



California  
LEGISLATIVE INFORMATION

AB-625 School finance: emergency apportionments: compliance audits. (2015-2016)

AMENDED IN ASSEMBLY APRIL 16, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

**ASSEMBLY BILL**

**No. 625**

Introduced by Assembly Member Bonta

February 24, 2015

An act to amend Section ~~42127.3~~ 41320.1 of the Education Code, relating to ~~schools~~ school finance.

**LEGISLATIVE COUNSEL'S DIGEST**

AB 625, as amended, Bonta. School finance: ~~school district budgets~~ emergency apportionments: compliance audits.

*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 the school district determines during a fiscal year that its revenues are less than the amount necessary to meet its current year expenditure obligations. Under existing law, if a school district accepts an emergency apportionment, that acceptance constitutes agreement by the school district to numerous conditions, among which is an agreement that the Controller, or his or her designee, shall conduct an annual audit of the books and accounts of the school district, as specified. This provision requires these audits to continue until the Controller determines, in consultation with the Superintendent, that the school district is financially solvent, but in no event earlier than one year following the implementation of the school district's fiscal plan or later than the time the apportionment is repaid, including interest.*

*This bill would require the Controller and the Superintendent, or their respective designees, to meet before each audit undertaken under this provision, develop an audit plan, and coordinate the audit.*

~~(1) Existing law requires a school district to adopt a budget for the subsequent fiscal year, as specified. Existing law requires the county superintendent of schools to examine the adopted budget, make certain determinations related to the adopted budget, and approve, conditionally approve, or disapprove the adopted budget for each school district, as specified.~~

~~If the adopted budget is conditionally approved or disapproved, existing law specifies a process for revising the budget. If the county superintendent of schools disapproves the revised budget, existing law requires him or her to call for the formation of a budget review committee, as specified. Existing law requires the budget review committee to review the proposed budget of the school district and the underlying fiscal policies of the school district and to transmit to the Superintendent of Public Instruction, the county superintendent of schools, and the governing board of the school district either a recommendation that the school district budget be approved~~

~~or a report disapproving the school district budget and setting forth recommendations for revisions to the school district budget, as specified.~~

~~If the budget review committee disapproves the school district budget, existing law authorizes the governing board of the school district to submit a response to the Superintendent, as specified, and, based upon the recommendations of the budget review committee and any response to those recommendations provided by the governing board of the school district, requires the Superintendent to either approve or disapprove the budget. If the Superintendent disapproves the budget, existing law requires the Superintendent to notify the governing board of the school district in writing of the reasons for that disapproval and requires the county superintendent of schools to take certain actions as necessary, including, among others, determining whether there are any financial problem areas and employing, subject to approval by the Superintendent, a certified public accounting firm to investigate financial problem areas.~~

~~This bill would add appointing a fiscal adviser to perform specified duties of the county superintendent of schools to the list of actions a county superintendent of schools is required to take as necessary. To the extent this bill would impose additional duties on a county superintendent of schools, the bill would impose a state-mandated local program. The bill would also make various nonsubstantive changes.~~

~~(2) 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions:~~

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: *yes/no*

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

**41320.1.** Acceptance by the school district of the apportionments made pursuant to Section 41320 constitutes the agreement by the school district to all of the following conditions:

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

- (1) The expenses incurred by the trustee and necessary staff shall be borne by the school district.
- (2) The Superintendent shall establish the terms and conditions of the employment, including the remuneration of the trustee. The trustee shall serve at the pleasure of, and report directly to, the Superintendent.
- (3) The trustee, and necessary staff, shall serve until the school district has adequate fiscal systems and controls in place, the Superintendent has determined that the school district's future compliance with the fiscal plan approved for the school district under Section 41320 is probable, and the Superintendent decides to terminate the trustee's appointment, but in no event, for less than three years. The Superintendent shall notify the county superintendent of schools, the Legislature, the Department of Finance, and the Controller no less than 60 days before the time that the Superintendent expects these conditions to be met.
- (4) Before the school district repays the loan, including interest, the recipient of the loan shall select an auditor from a list established by the Superintendent and the Controller to conduct an audit of its fiscal systems. If the fiscal systems are deemed to be inadequate, the Superintendent may retain the trustee until the deficiencies are corrected. The cost of this audit and any additional cost of the trustee shall be borne by the school district.
- (5) Notwithstanding any other law, all reports submitted to the trustee are public records.
- (6) To facilitate the appointment of the trustee and the employment of necessary staff, for purposes of this section, the Superintendent is 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 Division 2 of the Public Contract Code.
- (7) Notwithstanding any other law, the Superintendent may appoint an employee of the department to act as trustee for up to the duration of the trusteeship. The salary and benefits of that employee shall be established by the Superintendent and paid by the school district. During the time of appointment, the employee is an

