



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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LEGAL UPDATE

February 23, 2018

To: Superintendents, Member School Districts (K-12)
From: Ellie R. Austin *ERA*
Assistant General Counsel
Subject: Supplemental Apportionment Bill for Wildfire Mitigation Under
Consideration in State Assembly (AB 2228)
Memo No. 05-2018

Be advised that the State Assembly is currently considering Assembly Bill (“AB”) 2228 which, if passed, would provide a supplemental apportionment to eligible local educational agencies (“LEAs”) whose average daily attendance (“ADA”) has been materially decreased during the 2017-18, 2018-19, or 2019-20 fiscal years due to the 2017 wildfires. A copy of the bill in its current form is enclosed with this Legal Update.

Eligible LEAs for purposes of AB 2228 include school districts, county offices of education, and charter schools located within a county for which Governor Brown declared a state of emergency in 2017. “Material decrease” means a decrease in ADA attributable to the dislocation of pupils’ families due to the conditions that led to the declaration of a state of emergency on account of the 2017 wildfires.

The current version of the bill proposes to make a supplemental apportionment to eligible LEAs equal to 100% of the estimated ADA lost for 2017-18, 75% of the estimated ADA lost for 2018-19, and 50% of the estimated ADA lost for 2019-20. An eligible LEA can establish the fact of a material decrease by affidavits from members of the governing board or body of the LEA and the county superintendent of schools.

The bill was introduced by Assembly Member Wood and co-authored by Assembly Members Aguiar-Curry, Levine, and Limón, and Senators Dodd and McGuire. It may be heard in committee as early as March 16, 2018.

The governing boards of some local districts are passing resolutions in support of AB 2228. A draft board resolution is enclosed with this Legal Update.



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Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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ASSEMBLY BILL

No. 2228

Introduced by Assembly Member Wood

**(Principal coauthors: Assembly Members Aguiar-Curry, Levine,
and Limón)**

(Principal coauthors: Senators Dodd and McGuire)

February 13, 2018

An act to add and repeal Section 46392.5 of the Education Code, relating to education finance, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2228, as introduced, Wood. Education finance: school apportionments: wildfire mitigation.

Existing law establishes a public school financing system that requires state funding for county superintendents of schools, school districts, and charter schools to be calculated pursuant to a local control funding formula, as specified. Existing law provides that if the average daily attendance of a school district, county office of education, or charter school has been materially decreased during any fiscal year because of specified emergencies, that fact shall be established to the satisfaction of the Superintendent of Public Instruction by affidavits of the members of the governing board or body of the school district, county office of education, or charter school and the county superintendent of schools. Existing law requires the Superintendent to estimate the average daily attendance for the fiscal year in a manner that credits to the school district, county office of education, or charter school, for determining the apportionments to be made to it, approximately the total average daily attendance that would have been credited to the school district, county office of education, or charter school had the emergency not

occurred. Existing law requires the Superintendent, on or before February 20 of each year, to make the first principal apportionment and, on or before July 2 of each year, to make the 2nd principal apportionment to each local educational agency.

This bill would require, if the average daily attendance of an eligible local educational agency has been materially decreased during the 2017–18, 2018–19, or 2019–20 fiscal years, the fact of a material decrease to be established to the satisfaction of the Superintendent by affidavits of the members of the governing board or body of the local educational agency and the county superintendent of schools. The bill, for purposes of these provisions, would define “eligible local educational agency” to mean a school district, county office of education, or charter school that is located within a county for which a state of emergency was declared by the Governor during the 2017 calendar year in response to wildfires, and, for purposes of these provisions, would define “material decrease” to mean a decrease in average daily attendance attributable to the dislocation of pupils’ families due to the conditions that led to the declaration of a state of emergency. The bill would require the Superintendent to estimate, for each fiscal year from the 2017–18 to 2019–20, inclusive, fiscal years, the total average daily attendance that would have been credited to the eligible local educational agency for purposes of receiving apportionments from the State School Fund had the emergency not occurred, excluding any average daily attendance credited pursuant to existing law. The bill would require the Superintendent to make a supplemental apportionment to an eligible local educational agency in an amount that credits to the eligible local educational agency the apportionment the eligible local educational agency would have received from the State School Fund based on the average daily attendance the eligible local educational agency lost, as adjusted according to a specified schedule. The bill would appropriate an amount sufficient to fulfill the purposes of these provisions from the General Fund to the Superintendent to be apportioned pursuant to these provisions, as specified. The bill would repeal these provisions on January 1, 2021.

Funds appropriated by this bill would be applied toward the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution.

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

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

1 SECTION 1. Section 46392.5 is added to the Education Code,
2 to read:

3 46392.5. (a) If the average daily attendance of an eligible local
4 educational agency has been materially decreased during the
5 2017–18, 2018–19, or 2019–20 fiscal year, the fact of that material
6 decrease shall be established to the satisfaction of the
7 Superintendent by affidavits of the members of the governing
8 board or body of the local educational agency and the county
9 superintendent of schools.

10 (b) For purposes of this section, the following definitions apply:

11 (1) “Eligible local educational agency” means a school district,
12 county office of education, or charter school that is located within
13 a county for which a state of emergency was declared by the
14 Governor during the 2017 calendar year in response to wildfires.

15 (2) “Material decrease” means a decrease in average daily
16 attendance attributable to the dislocation of pupils’ families due
17 to the conditions that led to the declaration of a state of emergency
18 described in paragraph (1).

19 (c) The Superintendent shall estimate, for each fiscal year from
20 the 2017–18 to 2019–20, inclusive, fiscal years, the total average
21 daily attendance that would have been credited to the eligible local
22 educational agency for purposes of receiving apportionments from
23 the State School Fund had the emergency not occurred, excluding
24 any average daily attendance credited pursuant to Section 46392.

