

Assembly Bill No. 1550

CHAPTER 901

An act to amend Section 37670 of, to add an article heading immediately preceding Section 37670 of, and to add Article 2 (commencing with Section 37680) to Chapter 5.5 of Part 22 of, the Education Code, relating to year-round schools, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1550, Daucher. Concept 6 program.

Existing law authorizes a school district to operate a program of multitrack year-round scheduling at one or more schools within the district. Under existing law, a program of multitrack year-round scheduling may operate for as few as 163 days in each fiscal year if the governing board of the school district adopts a resolution containing specified certifications at a regularly scheduled board meeting.

This bill would, commencing with the 2004–05 school year, prohibit a school district from operating a Concept 6 program unless the school district operated a Concept 6 program continuously since the 2003–04 school year. The bill would define a Concept 6 program to mean a program whereby a school operates on a 3-track year-round calendar in which each track provides fewer than 180 days, but no fewer than 163 days, of instruction per school year. The bill would require a district, as a condition of operating a Concept 6 program, by January 1, 2005, to present to the State Department of Education a comprehensive action plan detailing the strategy and steps to be taken annually to eliminate the use of the Concept 6 program as soon as practicable and no later than July 1, 2012.

The bill would require a district that plans to operate a Concept 6 program after June 30, 2006, and after July 30, 2009, to submit specified reports to the Superintendent of Public Instruction that establish substantial progress has been made toward meeting its annual goals stated in the comprehensive action plan and that it has developed a specific school building plan to provide adequate pupil capacity to eliminate the Concept 6 program. The bill would authorize the State Board of Education to appoint a monitor to oversee the district if it finds that substantial progress has not been made or a specific school building plan has not been developed and the reason for the failure is not due to



circumstances beyond the control of the district. The bill would prohibit the operation of a Concept 6 program after July 1, 2012.

Existing law requires the State Department of Education, in consultation with the Office of Public School Construction, by July 1, 2008, to conduct a survey to determine whether school districts operating a program of multitrack year-round scheduling for as few as 163 days in a fiscal year will phase out this scheduling by the 2009–10 fiscal year, and to submit the survey to specified education committees of the Legislature and to the Department of Finance. Existing law requires the Legislature to determine, based on this survey, whether to repeal or continue the authority of a school district to operate a multitrack year-round schedule for as few as 163 days.

This bill, instead, would require the department, in consultation with the Office of Public School Construction, by July 1, 2008, to conduct a survey to determine whether school districts operating a Concept 6 program will phase out this program by the 2009–10 fiscal year, and to submit the survey to specified education committees of the Legislature and to the Department of Finance. The bill would require the Legislature to determine, based on the survey, whether to repeal the authority of a school district to operate a Concept 6 program prior to July 1, 2012.

The bill would declare that it would take effect immediately as an urgency statute.

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

SECTION 1. An article heading is added immediately preceding Section 37670 of the Education Code, to read:

Article 1. Multitrack Year-round Scheduling

SEC. 2. Section 37670 of the Education Code is amended to read:
37670. (a) Except as provided in Article 2 (commencing with Section 37680), a school district may operate a program of multitrack year-round scheduling at one or more schools within the district. A program of multitrack year-round scheduling may operate at a schoolsite for as few as 163 days in each fiscal year if the governing board of the school district adopts a resolution at a regularly scheduled board meeting certifying that both of the following criteria are met at the schoolsite:

(1) The number of annual instructional minutes is not less than that of schools of the same grade levels utilizing the traditional school calendar.

(2) It is not possible for the school to maintain a multitrack schedule containing the same number of instructional days as are provided in



schools of the district utilizing the traditional school calendar given the facilities, program, class sizes, and projected number of pupils enrolled at the schoolsite.

(b) A certificated employee working under a program described in this section, except one serving under an administrative or supervisory credential who is assigned full time to a school in a position requiring qualifications for certification, shall work the same number of days and shall increase the number of minutes worked daily on a uniform basis.

(c) A program conducted pursuant to this section is eligible for apportionment from the State School Fund.

SEC. 3. Article 2 (commencing with Section 37680) is added to Chapter 5.5 of Part 22 of the Education Code, to read:

Article 2. Concept 6 Class Scheduling

37680. For purposes of this article, the following terms have the following meanings:

(a) "Capacity-related busing" means transporting a pupil to a school other than the school of residence in order to reduce the number of pupils attending the school of residence.

(b) "Circumstances beyond the control of the district" means any of the following:

(1) An increase in pupil population beyond the demographic projections set forth in the district's comprehensive action plan, or an amendment thereto, if the increase was not reasonably foreseeable through the use of annual, informed reestimates of demographic projections.