employee of the school district, but shall remain in the same retirement system under the same plan as if the employee had remained in the department. Upon the expiration or termination of the appointment, the employee shall have the right to return to his or her former position, or to a position at substantially the same level as that position, with the department. 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 department.

(b) (1) The trustee appointed by the Superintendent shall monitor and review the operation of the school district. During the period of his or her service, the trustee may stay or rescind an action of the governing board of the school district that, in the judgment of the trustee, may affect the financial condition of the school district.

(2) After the trustee's period of service, and until the loan is repaid, the county superintendent of schools that has jurisdiction over the school district may stay or rescind an action of the governing board of the school district that, in his or her judgment, may affect the financial condition of the school district. The county superintendent of schools shall notify the Superintendent, within five business days, if he or she stays or rescinds an action of the governing board of the school district. The notice shall include, but not be limited to, both of the following:

(A) A description of the governing board of the school district's intended action and its financial implications.

(B) The rationale and findings that support the county superintendent of school's decision to stay or rescind the action of the governing board of the school district.

(3) If the Superintendent is notified by the county superintendent of schools pursuant to paragraph (2), the Superintendent shall report to the Legislature, on or before December 30 of every year, whether the school district is complying with the fiscal plan approved for the school district.

(4) The Superintendent may establish timelines and prescribe formats for reports and other materials to be used by the trustee to monitor and review the operations of the school district. The trustee shall approve or reject all reports and other materials required from the school district as a condition of receiving the apportionment. The Superintendent, upon the recommendation of the trustee, may reduce an apportionment to the school district in an amount up to two hundred dollars (\$200) per day for each late or unacceptable report or other material required under this part, and shall report to the Legislature a failure of the school district to comply with the requirements of this section. If the Superintendent determines, at any time, that the fiscal plan approved for the school district under Section 41320 is unsatisfactory, he or she may modify the plan as necessary, and the school district shall comply with the plan as modified.

(c) At the request of the Superintendent, the Controller shall transfer to the department, from an apportionment to which the school district would otherwise have been entitled pursuant to Section 42238, the amount necessary to pay the expenses incurred by the trustee and associated costs incurred by the county superintendent of schools.

(d) For the fiscal year in which the apportionments are disbursed and every year thereafter, the Controller, or his or her designee, shall cause an audit to be conducted of the books and accounts of the school district, in lieu of the audit required by Section 41020. At the Controller's discretion, the audit may be conducted by the Controller, his or her designee, or an auditor selected by the school district and approved by the Controller. The costs of these audits shall be borne by the school district. These audits shall be required until the Controller determines, in consultation with the Superintendent, that the school district is financially solvent, but in no event earlier than one year following the implementation of the plan or later than the time the apportionment made is repaid, including interest. *The Controller and the Superintendent, or their respective designees, shall meet before each audit, develop an audit plan, and coordinate the audit.* In addition, the Controller shall conduct quality control reviews pursuant to subdivision (c) of Section 14504.2.

(e) For purposes of errors and omissions liability insurance policies, the trustee appointed pursuant to this section is an employee of the local educational agency to which he or she is assigned. For purposes of workers' compensation benefits, the trustee is an employee of the local educational agency to which he or she is assigned, except that a trustee appointed pursuant to paragraph (7) of subdivision (a) is an employee of the department for those purposes.

