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SB-39 Oakland Unified School District: emergency loan. (2003-2004)

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Senate Bill No. 39

CHAPTER 14

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

[Filed with Secretary of State June 02, 2003. Approved by Governor May 30, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 39, Perata. Oakland Unified School District: emergency loan.

(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 Oakland Unified 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 authorize the administrator, with the approval of the superintendent, to enter into agreements on behalf of the school district and to change any existing district rules, policies, or practices, as provided. The bill would require the administrator to be added by the district as an employee for certain insurance purposes. The bill would, in addition, specify that the administrator is a public school employer within the meaning of the Educational Employment Relations Act.

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 an improvement plan 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 prepare an improvement plan for the school district, as provided, by July 1, 2003, and would require the FCMAT to report on the implementation of the plan, as specified.

This bill would appropriate \$100,000,000 from the General Fund to the Superintendent of Public Instruction for the purpose of providing the Oakland Unified School District with an emergency loan. The bill would authorize loan funds to be disbursed from the proceeds of the loan only if the trustee and FCMAT jointly determine that disbursement is necessary. The bill would require the district to repay the loan as a straight line loan amortized

over a 20-year term, with interest as provided. The bill would authorize the district from June 1, 2003, to June 30, 2005, inclusive, to sell property of the district and use the proceeds from that transaction to reduce or retire the emergency loan. The bill would, in addition, make the school district ineligible for hardship state funding for the construction of school facilities during that time.

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

(2) This bill would declare that due to the unique circumstances relating to the Oakland Unified School District's fiscal emergency, a general statute cannot be made applicable. (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 all of the following:

(a) Providing a quality education that meets the unique needs of Oakland public school pupils is a fundamental goal that should not be jeopardized.

(b) In late August 2002, the Oakland Unified School District became aware of a negative general fund balance for the 2001–02 fiscal year, and of potential deficits in its 2002–03 budget, and thereafter, promptly reported this information to the Alameda County Office of Education.

(c) The Oakland Unified School District is projected to run out of cash in May of 2003 and will be unable to pay school employees unless immediate action is taken.

(d) Despite initial budget cuts for the 2002–03 fiscal year exceeding fourteen million dollars (\$14,000,000) and additional budget cuts and adjustments of seventeen million dollars (\$17,000,000), the Oakland Unified School District will have a negative fund balance at the close of the current fiscal year and requires a loan from the State of California.

(e) While in need of a loan from the State of California, there have not been any accusations of intentional mismanagement or fraud in the Oakland Unified School District.

(f) The Oakland Unified School District has made demonstrable academic improvements over the last few years, witnessed by test score improvements, more fully credentialed teachers in Oakland classrooms, and increased parental and community involvement.

(g) The community of the Oakland Unified School District has the will to continue the key educational reforms that have benefited Oakland public school pupils in the last three years and to support difficult decisions in order to immediately eliminate all further overspending by the district.

SEC. 2. (a) It is the intent of the Legislature that the state administrator appointed pursuant to this act should work with the present administrators and governing board of the Oakland Unified School District to identify the procedures and programs currently implemented by the district that have proven to do one or more of the following:

- (1) Significantly raise pupil achievement.
- (2) Improve pupil attendance.
- (3) Lower pupil dropout rate.
- (4) Increase parental involvement.
- (5) Attract, retain, and train a quality teaching staff.

(b) It is the intent of the Legislature that these identified procedures and programs should be protected, maintained, and expanded as the district's budget allows.

SEC. 3. The Legislature finds and declares that because of the fiscal emergency in which the Oakland Unified School District finds itself and in recognition of the March 27, 2003 request of the governing board of the district for a loan from the state, it is necessary that the Superintendent of Public Instruction assume control of the district in order to ensure the return to the district of fiscal solvency.

SEC. 4. (a) The Superintendent of Public Instruction shall immediately assume all of the rights, duties, and powers of the governing board of the Oakland Unified School District.

(b) The Superintendent of Public Instruction, in consultation with the Alameda 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 Superintendent of Public Instruction or 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 administrator shall have recognized expertise in management and finance. The administrator shall serve under the direction and supervision of the Superintendent of Public Instruction until terminated by the Superintendent of Public Instruction at his or her discretion. The Superintendent of Public Instruction shall consult with the Alameda County Superintendent of Schools prior to terminating the administrator. The Superintendent of Public Instruction, operating through the administrator, may do all of the following:

(1) Implement substantial changes in the fiscal policies and practices of the Oakland Unified School District, including, if necessary, the filing of a petition under Chapter 9 of the federal Bankruptcy Act (11 U.S.C. Sec. 901 et seq.) for the adjustment of indebtedness of the district.

(2) Revise the educational program of the Oakland Unified 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. To the extent allowed by district finances, it is the intent of the Legislature that the revised program shall maintain the core educational reforms that have led to districtwide improvement of academic achievement, including, but not limited to, educational reforms targeting underperforming schools, new small schools, and other reforms that have demonstrated measurable success.

(3) Encourage all members of the school community to accept a fair share of the burden of the fiscal recovery of the Oakland Unified School District.

(4) Consult, for the purposes described in this act, with the governing board of the Oakland Unified School District, the exclusive representatives of the employees of the district, parents, and the community.

SEC. 5. (a) (1) To facilitate the appointment of the state-appointed administrator and the employment of any necessary staff, for the purposes of this act, the Superintendent of Public Instruction 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 the Public Contract Code.