(2) A cost escalation, shortage in construction material or capacity, delay in completion of an environmental review, or natural or human-made disaster materially affecting the district's facilities program, if the circumstance was not reasonably foreseeable and the district exercised due diligence in planning for that circumstance.

(3) A lack of sufficient state or local funds to complete necessary school construction. "Lack of sufficient state or local funds" may not be substantiated if a district expends state or local funds designated for new construction for any purpose other than the construction of additional school facilities to reduce reliance on the Concept 6 program, except for funds for projects eligible to receive facility hardship funds pursuant to Article 8 (commencing with Section 17075.10) of Chapter 12.5 of Part 10.

(c) "Comprehensive action plan" means the plan developed pursuant to Section 37682.



(d) “Concept 6” means a program whereby a school operates on a three-track year-round calendar in which each track provides fewer than 180 days, but no fewer than 163 days, of instruction per school year.

(e) “Specific school building plan” means both of the following:

(1) The district has identified preferred sites and has approved projects, as required under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), needed to satisfy the pupil capacity projected in the district’s comprehensive action plan.

(2) The district has identified and obtained the funding necessary to complete the particular projects identified. If state funding is part of the funding identified, a district is deemed to have obtained state funding if it has received either of the following:

(A) An apportionment from the state for the project.

(B) A preliminary apportionment for the project under the Critically Overcrowded School Facilities Program, as set forth in Article 11 (commencing with Section 17078.10) of Chapter 12.5 of Part 10.

(f) “State board” means the State Board of Education.

(g) “Substantial progress” means achieving a total enrollment on Concept 6 calendars of no more than 110 percent of the annual numerical goals set forth in the district’s comprehensive action plan.

(h) “Technical assistance” includes, but is not limited to, assistance in identifying and acquiring a schoolsite, guidance in maximizing access to funding, and facilitating the process of obtaining state approval for new construction projects.

37681. (a) Commencing with the 2004–05 school year, a school district may not operate a Concept 6 program, unless the school district operated a Concept 6 program continuously since the 2003–04 school year.

(b) A school initially operating on or after July 1, 2004, may not operate a Concept 6 program if operation of the program would increase the number of schools in the district operating a Concept 6 program above the number in operation in the district, on average, over the preceding two school years.

37682. (a) As a condition of operating a Concept 6 program at a school in the 2004–05 school year or thereafter, a district shall, by January 1, 2005, present to the department a comprehensive action plan detailing the strategy and steps to be taken annually to eliminate the use of the Concept 6 program as soon as practicable, and no later than July 1, 2012. Except as provided in subdivision (b), the action plan shall include all of the following:

(1) An analysis of the factors relating to the district’s current and projected operation of the Concept 6 program including, but not limited



to, demographic forecasts, space use and needs, class sizes, programmatic constraints, facility construction status, the amount of funding needed to create additional classroom space, and the proposed sources of that funding.

(2) A detailed description of the multiple phases of planning and construction, including site identification, site acquisition, construction commencement and completion date, and occupancy dates of projects designed to eliminate use of the Concept 6 program, including a reasonable projection of the number of additional pupil seats to be provided through each of the multiple phases of planning and construction.

(3) Reasonable, districtwide numerical goals against which annual progress toward eliminating the use of the Concept 6 program can be measured, including a projection of the number of pupils, if any, the district estimates will remain on a Concept 6 program on July 1 of each year through 2012.

(b) If a district projects that it will eliminate the Concept 6 program on or before July 1, 2008, the district shall not be required to include in its comprehensive action plan the information contained in paragraphs (2) and (3) of subdivision (a) but, instead, shall include a narrative explanation of the manner in which it will accomplish its goal to eliminate the Concept 6 program and shall project the date that each school in the district will eliminate the program.

(c) A district may not transport pupils to another school more than 40 minutes away from the school of residence, other than as required pursuant to a desegregation plan, as a means to eliminate the Concept 6 program.

37683. (a) The Superintendent of Public Instruction shall evaluate a comprehensive action plan submitted by a district and shall make recommendations to the state board for approval or disapproval of the plan. The evaluation shall be based on the reasonableness and practicability of the district in eliminating the Concept 6 program by the earliest practicable date and no later than July 1, 2012. The evaluation shall include an analysis of whether adequate sources of funding have been identified for the projects necessary to eliminate the program. In considering whether a district has identified adequate sources of funding, the superintendent shall consult with the Office of Public School Construction.

(b) If the state board disapproves a comprehensive action plan, it shall specify the reasons for the disapproval and require the district to submit a revised plan, within a time specified by the state board, to address the state board's concerns.



