

AMENDED IN SENATE JUNE 21, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2278

Introduced by Assembly Member Swanson

February 24, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2278, as amended, Swanson. School districts: state ~~administrators~~. *administrators: evaluations.*

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~~, *after one complete fiscal year has elapsed following the qualifying school district's acceptance of an emergency apportionment, to conduct an annual advisory evaluation of the administrator appointed by the Superintendent. The bill would require (A) an advisory evaluation to focus on the administrator's effectiveness in leading the school district toward fiscal recovery and improved academic achievement, (B) advisory evaluation criteria to be agreed upon by the governing board of the qualifying school district and the administrator before the advisory evaluation, and (C) the advisory evaluation to include, among other things, commendations in the areas of the administrator's strengths and achievements.* The bill would also require that the *advisory* evaluation of the administrator be submitted to the Governor, the Legislature, the Superintendent, and the County Office Fiscal Crisis and Management Assistance 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~~ *Before* applying for an
10 emergency apportionment in the amount identified in this
11 subdivision, a governing board of a school district shall discuss
12 the need for that apportionment at a regular or special meeting of
13 the governing board *of the school district* and, at that meeting,
14 shall receive testimony regarding the apportionment from parents,
15 exclusive representatives of employees of the school district, and
16 other 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.

1 The Superintendent, in consultation with the county superintendent
2 of schools, shall appoint an administrator to act on his or her behalf
3 in exercising the authority described in this subdivision in
4 accordance with all of the following:

5 (1) The administrator shall serve under the direction and
6 supervision of the Superintendent until terminated by the
7 Superintendent at his or her discretion. The Superintendent shall
8 consult with the county superintendent of schools before
9 terminating the administrator.

10 (2) The administrator shall have recognized expertise in
11 management and finance.

12 (3) To facilitate the appointment of the administrator and the
13 employment of ~~any~~ necessary staff, for ~~the~~ purposes of this section,
14 the Superintendent is exempt from the requirements of Article 6
15 (commencing with Section 999) of Chapter 6 of Division 4 of the
16 Military and Veterans Code and Part 2 (commencing with Section
17 10100) of Division 2 of the Public Contract Code.

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

35 (5) Except for an individual appointed as an administrator by
36 the Superintendent pursuant to paragraph (4), the administrator
37 shall be a member of the State Teachers' Retirement System, if
38 qualified, for the period of service as administrator, unless he or
39 she elects in writing not to become a member. A person who is a
40 member or retirant of the State Teachers' Retirement System at

1 the time of appointment shall continue to be a member or retirant
2 of the system for the duration of the appointment. If the
3 administrator chooses to become a member or is already a member,
4 the administrator shall be placed on the payroll of the qualifying
5 school district for ~~the~~ purposes of providing appropriate
6 contributions to the system. The Superintendent may also require
7 the administrator to be placed on the payroll of the qualifying
8 school district for purposes of remuneration, other benefits, and
9 payroll deductions.

10 (6) For ~~the~~ purposes of workers' compensation benefits, the
11 administrator is an employee of the qualifying school district,
12 except that an administrator appointed pursuant to paragraph (4)
13 may be deemed an employee of the state or office of the county
14 superintendent of schools, as applicable.

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

18 (8) The salary and benefits of the administrator shall be
19 established by the Superintendent and paid by the qualifying school
20 district.

21 (9) The Superintendent or the administrator may, on a short-term
22 basis, employ at the expense of the qualifying school district any
23 staff necessary to assist the administrator, including, but not limited
24 to, a certified public accountant.

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

26 (A) Implement substantial changes in the fiscal policies and
27 practices of the qualifying school district, including, if necessary,
28 the filing of a petition under Chapter 9 (commencing with Section
29 901) of Title 11 of the United States Code for the adjustment of
30 indebtedness.

31 (B) Revise the educational program of the qualifying school
32 district to reflect realistic income projections and pupil performance
33 relative to state standards.

34 (C) Encourage all members of the school community to accept
35 a fair share of the burden of the fiscal recovery of the qualifying
36 school district.

