

AMENDED IN ASSEMBLY APRIL 25, 2011

AMENDED IN ASSEMBLY MARCH 30, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 609

Introduced by Assembly Member Swanson

February 16, 2011

An act to *amend Section 41320.1 of, and to add Section 41344.45 to, the Education Code, and to amend Section 9 of Chapter 14 of the Statutes of 2003, relating to the Oakland Unified School District education finance.*

LEGISLATIVE COUNSEL'S DIGEST

AB 609, as amended, Swanson. *Education Finance: Oakland Unified School District: audits: emergency loan deductions.*

(1) Existing law *provides for emergency apportionments to school districts subject to specified conditions, including, in certain circumstances, the repayment of an emergency loan 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. As a condition of receiving an emergency apportionment, existing law requires the Controller, or his or her designee, to cause an audit to be conducted on the books and accounts of the school district. Pursuant to these provisions, existing law appropriates \$100,000,000 from the General Fund to the Superintendent of Public Instruction for apportionment to purposes of providing the Oakland Unified School District as with an emergency loan, and requires the Controller to conduct an audit for the fiscal year in which the loan moneys are disbursed and each fiscal year thereafter.*

~~Existing law requires the Controller, or his or her designee, to cause an audit to be conducted of the books and accounts of the Oakland Unified School District for the fiscal years in which emergency loan moneys are disbursed to the school district. Existing law provides that, 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 of schools and approved by the Controller. Existing law also requires that the cost of the audit be paid by the school district.~~

~~This bill would delete the requirement that the Oakland Unified School District be subject to, and be responsible for paying for, these audits, and would instead require the school district to comply with certain other provisions of existing law relating to annual audits. The bill would require the Controller to deduct specified amounts related to the cost to the school district of these audits from the amount owed by the school district for the emergency loan. The bill would additionally require the Controller to deduct \$16,630,000 from the amount owed for that emergency loan.~~

This bill would require an audit conducted as a condition of receiving an emergency apportionment to only be conducted to assist the administrator in ensuring that the school district returns to financial solvency, and would prohibit the audit from being conducted in a manner that would impose an additional financial burden on the school district. The bill would require the Oakland Unified School District to be released from any requirement to be subject to, or to pay for, fines or penalties imposed as a result of emergency loan audits for a specified period. The bill would also require the Controller to calculate the total amount of emergency loan audit fines or penalties accrued or paid by the Oakland Unified School District during a specified period and deduct that amount from the amount owed by the school district for the emergency loan. The bill would also require the Controller to deduct \$18,500,000 dollars from the amount owed by the Oakland Unified School District on the outstanding principal balance of the emergency loan.

(2) This bill would make legislative findings and declarations as to the necessity of a special statute for the Oakland Unified School District.

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

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

1 SECTION 1. Section 41320.1 of the Education Code is amended
2 to read:

3 41320.1. Acceptance by the district of the apportionments made
4 pursuant to Section 41320 constitutes the agreement by the district
5 to all of the following conditions:

6 (a) The Superintendent of Public Instruction shall appoint a
7 trustee who has recognized expertise in management and finance
8 and may employ, on a short-term basis, any staff necessary to assist
9 the trustee, including, but not limited to, certified public
10 accountants, as follows:

11 (1) The expenses incurred by the trustee and any necessary staff
12 shall be borne by the district.

13 (2) The Superintendent shall establish the terms and conditions
14 of the employment, including the remuneration of the trustee. The
15 trustee shall serve at the pleasure of, and report directly to, the
16 Superintendent.

17 (3) The trustee, and any necessary staff, shall serve until the
18 loan authorized by this section is repaid, the district has adequate
19 fiscal systems and controls in place, and the Superintendent has
20 determined that the district's future compliance with the fiscal plan
21 approved for the district under Section 41320 is probable. The
22 Superintendent shall notify the county superintendent of schools,
23 the Legislature, the Department of Finance, and the Controller no
24 less than 60 days prior to the time that the Superintendent expects
25 these conditions to be met.

26 (4) Before the district repays the loan, including interest, the
27 recipient of the loan shall select an auditor from a list established
28 by the Superintendent and the Controller to conduct an audit of its
29 fiscal systems. If the fiscal systems are deemed to be inadequate,
30 the Superintendent may retain the trustee until the deficiencies are
31 corrected. The cost of this audit and any additional cost of the
32 trustee shall be borne by the district.

33 (5) Notwithstanding any other law, all reports submitted to the
34 trustee are public records.

35 (6) To facilitate the appointment of the trustee and the
36 employment of any necessary staff, for the purposes of this section,
37 the Superintendent is exempt from the requirements of Article 6
38 (commencing with Section 999) of Chapter 6 of Division 4 of the

1 Military and Veterans Code and Part 2 (commencing with Section
2 10100) of *Division 2 of the Public-Contracts Contract Code*.