37684. (a) A district operating a Concept 6 program shall report each January to the Superintendent of Public Instruction, who shall report to the state board, on progress made in reaching the annual numerical goals established in its comprehensive action plan. If a district fails to meet an annual numerical goal, the district shall identify the specific cause of the failure and amend its comprehensive action plan to indicate the specific steps that it will take to remedy that failure so that it will meet its deadline to eliminate the Concept 6 program as stated in its comprehensive action plan.

(b) If the district's progress toward meeting its numerical goals has or is projected to change materially, the district shall file a supplemental, mid-year report with the Superintendent of Public Instruction. The report shall describe the nature and cause of the material change and indicate the specific steps that the district will take, and the state technical assistance needed, if any, to address the change. The superintendent shall evaluate the supplemental, mid-year report and make recommendations to the state board for approval or disapproval. The evaluation shall be based on the reasonableness and practicability of the district to reach its annual goals and eliminate the Concept 6 program by the earliest practicable date, and no later than July 1, 2012. If the state board disapproves a report, it shall specify the reasons for disapproval and require the district to submit a revised report, within a timeframe specified by the state board, to address the concerns raised by the state board.

37685. (a) A district that plans to operate a Concept 6 program after June 30, 2006, shall, by July 1, 2006, and by July 1 of any succeeding year in which it plans to operate a Concept 6 program, as a condition of operating that program, submit evidence in writing to establish to the satisfaction of the Superintendent of Public Instruction that substantial progress has been made toward meeting its annual numerical goals as stated in its comprehensive action plan.

(b) The superintendent shall evaluate the written submission to determine whether the district has made substantial progress toward meeting its goals and shall submit a report to the state board.

37686. (a) If a district fails to meet its annual numerical goals for any two consecutive years between 2005 and 2012, the district shall be prohibited from all the following until the district achieves substantial progress toward meeting its annual numerical goals:

(1) Approving any new construction or new portable classroom other than a project directly designed to eliminate the use of the Concept 6 program or to reduce reliance on capacity-related busing that transports pupils more than 40 minutes to or from school.



(2) To the extent permitted by law, designating revenues from developer fees for any purpose not directly related to eliminating the Concept 6 program or reducing reliance on capacity-related busing.

(3) Approving the issuance of a Certificate of Participation for any school facilities-related purpose not directly related to the elimination of the Concept 6 program or reducing reliance on capacity-related busing.

(b) Subdivision (a) does not preclude a district from using funding from any source for a project that is eligible for hardship funding approved by the State Allocation Board pursuant to Article 8 (commencing with Section 17075.10) of Chapter 12.5 of Part 10.

37687. (a) A district that plans to operate a Concept 6 program after June 30, 2009, shall by July 1 of 2009, and by July 1 of any succeeding year in which it plans to operate a Concept 6 program, submit evidence in writing to establish to the satisfaction of the Superintendent of Public Instruction that it has developed a specific school building plan to provide adequate pupil capacity to eliminate the Concept 6 program by the earliest practicable date and no later than July 1, 2012.

(b) The superintendent shall evaluate the written submission to determine whether the district has developed a specific school building plan and shall submit a report to the state board.

37688. (a) If on or after July 31, 2008, and any succeeding year in which a district operates a Concept 6 program, the state board finds that a district has failed to make substantial progress in eliminating the Concept 6 program, or if on or after July 31, 2009, and any succeeding year in which a district operates a Concept 6 program, the state board finds that a district has failed to develop a specific school building plan, the state board shall hold a public hearing to determine the cause of the failure and the remedies to be undertaken by the state board to ensure elimination of the Concept 6 program by the earliest practicable date and no later than July 1, 2012.

(b) Prior to the public hearing, the Superintendent of Public Instruction and the State Allocation Board shall each provide a written analysis and opinion to the state board as to the cause of the failure and the remedies proposed to be undertaken. The State Allocation Board shall render its opinion based upon a written analysis prepared by the Office of Public School Construction. The district may submit its own analysis as to the cause of the failure and remedies it proposes to be undertaken.

(c) After the public hearing, the state board shall adopt a remedial plan that the district shall follow to ensure elimination of the Concept 6 program by the earliest practicable date and no later than July 1, 2012.

(d) (1) If the state board determines that the failure of a district to achieve substantial progress or develop a specific school building plan



is due to circumstances beyond the control of the district, the remedial plan adopted by the state board may provide for technical assistance to the district from the department, the Office of Public School Construction, or the Division of the State Architect. The remedial plan may also recommend action for state financial assistance necessary to enable the district to eliminate the Concept 6 program by the earliest date practicable and no later than July 1, 2012.

(2) If the state board determines that the failure of the district to achieve substantial progress or develop a specific school building plan is not due to circumstances beyond the control of the district, but due to its failure to act diligently to plan for the elimination of the Concept 6 program or to execute its comprehensive action plan, the remedial plan shall mandate at least quarterly review and oversight of the district by the department. The remedial plan may also include any of the measures described in paragraph (1) or other measures as the state board deems necessary to enable the district to eliminate the Concept 6 program by the earliest date practicable and no later than July 1, 2012.