37 (D) Consult, for the purposes described in this subdivision, with
38 the governing board of the qualifying school district, the exclusive
39 representatives of the employees of the qualifying school district,
40 parents, and the community.

1 (E) Consult with, and seek recommendations from, the
2 Superintendent, *the* county superintendent of schools, and the
3 County Office Fiscal Crisis and Management Assistance Team
4 authorized pursuant to subdivision (c) of Section 42127.8 for the
5 purposes described in this article.

6 (F) With the approval of the Superintendent, enter into
7 agreements on behalf of the qualifying school district and, subject
8 to any contractual obligation of the qualifying school district,
9 change ~~any~~ existing school district rules, regulations, policies, or
10 practices as necessary for the effective implementation of the
11 recovery plans referred to in Sections 41327 and 41327.1.

12 (c) (1) Except as provided in paragraph (2), for the period of
13 time during which the Superintendent exercises the authority
14 described in subdivision (b), the governing board of the qualifying
15 school district shall serve as an advisory body reporting to the
16 state-appointed administrator, and has no rights, duties, or powers,
17 and is not entitled to any stipend, benefits, or other compensation
18 from the qualifying school district.

19 (2) ~~The~~ (A) *After one complete fiscal year has elapsed following*
20 *the qualifying school district's acceptance of an emergency*
21 *apportionment, the governing board of a the qualifying school*
22 *district may ~~annually evaluate~~ conduct an annual advisory*
23 *evaluation of an administrator for the duration of the*
24 *administratorship.* ~~An~~

25 (B) *An advisory evaluation of an administrator shall focus on*
26 *the administrator's effectiveness in leading the school district*
27 *toward fiscal recovery and improved academic achievement.*
28 *Advisory evaluation criteria shall be agreed upon by the governing*
29 *board of the qualifying school district and the administrator before*
30 *the advisory evaluation. The advisory evaluation shall include,*
31 *but not be limited to, all of the following:*

32 (i) *Goals and standards consistent with Section 41327.1.*

33 (ii) *Commendations in the areas of the administrator's strengths*
34 *and achievements.*

35 (iii) *Recommendations for improving the administrator's*
36 *effectiveness in areas of concern and unsatisfactory performance.*

37 (C) *An advisory evaluation of an administrator conducted by*
38 *the governing board of a qualifying school district shall be*
39 *submitted to the Governor, the Legislature, the Superintendent,*

1 and the County Office Fiscal Crisis and Management Assistance
2 Team.

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

6 (4) A determination of the severance compensation for the
7 district superintendent of schools shall be made pursuant to
8 subdivision (j).

9 (d) Notwithstanding Section 35031 or any other law, the
10 administrator may, after according the employee reasonable notice
11 and the opportunity for a hearing, terminate the employment of
12 ~~any~~ a deputy, associate, assistant superintendent of schools, or ~~any~~
13 other school district level administrator who is employed by a
14 qualifying school district under a contract of employment signed
15 or renewed after January 1, 1992, if the employee fails to
16 document, to the satisfaction of the administrator, that before the
17 date of the acceptance of the apportionment he or she either advised
18 the governing board of the qualifying school district, or his or her
19 superior, that actions contemplated or taken by the governing board
20 of the qualifying school district could result in the fiscal insolvency
21 of the qualifying school district, or took other appropriate action
22 to avert that fiscal insolvency.

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

25 (1) (A) After one complete fiscal year has elapsed following
26 the qualifying school district's acceptance of ~~a loan~~ *an emergency*
27 *apportionment* as described in subdivision (a), the administrator
28 determines, and so notifies the Superintendent and the county
29 superintendent of schools, that future compliance by the *qualifying*
30 school district with the recovery plans approved pursuant to
31 paragraph (2) is probable.

32 (B) The Superintendent may return power to the governing
33 board of a qualifying school district for any area listed in
34 subdivision (a) of Section 41327.1 if performance under the
35 recovery plan for that area has been demonstrated to the satisfaction
36 of the Superintendent.

37 (2) The Superintendent has approved all of the recovery plans
38 referred to in subdivision (a) of Section 41327 and the County
39 Office Fiscal Crisis and Management Assistance Team completes
40 the improvement plans specified in Section 41327.1 and has

1 completed a minimum of two reports identifying the qualifying
2 school district's progress in implementing the improvement plans.