3 (7) Notwithstanding any other law, the Superintendent may
4 appoint an employee of the department to act as trustee for up to
5 the duration of the trusteeship. The salary and benefits of that
6 employee shall be established by the Superintendent and paid by
7 the school district. During the time of appointment, the employee
8 is an employee of the school district, but shall remain in the same
9 retirement system under the same plan as if the employee had
10 remained in the department. Upon the expiration or termination
11 of the appointment, the employee shall have the right to return to
12 his or her former position, or to a position at substantially the same
13 level as that position, with the department. The time served in the
14 appointment shall be counted for all purposes as if the employee
15 had served that time in his or her former position with the
16 department.

17 (b) The trustee appointed by the Superintendent shall monitor
18 and review the operation of the district. During the period of his
19 or her service, the trustee may stay or rescind any action of the
20 local district governing board that, in the judgment of the trustee,
21 may affect the financial condition of the district. The
22 Superintendent may establish timelines and prescribe formats for
23 reports and other materials to be used by the trustee to monitor
24 and review the operations of the district. The trustee shall approve
25 or reject all reports and other materials required from the district
26 as a condition of receiving the apportionment. The Superintendent,
27 upon the recommendation of the trustee, may reduce any
28 apportionment to the district in an amount up to two hundred
29 dollars (\$200) per day for each late or unacceptable report or other
30 material required under Part 24 (commencing with Section 41000),
31 and shall report to the Legislature any failure of the district to
32 comply with the requirements of this section. If the Superintendent
33 determines, at any time, that the fiscal plan approved for the district
34 under Section 41320 is unsatisfactory, he or she may modify the
35 plan as necessary, and the district shall comply with the plan as
36 modified.

37 (c) At the request of the Superintendent, the Controller shall
38 transfer to the department, from any apportionment to which the
39 district would otherwise have been entitled pursuant to Section
40 42238, the amount necessary to pay the expenses incurred by the

1 trustee and any associated costs incurred by the county
2 superintendent of schools.

3 (d) (1) For the fiscal year in which the apportionments are
4 disbursed and each year thereafter, the Controller, or his or her
5 designee, shall cause an audit to be conducted of the books and
6 accounts of the district, in lieu of the audit required by Section
7 41020. At the Controller's discretion, the audit may be conducted
8 by the Controller, his or her designee, or an auditor selected by
9 the district and approved by the Controller. The costs of these
10 audits shall be borne by the district. These audits shall be required
11 until the Controller determines, in consultation with the
12 Superintendent, that the district is financially solvent, but in no
13 event earlier than one year following the implementation of the
14 plan or later than the time the apportionment made is repaid,
15 including interest. In addition, the Controller shall conduct quality
16 control reviews pursuant to subdivision (c) of Section 14504.2.

17 (2) *The audit required pursuant to this subdivision shall only*
18 *be conducted to assist the administrator in ensuring that the district*
19 *returns to financial solvency. The audit shall not be conducted in*
20 *a manner that would impose an additional financial burden on*
21 *the district.*

22 (e) For all purposes of errors and omissions liability insurance
23 policies, the trustee appointed pursuant to this section is an
24 employee of the local education agency to which he or she is
25 assigned. For the purpose of workers' compensation benefits, the
26 trustee is an employee of the local education agency to which he
27 or she is assigned, except that a trustee appointed pursuant to
28 paragraph (7) of subdivision (a) is an employee of the department
29 for that purpose.

30 (f) Except for an individual appointed by the Superintendent as
31 trustee pursuant to paragraph (7) of subdivision (a), the
32 state-appointed trustee is a member of the State Teachers'
33 Retirement System, if qualified, for the period of service as trustee,
34 unless the trustee elects in writing not to become a member. A
35 person who is a member or retirant of the State Teachers'
36 Retirement System at the time of appointment shall continue to
37 be a member or retirant of the system for the duration of the
38 appointment. If the trustee chooses to become a member or is
39 already a member, the trustee shall be placed on the payroll of the
40 school district for the purposes of providing appropriate

1 contributions to the system. The Superintendent may also require
 2 that any individual appointed as trustee pursuant to paragraph (7)
 3 of subdivision (a) be placed on the payroll of the school district
 4 for purposes of remuneration, other benefits, and payroll
 5 deductions. For the purpose of workers' compensation benefits,
 6 the state-appointed trustee is deemed an employee of the local
 7 education agency to which he or she is assigned, except that a
 8 trustee who is appointed pursuant to paragraph (7) of subdivision
 9 (a) is an employee of the department for that purpose.

