

**ASSEMBLY BILL**

**No. 165**

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**Introduced by Assembly Member Lara  
(Coauthor: Assembly Member John A. Pérez)**

January 20, 2011

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An act to amend Sections 14501, 35186, and 41020 of, and to add Article 5.5 (commencing with Section 49010) to Chapter 6 of Part 27 of Division 4 of Title 2 of, the Education Code, relating to school fees, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 165, as introduced, Lara. Pupil fees.

(1) Existing law requires the Legislature to provide for a system of common schools by which a free school shall be kept up and supported in each district. Existing law prohibits a pupil enrolled in school from being required to pay a fee, deposit, or other charge not specifically authorized by law.

This bill would prohibit a school district, school, or other entity working under the supervision of, or in coordination with, a district or school from imposing a pupil fee, as defined, for participation in educational activities, as defined, as specified. The bill would provide that this prohibition is not to be interpreted to prohibit an entire school, class, sports team, or club from voluntarily participating in fundraising or to prohibit school districts and schools from providing pupils prizes or other recognition for voluntarily participating in fundraising activities. The bill would specify that these provisions are declarative of existing law and should not be interpreted to prohibit a school district or school from imposing a fee, deposit, or other charge otherwise allowed by law.

(2) Existing law requires the Controller, in consultation with the Department of Finance and the State Department of Education, to develop a plan to review and report on financial and compliance audits, and with representatives of other entities, to recommend the statements and other information to be included in the audit reports filed with the state by local educational agencies and to propose the content of an audit guide.

This bill would require a compliance audit to include the verification of compliance with the prohibition against the imposition of pupil fees for participation in educational activities in violation of specified law.

(3) Existing law requires a school district to use its uniform complaint process to help identify and resolve any deficiencies related to instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, teacher vacancy or misassignment, and intensive instruction and services provided to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12. Existing law provides certain complainants the right to file an appeal to the Superintendent of Public Instruction, who is required to provide a written report to the State Board of Education that describes the basis for the complaint and, as appropriate, proposes a remedy. A notice regarding the appropriate subjects of a complaint is required to be posted in each classroom in each school in the school district and a complaint regarding those deficiencies is required to be filed with the principal of the school or his or her designee, except as specified.

This bill also would require a school district to use its uniform complaint process to help identify and resolve any deficiencies related to the imposition of pupil fees for participation in educational activities, as those terms are defined. The bill would also provide persons with a complaint regarding the imposition of pupil fees the right to file an appeal to the Superintendent and would require the Superintendent to provide the written report to the state board and the complainant no later than 30 working days after the appeal was received by the Superintendent. The bill would require that a remedy proposed in the Superintendent's report regarding the imposition of an unlawful pupil fee shall include, but not be limited to, requiring the offending school district or school to fully reimburse all affected pupils, parents, or guardians. The bill would also require the classroom notice to include certain information about the prohibition against charging pupil fees for participation in educational activities. By imposing additional duties

on school districts, this bill would impose a state-mandated local program.

(4) Existing law requires a county superintendent of schools to provide for an audit of all funds under his or her jurisdiction and requires the governing board of a local educational agency to either provide for an audit of the books and accounts of the local educational agency or make arrangements with the county superintendent of schools having jurisdiction over the local educational agency to provide for that auditing. Existing law requires a county superintendent of schools to be responsible for reviewing the audit exceptions contained in an audit of a local educational agency under his or her jurisdiction related to specified topics, and determining whether the exceptions were either corrected or an acceptable plan of correction was developed. Existing law requires the county office of education to review certain audit exceptions upon submission and receipt of a final audit report. Existing law requires the Superintendent of Public Instruction to be responsible for ensuring that local educational agencies have either corrected or developed plans of correction for specified audit exceptions.

This bill, commencing with the 2010–11 audit of local educational agencies, would require the county superintendent of schools to also include in the review of audit exceptions those audit exceptions related to the imposition of pupil fees for participation in educational activities in violation of specified law, and to determine whether the exceptions are either corrected or an acceptable plan of correction is developed. The bill would also require the county office of education to review audit exceptions relating to the imposition of unlawful pupil fees. The bill would require the auditor to notify the Controller, among others, if the auditor determines that an exception related to the imposition of unlawful pupil fees has not been corrected, or the local educational agency has a new audit exception related to those unlawful pupil fees, and would require the Controller to withhold certain payments to the local educational agency until the agency provides reimbursement, as specified. The bill would also require the Superintendent to ensure that local educational agencies have either corrected or developed plans of correction for audit exceptions related to the imposition of unlawful pupil fees. By imposing additional duties on local educational agencies, this bill would impose a state-mandated local program.