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

6 (4) The qualifying school district has completed all reports
7 required by the Superintendent and the administrator.

8 (5) The Superintendent determines that future compliance by
9 the qualifying school district with the recovery plans approved
10 pursuant to paragraph (2) is probable.

11 (f) When the conditions stated in subdivision (e) have been met,
12 and at least 60 days after the Superintendent has notified the
13 Legislature, the Department of Finance, the Controller, and the
14 county superintendent of schools that he or she expects the
15 conditions prescribed pursuant to this section to be met, the
16 governing board of the qualifying school district shall regain all
17 of its legal rights, duties, and powers, except for the powers held
18 by the trustee provided for pursuant to Article 2 (commencing with
19 Section 41320). The Superintendent shall appoint a trustee under
20 Section 41320.1 to monitor and review the operations of the
21 qualifying school district until the conditions of subdivision (b)
22 of that section have been met.

23 (g) Notwithstanding subdivision (f), if the qualifying school
24 district violates ~~any~~ a provision of the recovery plans approved by
25 the Superintendent pursuant to this article within five years after
26 the trustee appointed pursuant to Section 41320.1 is removed, the
27 Superintendent may reassume, either directly or through an
28 administrator appointed in accordance with this section, all of the
29 legal rights, duties, and powers of the governing board of the
30 qualifying school district. The Superintendent shall return to the
31 governing board of the qualifying school district all of its legal
32 rights, duties, and powers reassumed under this subdivision when
33 he or she determines that future compliance with the approved
34 recovery plans is probable, or after a period of one year, whichever
35 occurs later.

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

38 (i) It is the intent of the Legislature that the legislative budget
39 subcommittees annually conduct a review of each qualifying school
40 district that includes an evaluation of the financial condition of the

1 qualifying school district, the impact of the recovery plans upon
2 the qualifying school district's educational program, and the efforts
3 made by the state-appointed administrator to obtain input from the
4 community and the governing board of the qualifying school
5 district.

6 (j) (1) The district superintendent of schools is entitled to a due
7 process hearing for purposes of determining final compensation.
8 The final compensation of the district superintendent of schools
9 shall be between zero and six times his or her monthly salary. The
10 outcome of the due process hearing shall be reported to the
11 Superintendent and the public. The information provided to the
12 public shall explain the rationale for the compensation.

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

15 (k) (1) When the Superintendent assumes control over a school
16 district pursuant to subdivision (b), he or she shall, in consultation
17 with the County Office Fiscal Crisis and Management Assistance
18 Team, review the fiscal oversight of the qualifying school district
19 by the county superintendent of schools. The Superintendent may
20 consult with other fiscal experts, including other county
21 superintendents of schools and regional fiscal teams, in conducting
22 this review.

23 (2) Within three months of assuming control over a qualifying
24 school district, the Superintendent shall report his or her findings
25 to the Legislature and shall provide a copy of that report to the
26 Department of Finance. This report shall include findings as to
27 fiscal oversight actions that were or were not taken and may include
28 recommendations as to an appropriate legislative response to
29 improve fiscal oversight.

30 (3) If after performing the duties described in paragraphs (1)
31 and (2), the Superintendent determines that the county
32 superintendent of schools failed to carry out his or her
33 responsibilities for fiscal oversight as required by this code, the
34 Superintendent may exercise the authority of the county
35 superintendent of schools who has oversight responsibilities for a
36 qualifying school district. If the Superintendent finds, based on
37 the report required in paragraph (2), that the county superintendent
38 of schools failed to appropriately take into account particular types
39 of indicators of financial distress, or failed to take appropriate
40 remedial actions in the qualifying school district, the

1 Superintendent shall further investigate whether the county
2 superintendent of schools failed to take into account those
3 indicators, or similarly failed to take appropriate actions in other
4 school districts with negative or qualified certifications, and shall
5 provide an additional report on the fiscal oversight practices of the
6 county superintendent of schools to the appropriate policy and
7 fiscal committees of each house of the Legislature and the
8 Department of Finance.

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