(f) Except for an individual appointed by the Superintendent as trustee pursuant to paragraph (7) of subdivision (a), the state-appointed trustee is a member of the State Teachers' Retirement System, if qualified, for the period of service as trustee, unless the trustee elects in writing not to become a member. A person who is a member or retirant of the State Teachers' Retirement System at the time of appointment shall continue to be a member or retirant of the system for the duration of the appointment. If the trustee chooses to become a

member or is already a member, the trustee shall be placed on the payroll of the school district for the purpose of providing appropriate contributions to the system. The Superintendent may also require that an individual appointed as trustee pursuant to paragraph (7) of subdivision (a) be placed on the payroll of the school district for purposes of remuneration, other benefits, and payroll deductions. For purposes of workers' compensation benefits, the state-appointed trustee is deemed an employee of the local educational agency to which he or she is assigned, except that a trustee who is appointed pursuant to paragraph (7) of subdivision (a) is an employee of the department for those purposes.

~~SECTION 1. Section 42127.3 of the Education Code is amended to read:~~

~~42127.3.(a) If the budget review committee established pursuant to Sections 42127.1 and 42127.2 recommends approval of the school district budget, the county superintendent of schools shall accept the recommendation of the budget review committee and approve the budget.~~

~~(b) If the budget review committee established pursuant to Sections 42127.1 and 42127.2 disapproves the school district budget, the governing board of the school district, not later than five working days after receipt of the report described in paragraph (2) of subdivision (b) of Section 42127.2, may submit a response to the Superintendent, including any revisions to the adopted final budget and any other proposed actions to be taken as a result of the recommendations of the budget review committee. Based upon the recommendations of the budget review committee and any response to those recommendations provided by the governing board of the school district, the Superintendent shall either approve or disapprove the budget. If the Superintendent disapproves the budget, he or she shall notify the governing board of the school district in writing of the reasons for that disapproval and, until the county superintendent of schools certifies the school district's first interim report pursuant to Section 42131, the county superintendent of schools shall do the following as necessary:~~

~~(1) Not later than November 30, develop and adopt, in consultation with the Superintendent and the governing board of the school district, a fiscal plan and budget that will govern the school district and will allow the school district to meet its financial obligations, both in the current fiscal year and with regard to the school district's multiyear financial commitments. The Superintendent may extend the date by which the county superintendent of schools is required to develop and adopt a fiscal plan and budget. The governing board of the school district shall govern the operation of the school district for the current fiscal year in accordance with that adopted budget.~~

~~(2) Cancel purchase orders, prohibit the issuance of nonsalary warrants, and otherwise stay or rescind any action that is inconsistent with the budget adopted pursuant to paragraph (1). The county superintendent of schools shall inform the governing board of the school district in writing of his or her justification for any exercise of authority under this paragraph.~~

~~(3) Monitor and review the operation of the school district.~~

~~(4) Appoint a fiscal adviser to perform any or all of the duties of the county superintendent of schools prescribed by this section.~~

~~(5) Determine the need for additional staff and may employ, subject to approval by the Superintendent, short-term analytical assistance or expertise to validate financial information if the school district staff does not have the expertise or staff.~~

~~(6) Require the school district to encumber all contracts and other obligations, to prepare appropriate cashflow analyses and monthly or quarterly budget revisions, and to appropriately record all receivables and payables.~~

~~(7) Determine whether there are any financial problem areas and may employ, subject to approval by the Superintendent, a certified public accounting firm to investigate financial problem areas.~~

~~(8) Withhold compensation of the members of the governing board of the school district and the superintendent of the school district for failure to provide requested financial information. A forfeiture may be appealed to the Superintendent pursuant to subdivision (b) of Section 42127.6.~~

~~(c) If, during the selection of the budget review committee or during the committee's review of the budget, an agreement is reached between the governing board of the school district and the county superintendent of schools, and the school district revises its budget to comply with this agreement, the county superintendent of schools shall approve the school district budget and the budget review committee selection, or its review of the budget, shall be canceled.~~

~~(d)The school district shall pay 75 percent and the county office of education shall pay 25 percent of the actual administrative expenses incurred pursuant to subdivision (b), or costs associated with improving the school district's financial management practices. The Superintendent shall develop, and distribute to affected school districts and county offices of education, advisory guidelines regarding the appropriate amount of any fees charged pursuant to this subdivision.~~