(5) 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.

(6) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

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

1 SECTION 1. Section 14501 of the Education Code is amended  
2 to read:

3 14501. (a) As used in this chapter, “financial and compliance  
4 audit” shall be consistent with the definition provided in the  
5 “Standards for Audits of Governmental Organizations, Programs,  
6 Activities, and Functions” promulgated by the Comptroller General  
7 of the United States. Financial and compliance audits conducted  
8 under this chapter shall fulfill federal single audit requirements.

9 (b) As used in this chapter, “compliance audit” means an audit  
10 that ascertains and verifies whether or not funds provided through  
11 apportionment, contract, or grant, either federal or state, have been  
12 properly disbursed and expended as required by law or regulation  
13 or both and includes the verification of each of the following:

14 (1) The reporting requirements for the sufficiency of textbooks  
15 or instructional materials, or both, as defined in Section 60119.

16 (2) Teacher misassignments pursuant to Section 44258.9.

17 (3) The accuracy of information reported on the School  
18 Accountability Report Card required by Section 33126. The  
19 requirements set forth in paragraphs (1) and (2) and this paragraph  
20 shall be added to the audit guide requirements pursuant to  
21 subdivision (b) of Section 14502.1.

22 (4) *Compliance with Section 49011 and Section 5 of Article IX*  
23 *of the California Constitution.*

24 SEC. 2. Section 35186 of the Education Code is amended to  
25 read:

26 35186. (a) A school district shall use the uniform complaint  
27 process it has adopted as required by Chapter 5.1 (commencing  
28 with Section 4600) of Title 5 of the California Code of Regulations,  
29 with modifications, as necessary, to help identify and resolve any

1 deficiencies related to instructional materials, emergency or urgent  
2 facilities conditions that pose a threat to the health and safety of  
3 pupils or staff, teacher vacancy or misassignment, ~~and~~ intensive  
4 instruction and services provided pursuant to Section 37254 to  
5 pupils who have not passed one or both parts of the high school  
6 exit examination after the completion of grade 12, *and the*  
7 *imposition of pupil fees for participation in educational activities.*

8 (1) A complaint may be filed anonymously. A complainant who  
9 identifies himself or herself is entitled to a response if he or she  
10 indicates that a response is requested. A complaint form shall  
11 include a space to mark to indicate whether a response is requested.  
12 If Section 48985 is otherwise applicable, the response, if requested,  
13 and report shall be written in English and the primary language in  
14 which the complaint was filed. All complaints and responses are  
15 public records.

16 (2) The complaint form shall specify the location for filing a  
17 complaint. A complainant may add as much text to explain the  
18 complaint as he or she wishes.

19 (3) Except as provided pursuant to paragraph (4), a complaint  
20 shall be filed with the principal of the school or his or her designee.  
21 A complaint about problems beyond the authority of the school  
22 principal shall be forwarded in a timely manner but not to exceed  
23 10 working days to the appropriate school district official for  
24 resolution.

25 (4) A complaint regarding any deficiencies related to intensive  
26 instruction and services provided pursuant to Section 37254 to  
27 pupils who have not passed one or both parts of the high school  
28 exit examination after the completion of grade 12 shall be  
29 submitted to the district official designated by the district  
30 superintendent. A complaint may be filed at the school district  
31 office, or it may be filed at the schoolsite and shall be immediately  
32 forwarded to the designee of the district superintendent.

33 (b) The principal or the designee of the district superintendent,  
34 as applicable, shall make all reasonable efforts to investigate any  
35 problem within his or her authority. The principal or designee of  
36 the district superintendent shall remedy a valid complaint within  
37 a reasonable time period but not to exceed 30 working days from  
38 the date the complaint was received. The principal or designee of  
39 the district superintendent shall report to the complainant the  
40 resolution of the complaint within 45 working days of the initial

1 filing. If the principal makes this report, the principal shall also  
2 report the same information in the same timeframe to the designee  
3 of the district superintendent.