(2) The salary and benefits of the administrator shall be established by the Superintendent of Public Instruction and paid by the Oakland Unified School District.

(3) During the tenure of his or her appointment, the administrator, if otherwise an employee of the state or of the county superintendent, is an employee of the school district, but shall remain in the same retirement system under the same plan that has been provided by his or her employment with the state or the office of the county superintendent. Upon the expiration or termination of the appointment, the 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 administrator 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 subdivision (a) of Section 4, the governing board of the Oakland Unified School District shall serve as an advisory body reporting to the administrator, but has no rights, duties, or powers, and is not entitled to any stipend, benefits, or other compensation from the district.

(c) Notwithstanding any other provision of law, the administrator may, after according the employee reasonable notice and opportunity for 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 Oakland Unified School District, and who is employed by the Oakland Unified 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 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 administrator may enter into agreements on behalf of the school district and, subject to any contractual and statutory obligation of the school district, change any existing school district rules, regulations, policies, or practices as necessary for the effective implementation of the improvement plan specified in Section 7 of this act.

(e) The authority of the Superintendent of Public Instruction and the administrator pursuant to 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 administrator determines, and so notifies the Superintendent of Public Instruction, that future compliance by the Oakland Unified School District with the improvement plan specified in Section 7 of this act is probable.

(2) The County Office Fiscal Crisis and Management Assistance Team (FCMAT) completes the improvement plan specified in Section 7 of this act.

(3) FCMAT, after consultation with the 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 administrator certifies that all necessary collective bargaining agreements have been negotiated and ratified, and that the agreements are consistent with the terms of the improvement plan specified in Section 7 of this act.

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

(6) The Superintendent of Public Instruction concurs with the assessment of the administrator and FCMAT that future compliance by the Oakland Unified School District with the improvement plan described in Section 7 of this act 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 Oakland Unified School District shall regain all of its rights, duties, and powers.

(g) Notwithstanding subdivision (f), if the Oakland Unified School District violates any provision of the improvement plan specified in Section 7 of this act, after the governing board of the school district regains all of its rights, duties, and powers pursuant to subdivision (f), the Superintendent of Public Instruction 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.

(h) For the purposes of Article 2 (commencing with Section 41320) and Article 2.5 (commencing with Section 41325 of Chapter 3 of Part 24 of the Education Code, the administrator is a public school employer within the meaning of the Educational Employment Relations Act (Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code).

SEC. 6. The administrator shall consider, on a monthly basis, or more frequently if so desired by the administrator, information from one or more groups from each of the following categories:

(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.

(f) The Superintendent of Public Instruction.

SEC. 7. (a) On or before July 1, 2003, the County Office Fiscal Crisis and Management Assistance Team (FCMAT) shall prepare an improvement plan for the Oakland Unified School District by updating the January 2000 comprehensive assessments and recovery plans of the Oakland Unified School District.

(b) Based upon progress reports prepared pursuant to subdivision (c), 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 30 days following the effective date of this act and in September 2003, and each six months thereafter until September 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 Oakland Unified School District, the advisory board 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 Oakland Unified School District is making in meeting the recommendations of the improvement plan developed pursuant to this section.

SEC. 8. (a) The Oakland Unified 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 progress reports specified in Section 7 of this act.

(b) The Oakland Unified School District shall add the administrator as a covered employee of the school district for all purposes of errors and omissions liability insurance policies.

SEC. 9. (a) The sum of one hundred million dollars (\$100,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for apportionment to the Oakland Unified 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 specified in this act.

(b) Funds may be disbursed from the proceeds of the loan only if the 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 loan moneys 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 the audit shall be paid by the district. The audits shall be performed until the Superintendent of Public Instruction, in consultation with the Controller, determines that the district is financially solvent, but may not cease being performed earlier than one year following the implementation of the plan required by Section 7 nor later than the time the emergency loan, 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. 10. (a) Notwithstanding subparagraph (A) of paragraph (2) of subdivision (a) of Section 41327 of the Education Code, the Oakland Unified School District shall repay the emergency loan incurred pursuant to Section 9 of this act as a straight line loan amortized over a 20-year term. This amount shall be repaid by the 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 20 years.

(b) If a required payment is not made within 60 days after a 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 Oakland Unified 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 Oakland Unified 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. 11. (a) Notwithstanding Sections 17456, 17457, 17462, and 17463 of the Education Code, or any other law, from June 1, 2003, to June 30, 2005, inclusive, the Oakland Unified School District may sell property owned by the district and use the proceeds from the sale to reduce or retire the emergency loan provided in Section 9 of this act. The sale only of property pursuant to this subdivision is not subject to Section 17459 or 17464 of the Education Code.

(b) Notwithstanding any other provision of law, from June 1, 2003, to June 30, 2005, inclusive, the Oakland Unified School District is not eligible for financial hardship assistance pursuant to Article 8 (commencing with Section 17075.10) of Chapter 12.5 of Part 10 of the Education Code.

SEC. 12. The Alameda 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 school.

SEC. 13. 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 and from the corresponding item and section number of the Budget Act of 2003 for the purposes of funding activities of the County Office Fiscal Crisis and Management Assistance Team specified in this act.

SEC. 14. The Legislature finds and declares that due to unique circumstances relating to the fiscal emergency in the Oakland Unified School District, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 15. 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. 16. 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 California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address the fiscal emergency in which the Oakland Unified 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.