25 (d) Notwithstanding any other law, the Superintendent shall
26 make a supplemental apportionment to an eligible local educational
27 agency in an amount that credits to the eligible local educational
28 agency the apportionment the eligible local educational agency
29 would have received from the State School Fund based on the
30 average daily attendance the eligible local educational agency lost,
31 as adjusted according to the following:

32 (1) For the 2017–18 fiscal year, 100 percent of the estimated
33 average daily attendance the eligible local educational agency lost,
34 as calculated pursuant to subdivision (c).

35 (2) For the 2018–19 fiscal year, 75 percent of the estimated
36 average daily attendance the eligible local educational agency lost,
37 as calculated pursuant to subdivision (c).

1 (3) For the 2019–20 fiscal year, 50 percent of the estimated
2 average daily attendance the eligible local educational agency lost,
3 as calculated pursuant to subdivision (c).

4 (e) (1) An amount sufficient to fulfill the purposes of making
5 supplemental apportionments required by subdivision (d) for the
6 2017–18 and 2018–19 fiscal years is appropriated from the General
7 Fund for the 2018–19 fiscal year to the Superintendent to be
8 apportioned pursuant to subdivision (d) for those fiscal years.

9 (2) An amount sufficient to fulfill the purposes of making
10 supplemental apportionments required by subdivision (d) for the
11 2019–20 fiscal year is appropriated from the General Fund for the
12 2019–20 fiscal year to the Superintendent to be apportioned
13 pursuant to subdivision (d) for that fiscal year.

14 (f) (1) For purposes of making the computations required by
15 Section 8 of Article XVI of the California Constitution, the
16 appropriations made by subdivision (e) and allocated for the
17 2017–18 fiscal year shall be deemed to be “General Fund revenues
18 appropriated for school districts,” as defined in subdivision (c) of
19 Section 41202, for the 2017–18 fiscal year, and included within
20 the “total allocations to school districts and community college
21 districts from General Fund proceeds of taxes appropriated pursuant
22 to Article XIII B,” as defined in subdivision (e) of Section 41202,
23 for the 2017–18 fiscal year.

24 (2) For purposes of making the computations required by Section
25 8 of Article XVI of the California Constitution, the appropriations
26 made by subdivision (e) and allocated for the 2018–19 fiscal year
27 shall be deemed to be “General Fund revenues appropriated for
28 school districts,” as defined in subdivision (c) of Section 41202,
29 for the 2018–19 fiscal year, and included within the “total
30 allocations to school districts and community college districts from
31 General Fund proceeds of taxes appropriated pursuant to Article
32 XIII B,” as defined in subdivision (e) of Section 41202, for the
33 2018–19 fiscal year.

34 (3) For purposes of making the computations required by Section
35 8 of Article XVI of the California Constitution, the appropriations
36 made by subdivision (e) and allocated for the 2019–20 fiscal year
37 shall be deemed to be “General Fund revenues appropriated for
38 school districts,” as defined in subdivision (c) of Section 41202,
39 for the 2019–20 fiscal year, and included within the “total
40 allocations to school districts and community college districts from

1 General Fund proceeds of taxes appropriated pursuant to Article
2 XIII B,” as defined in subdivision (e) of Section 41202, for the
3 2019–20 fiscal year.

4 (g) This section shall remain in effect only until January 1, 2021,
5 and as of that date is repealed.

O

Resolution No: _____

**Resolution of the [Name] School District to Support
Assembly Bill 2228 Relating to Supplemental
Apportionment for Districts Affected by the 2017 Wildfires**

WHEREAS, the State Assembly is currently considering Assembly Bill (“AB”) 2228; and

WHEREAS, AB 2228, if passed, would provide a supplemental apportionment to eligible local educational agencies (“LEAs”) whose average daily attendance (“ADA”) has been materially decreased during the 2017-18, 2018-19, or 2019-20 fiscal years because of the 2017 wildfires; and

WHEREAS, eligible LEAs for purposes of AB 2228 include school districts, county offices of education, and charter schools located in a county for which Governor Brown declared a state of emergency in 2017; and

WHEREAS, “material decrease” means a decrease in ADA attributable to the dislocation of pupils’ families because of the conditions that led to the declaration of a state of emergency on account of the 2017 wildfires; and

WHEREAS, the current version of the bill proposes to make a supplemental apportionment to eligible LEAs equal to 100% of the estimated ADA lost for 2017-18, 75% of the estimated ADA lost for 2018-19, and 50% of the estimated ADA lost for 2019-20; and

WHEREAS, an eligible LEA can establish the fact of a material decrease by affidavits from members of the governing board or body of the LEA and the county superintendent of schools; and

WHEREAS, the bill was introduced by Assembly Member Wood and co-authored by Assembly Members Aguiar-Curry, Levine, and Limón, and Senators Dodd and McGuire, and may be heard in committee as early as March 16, 2018:

NOW, THEREFORE BE IT RESOLVED that the [Name] School District Board of Trustees supports the passage of AB 2228; AND

BE IT FURTHER RESOLVED, that this Board urges the full Legislature to adopt AB 2228 as soon as possible to support those school districts affected by the 2017 wildfires.

Adopted by the Governing Board of the [Name] School District on _____ [date], 2018, by the following roll call vote of the Board:

AYES: Trustees [names] NOES: Trustees [names] ABSENT/ABSTAIN: [names]

Whereupon, the Chair declared the foregoing resolution passed and adopted.

Chair, [Name] Board of Trustees