Recent Changes to State-Administered Districts and FCMAT Automatic Engagement

BASC Fall AB1200 Conference
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Under AB 1200

- The practical trigger for an emergency apportionment (state loan) is cash insolvency.
  - Cash insolvency occurs when the payroll cost exceeds the cash available in the county treasury (or other possible sources of cash), and all options for short-term borrowing have been exhausted.
  - Cash insolvency is a function of deficit spending, erosion of fund balance, and sustained negative cash flow over time.
  - Cash insolvency is the end of the road – game over – and is usually the trigger point for an emergency appropriation (or state loan) and state takeover.
Two Flavors of State Loans

- There are two tiers of emergency appropriations based on amount requested
  - EC 41321.1 – Tier 1 – applicable to all amounts
  - EC 41325 – Tier 2 – applicable when amount is greater than 200% of reserve requirement in standards and criteria

Past Practice

- State-centric process
- As a condition of the emergency apportionment
  - SPI appoints trustee or administrator, in consultation with the county superintendent
  - Trustee or administrator takes direction from the SPI
  - Trustee or administrator is an employee of the district
  - Tier 2 loan - governing board’s authority is shifted to the SPI and delegated to administrator
  - CDE evaluates effectiveness of county superintendent oversight
  - County superintendent’s oversight role is unchanged throughout the process
AB 1840 (Chapter 426/2018)

- Budget Trailer Bill AB 1840 passed the legislature on August 31, 2018 and became effective on September 17, 2018.
- It does not change the definition or trigger for fiscal insolvency, but does change the structure of how fiscally insolvent districts are administered once an emergency appropriation has been made.
- Shifts the former state-centric system to be more consistent with the principles of local control.
  - A number of former duties assigned to the state superintendent are now assigned to the county superintendent, with the concurrence of the state superintendent and the president of the state board of education.

Automatically Eligible for CCEE

- Recognizes that poor student academic achievement is a common characteristic of a fiscally insolvent district.
- Makes the district eligible for assistance from the California Collaborative for Educational Excellence.
Tier I Conditions

- As a condition of the emergency appropriation
  - County superintendent, state superintendent and president of the state board of education, by majority vote, appoint a trustee from a pool of candidates identified and vetted by FCMAT.
  - County superintendent, with concurrence of the state superintendent and president of the state board of education, shall establish the terms and conditions of employment.
  - Trustee reports directly to the county superintendent.
  - County superintendent provides regular updates to the state superintendent and president of the state board of education.

Tier I Conditions (continued)

- County superintendent, state superintendent and president of the state board of education decide to terminate trustee’s appointment.
- County superintendent notifies legislature, DOF, controller no less than 60 days before they expect conditions for resolution to be met (generally minimum of three years).
- Before loan is repaid, district arranges for audit of fiscal systems. If inadequate, county superintendent, with the concurrence of state superintendent and president of the state board of education, may retain trustee until deficiencies are corrected.

EC 41320.1
Tier 2 Conditions

- As a condition of the emergency appropriation
  - County superintendent, under the supervision of the state superintendent, assumes control of the district.
  - County superintendent assumes all legal rights, duties and powers of the governing board.
  - County superintendent, with concurrence of the state superintendent and president of the state board of education, shall appoint an administrator from a pool of candidates identified and vetted by FCMAT.
  - Administrator serves under the direction and supervision of the county superintendent, with concurrence of the state superintendent and president of the state board of education, until terminated.

- County superintendent establishes salary and benefits of the administrator, with concurrence of the state superintendent and president of the state board of education.
- FCMAT is assigned responsibility to review the fiscal oversight of the district by the county superintendent.
  - The initial report must be made within three months of the county superintendent assuming control of the district, and annually thereafter.
  - FCMAT shall report findings to the legislature, DOF, state superintendent, president of the state board of education.

EC 41326
Trustee / Administrator Pool

- Candidates for trustee or administrator roles are to be identified and vetted by FCMAT.
- Must have experience in management and finance, previous experience mitigating fiscal distress in districts, and ability to meaningfully engage with community.
- FCMAT must provide for public input on the candidate pool before recommending the pool for consideration by the county superintendent, state superintendent and president of the state board of education.

EC 41320.1

Controller Audits

- Annual independent audit of insolvent districts was limited to the controller or their designee.
- Expanded to include the controller, or any auditor designated by the controller as active and able to perform K-12 LEA audits.
- Requires a meeting between the auditor, county superintendent, FCMAT, state superintendent and district prior to the audit to discuss the terms and timeline under which the audit will proceed.

EC 41320.1
Progress Reporting

- In addition to other existing and new reporting requirements
  - Administrator shall prepare reports in accordance with timelines, instructions and format established by the county superintendent, with the concurrence of the state superintendent and president of the state board of education.
  - FCMAT shall conduct an annual review of the progress made with regard to recovery plans and report such to the county superintendent, state superintendent and president of the state board of education.

Returning Local Authority

- The county superintendent, in consultation with the state superintendent and president of the state board of education, shall determine the level of improvement needed based on the FCMAT comprehensive review standards before local authority is returned.
Adds SBE to Notices

- When the county superintendent determines that a district may be unable to meet its financial obligations for the current and two subsequent fiscal years, the county superintendent shall notify the state superintendent and the president of the state board of education.

EC 42127.6

Ineffective Resolution

- If the state superintendent finds that the actions of the county superintendent are not effective in resolving the financial problems of a district, the state superintendent shall assume those powers.
- The state superintendent shall request that FCMAT identify the circumstances that led to the ineffectiveness of the county superintendent in resolving the financial problems of the district.

EC 42127.6
Other AB 1840 Provisions

- Adds the concurrence of the president of the SBE to the appeal process when the county superintendent imposes changes in a district’s budget.
- Provides for a state appropriation to cover a percentage of the projected budget deficit, under certain conditions and after meeting certain requirements, for Inglewood and Oakland unified school districts.
- Provides certain authority for four designated school districts with outstanding emergency apportionment loans regarding the sale or lease of surplus property.

Automatic Engagement

- Historically, FCMAT has not engaged directly with a district showing fiscal distress until it has been invited to do so by the district or the county superintendent.
- Under the 2018-19 Budget Act, FCMAT will now “offer more proactive and preventive services to fiscally distressed school districts” by automatically engaging with a district under the following conditions:
  - Disapproved budget
  - Negative interim report certification
  - Three consecutive qualified interim report certifications
  - Downgrade of an interim certification by the county superintendent
  - “Lack of going concern” designation
Automatic Engagement (cont)

- Under these conditions, FCMAT will perform a fiscal health risk analysis to determine the level of fiscal risk.
- Updated FHRA tool weights each question based on high, medium and low risk.
- The analysis will not be performed more than once in a 12-month period per district.
- The engagement will be coordinated with the county superintendent and build upon their oversight process and activities.
- There is no cost to the county superintendent or the district for the analysis.