37689. (a) In addition to Section 37688, on or after July 31, 2009, if the state board determines that the failure of a district to achieve substantial progress or develop a specific school building plan is not due to circumstances beyond the control of the district, but due to its failure to act diligently to plan for the elimination of the Concept 6 program or to execute its comprehensive action plan, the board shall hold a public hearing to determine whether the state board should implement direct oversight of the district's facilities construction program.

(b) If the state board determines that direct oversight is necessary, the state board shall implement the oversight within 90 days of that determination.

(1) Direct oversight by the state board shall consist of assigning a monitor to the district who shall report to the state board at each of its regularly scheduled meetings on progress made by the district in working toward the elimination of the Concept 6 program. The monitor shall have relevant experience in engineering, construction, or management of major public works projects and shall have the resources and authority to contract with appropriate professionals in the fields of program management, project management, and finance. In selecting a monitor, the state board shall receive nominees from, and consult with, the superintendent of the district, the Office of Public School Construction, and the citizens' oversight committee of the district, established under Section 15278.

(2) The monitor shall make recommendations to the district with respect to the planning and implementation of its school construction program. The district shall follow the recommendations of the monitor



unless the district shows, to the satisfaction of the state board, good cause for not doing so. The district shall notify the state board if it disputes a recommendation and the state board shall hold a public hearing to hear and decide the dispute within 30 days of receiving the notice.

(3) The district and the citizens' oversight committee shall have an opportunity to appear at the public hearing and provide written or oral testimony to support their positions.

(4) A recommendation of the monitor that is mandatory, as opposed to prohibitory, shall be stayed during the time the dispute is before the state board.

(5) Upon the conclusion of the public hearing, the state board shall direct the district to implement the recommendations of the monitor if it finds, in consultation with the Office of Public School Construction, that the district lacks good cause for failing to implement the recommendations.

37690. All reports required by a district to be submitted to a state agency pursuant to this article shall be made available to the public. An interested party shall be permitted to submit comments regarding a report to the appropriate state agency within a reasonable time following the submission of the report to that state agency.

37691. A Concept 6 program conducted pursuant to this article is eligible for apportionment from the State School Fund.

37692. On or before July 1, 2008, the department, in consultation with the Office of Public School Construction, shall conduct a survey to determine whether the school districts operating Concept 6 programs will phase out the program by the 2009–10 fiscal year and shall submit a copy of the results of the survey to the Assembly Committee on Education, the Senate Committee on Education, and the Department of Finance. Based on the survey, the Legislature shall determine whether to repeal the authority to operate a Concept 6 program prior to July 1, 2012.

37693. (a) A Concept 6 program may not be operated after July 1, 2012, or such earlier date as may be prescribed by the Legislature pursuant to Section 37692.

(b) Although the Concept 6 program is authorized until July 1, 2012, it is the intent of the Legislature that all school districts eliminate the Concept 6 program as soon as practicable.

37694. A school district operating a Concept 6 program is exempt from the requirements of Section 37202.

37695. (a) A pupil participating in a Concept 6 program shall not be credited with more than one day of attendance in any calendar day, except as permitted in Section 46140.



(b) Average daily attendance generated at a regular elementary, junior high, or high school operated pursuant to this article shall be calculated as prescribed in subdivision (a) of Section 41601.

(c) Notwithstanding Section 37640, subdivision (a) of Section 41601, and any other law, the number of days taught in one or more late entry makeup classes in which a pupil in a Concept 6 program is enrolled shall be disregarded, at the option of a school district, in calculating the number of days taught in the calculation of average daily attendance of that district for any school year, if the pupil entered the Concept 6 program after September 1 of that school year and the track in which the pupil is enrolled began instruction in July or August of that school year. For purposes of this subdivision, “late entry makeup class” is a class in which a pupil in a Concept 6 program is enrolled in order to compensate for the pupil’s late enrollment in that program. The number of days taught that are disregarded under this subdivision shall not exceed the number of schooldays occurring in the school year prior to September 1 in the track in which the pupil is enrolled, reduced by the number of schooldays, if any, occurring in a program operating under the traditional school calendar in which the pupil was enrolled in that school district in the same school year prior to the date upon which the pupil is first enrolled in the Concept 6 program.

SEC. 4. 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 Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to reduce overcrowding in public schools and to implement the settlement agreement in the case of *Williams v. State of California* (Super. Ct., San Francisco, 2004, No. CGC-00-312236) as soon as possible, it is necessary for this act to take effect immediately.