~~(e)This section shall not be construed to authorize the county superintendent of schools to abrogate any provision of a collective bargaining agreement that was entered into by a school district before the date upon which the county superintendent of schools disapproved the budget of the school district pursuant to subdivision (b).~~

~~SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.~~

Date of Hearing: April 29, 2015

ASSEMBLY COMMITTEE ON EDUCATION  
Patrick O'Donnell, Chair  
AB 625 Bonta – As Amended April 16, 2015

**SUBJECT:** School finance: emergency apportionments: compliance audits

**SUMMARY:** Requires the State Controller and Superintendent of Public Instruction (SPI) or their respective designees to meet before each audit, develop an audit plan, and coordinate the audit before the Controller conducts an audit of the books and accounts of a school district that has received an emergency apportionment.

**EXISTING LAW:**

- 1) Requires an annual audit of the books and accounts of a school district that has received an emergency apportionment due to an inability to meet its financial obligations.
- 2) Provides that the audit may be conducted by the Controller or his or her designee or an auditor selected by the school district and approved by the Controller.
- 3) Requires the SPI, in the case of an appeal, to either approve or disapprove of the school district's budget.
- 4) Requires the SPI, if he or she disapproves the budget, to notify the school district in writing of the decision.
- 5) Requires the county superintendent of schools, in the case of a district with a disapproved budget, and until the county superintendent of schools certifies the district's first interim report, to do the following as necessary:
  - a) Develop and adopt, by November 30, in consultation with the SPI and the district governing board, a fiscal plan and budget that will govern the district and will allow the district to meet its financial obligations, both in the current fiscal year and with regard to the district's multiyear financial commitments;
  - b) Cancel purchase orders, prohibit the issuance of non-salary warrants, and otherwise stay or rescind any action that is inconsistent with the budget.
  - c) Monitor and review the operation of the district;
  - d) Determine the need for additional staff and may employ, subject to approval by the SPI, short-term analytical assistance or expertise to validate financial information if the district staff does not have the expertise or staff;
  - e) Require the school district to encumber all contracts and other obligations, to prepare appropriate cash flow analyses and monthly or quarterly budget revisions, and to appropriately record all receivables and payables;

- f) Determine whether there are any financial problem areas and may employ, subject to approval by the SPI, a certified public accounting firm to investigate financial problem areas; and
  - g) Withhold compensation of the members of the governing board of the district and the superintendent of the district for failure to provide requested financial information.
- 6) Makes technical, nonsubstantive changes.

**FISCAL EFFECT:** Legislative counsel has keyed this bill as a state mandated local program

**COMMENTS:** The annual audits that are required of districts that have received an emergency apportionment are in lieu of the annual audits otherwise required. Information provided by the author's office shows that these audits are usually late. In fact, of the 38 due dates of audits for five different districts in receivership, only four have been completed by the due date. The others have been late by periods ranging from 43 to 961 days (more than two and a half years). Late audits can cause several problems for districts, including:

- A lower credit rating, resulting in higher interest rates (a credit rating agency did not give the Oakland Unified School District credit rating at all, due to the absence of a current audit).
- Difficulty in projecting financial needs, because the current financial condition is not known.
- Compounded audit exceptions, because problems are not identified in time to be corrected prior to the next year's audits.
- Difficulty in locating old records, especially in districts that has experience excessive staff turnover due to being in receivership.

This bill is sponsored by the SPI, whose intent is to establish communication between the SPI and the Controller prior to an audit to develop a plan, establish coordination, and help ensure that needed documentation is available and shared in order to meet the audit's deadline.

**Committee amendment.** According to the State Controller's Office (SCO), this bill could be interpreted to sign-off or approval of an audit plan. This, in turn, could jeopardize the independence of the audit, especially since the district being audited is under the control of the SPI. The SCO recommends the following alternative language: "The Controller, the Superintendent, and the head of the affected district's governing board, or their respective designees, shall meet before each audit to discuss the terms of the audit and the timeline under which it will proceed." **Staff recommends** that the bill be amended make this change.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Oakland Unified School District  
Superintendent of Public Instruction, Tom Torlakson

**Opposition**

None received

**Analysis Prepared by:** Rick Pratt / ED. / (916) 319-2087