualified certifications, and shall  
21 provide an additional report on the fiscal oversight practices of the  
22 county superintendent *of schools* to the appropriate policy and  
23 fiscal committees of each house of the Legislature and the  
24 Department of Finance.