10 SECTION 4.

11 SEC. 2. Section 41344.45 is added to the Education Code,
 12 immediately following Section 41344.4, to read:

13 41344.45. (a) ~~On and after January 1, 2012, the~~ *The Oakland*
 14 *Unified School District shall be released from any requirement to*
 15 *be subject to, or to pay for, audits pursuant to former fines or*
 16 *penalties imposed as a result of audits performed pursuant to*
 17 *subdivision (d) of Section 9 of Chapter 14 of the Statutes of 2003,*
 18 *and shall instead comply with Section 41020 for any fiscal year*
 19 *that falls between June 16, 2003, and June 28, 2009, inclusive.*

20 (b) ~~No later than April 1, 2012, the Controller shall determine~~
 21 ~~both of the following with respect to audits performed pursuant to~~
 22 ~~former subdivision (d) of Section 9 of Chapter 14 of the Statutes~~
 23 ~~of 2003:~~

24 (1) ~~The cost to the Oakland Unified School District of each of~~
 25 ~~the audits required by former subdivision (d) of Section 9 of~~
 26 ~~Chapter 14 of the Statutes of 2003 for the 2003-04 fiscal year to~~
 27 ~~the 2010-11 fiscal year, inclusive.~~

28 (2) ~~The amounts paid by the Oakland Unified School District~~
 29 ~~for audits required by former subdivision (d) of Section 9 of~~
 30 ~~Chapter 14 of the Statutes of 2003 for audits that were issued by~~
 31 ~~the Controller six or more months late.~~

32 (e)

33 (b) Notwithstanding any other law, ~~no later than July 1, 2012,~~
 34 the Controller shall do all of the following:

35 (1) ~~Subtract one-half of the amount calculated under paragraph~~
 36 ~~(2) of subdivision (b) from the amount owed by the Oakland~~
 37 ~~Unified School District for the loan that it received pursuant to~~
 38 ~~subdivision (a) of Section 9 of Chapter 14 of the Statutes of 2003.~~

39 (2)

1 (1) Calculate the total amount of any audit fines or penalties
 2 ~~charged to accrued or paid~~ by the Oakland Unified School District
 3 as a result of the audits performed pursuant to ~~former~~ subdivision
 4 (d) of Section 9 of Chapter 14 of the Statutes of 2003 ~~between the~~
 5 ~~2003–04 fiscal year and the 2010–11 fiscal year~~ *during the period*
 6 *of June 16, 2003, to June 28, 2009, inclusive*, and deduct that
 7 amount from the amount owed by the Oakland Unified School
 8 District for the loan that it received pursuant to subdivision (a) of
 9 Section 9 of Chapter 14 of the Statutes of 2003.

10 ~~(3)~~

11 (2) ~~Deduct sixteen million six hundred thirty thousand dollars~~
 12 ~~(\$16,630,000)~~ *eighteen million five hundred thousand dollars*
 13 *(\$18,500,000)* from the amount owed by the Oakland Unified
 14 School District ~~for on the outstanding principal balance of the~~
 15 loan that it received pursuant to subdivision (a) of Section 9 of
 16 Chapter 14 of the Statutes of 2003.

17 ~~SEC. 2. Section 9 of Chapter 14 of the Statutes of 2003 is~~
 18 ~~amended to read:~~

19 ~~Sec. 9. (a) The sum of one hundred million dollars~~
 20 ~~(\$100,000,000) is hereby appropriated from the General Fund to~~
 21 ~~the Superintendent of Public Instruction for apportionment to the~~
 22 ~~Oakland Unified School District for the purpose of an emergency~~
 23 ~~loan. In order to qualify for the loan, the district shall comply with~~
 24 ~~Article 2 (commencing with Section 41320) of, and Article 2.5~~
 25 ~~(commencing with Section 41325) of, Chapter 3 of Part 24 of~~
 26 ~~Division 3 of Title 2 of the Education Code to the extent those~~
 27 ~~provisions are consistent with the conditions specified in this act.~~

28 ~~(b) Funds may be disbursed from the proceeds of the loan only~~
 29 ~~if the administrator and the County Office Fiscal Crisis and~~
 30 ~~Management Assistance Team jointly determine that the~~
 31 ~~disbursement is necessary.~~

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

37 ~~SEC. 3. The Legislature finds and declares that, due to the~~
 38 ~~unique circumstances relating to the fiscal emergency in the~~
 39 ~~Oakland Unified School District, a general statute cannot be made~~
 40 ~~applicable within the meaning of Section 16 of Article IV of the~~

- 1 California Constitution, and the enactment of ~~this~~ *Section 41344.45*
- 2 *of the Education Code by Section 2 of this act as a special statute*
- 3 is therefore necessary.

O