4 (c) A complainant not satisfied with the resolution of the  
5 principal or the designee of the district superintendent has the right  
6 to describe the complaint to the governing board of the school  
7 district at a regularly scheduled hearing of the governing board.  
8 As to complaints involving a condition of a facility that poses an  
9 emergency or urgent threat, as defined in paragraph (1) of  
10 subdivision (c) of Section 17592.72, *or complaints involving the*  
11 *imposition of pupil fees for participation in educational activities,*  
12 a complainant who is not satisfied with the resolution proffered  
13 by the principal or the designee of the district superintendent has  
14 the right to file an appeal to the Superintendent, who shall provide  
15 a written report to the state board *and the complainant no later*  
16 *than 30 working days after the date the appeal was received by*  
17 *the Superintendent* describing the basis for the complaint and, as  
18 appropriate, a proposed remedy for the issue described in the  
19 complaint. *If the report finds that a school district or school has*  
20 *unlawfully imposed a pupil fee for participation in educational*  
21 *activities, the Superintendent's remedy shall include, but not*  
22 *necessarily be limited to, requiring the school district or school*  
23 *to fully reimburse all affected pupils, parents, or guardians with*  
24 *interest, as calculated in subparagraph (D) of paragraph (1) of*  
25 *subdivision (m) of Section 41020.*

26 (d) A school district shall report summarized data on the nature  
27 and resolution of all complaints on a quarterly basis to the county  
28 superintendent of schools and the governing board of the school  
29 district. The summaries shall be publicly reported on a quarterly  
30 basis at a regularly scheduled meeting of the governing board of  
31 the school district. The report shall include the number of  
32 complaints by general subject area with the number of resolved  
33 and unresolved complaints. The complaints and written responses  
34 shall be available as public records.

35 (e) The procedure required pursuant to this section is intended  
36 to address all of the following:

37 (1) A complaint related to instructional materials as follows:

38 (A) A pupil, including an English learner, does not have  
39 standards-aligned textbooks or instructional materials or

1 state-adopted or district-adopted textbooks or other required  
2 instructional material to use in class.

3 (B) A pupil does not have access to instructional materials to  
4 use at home or after school.

5 (C) Textbooks or instructional materials are in poor or unusable  
6 condition, have missing pages, or are unreadable due to damage.

7 (2) A complaint related to teacher vacancy or misassignment  
8 as follows:

9 (A) A semester begins and a teacher vacancy exists.

10 (B) A teacher who lacks credentials or training to teach English  
11 learners is assigned to teach a class with more than 20-percent  
12 English learner pupils in the class. This subparagraph does not  
13 relieve a school district from complying with state or federal law  
14 regarding teachers of English learners.

15 (C) A teacher is assigned to teach a class for which the teacher  
16 lacks subject matter competency.

17 (3) A complaint related to the condition of facilities that pose  
18 an emergency or urgent threat to the health or safety of pupils or  
19 staff as defined in paragraph (1) of subdivision (c) of Section  
20 17592.72 and any other emergency conditions the school district  
21 determines appropriate and the requirements established pursuant  
22 to subdivision (a) of Section 35292.5.

23 (4) A complaint related to the provision of intensive instruction  
24 and services pursuant to paragraphs (4) and (5) of subdivision (d)  
25 of Section 37254.

26 (5) *A complaint related to the imposition of pupil fees for*  
27 *participation in educational activities.*

28 (f) In order to identify appropriate subjects of complaint, a notice  
29 shall be posted in each classroom in each school in the school  
30 district notifying parents, guardians, pupils, and teachers of the  
31 following:

32 (1) There should be sufficient textbooks and instructional  
33 materials. For there to be sufficient textbooks and instructional  
34 materials each pupil, including English learners, must have a  
35 textbook or instructional materials, or both, to use in class and to  
36 take home.

37 (2) School facilities must be clean, safe, and maintained in good  
38 repair.

39 (3) There should be no teacher vacancies or misassignments as  
40 defined in paragraphs (2) and (3) of subdivision (h).

1 (4) Pupils shall not be charged fees, including security deposits,  
2 or be required to purchase materials or equipment, to participate  
3 in a class or an extracurricular activity.

4 ~~(4)~~

5 (5) Pupils who have not passed the high school exit examination  
6 by the end of grade 12 are entitled to receive intensive instruction  
7 and services for up to two consecutive academic years after  
8 completion of grade 12 or until the pupil has passed both parts of  
9 the high school exit examination, whichever comes first, pursuant  
10 to paragraphs (4) and (5) of subdivision (d) of Section 37254. The  
11 information in this paragraph, which is to be included in the notice  
12 required pursuant to this subdivision, shall only be included in  
13 notices posted in classrooms in schools with grades 10 to 12,  
14 inclusive.

15 ~~(5)~~

16 (6) The location at which to obtain a form to file a complaint  
17 in case of a shortage. Posting a notice downloadable from the  
18 Internet Web site of the department shall satisfy this requirement.

19 (g) A local educational agency shall establish local policies and  
20 procedures, post notices, and implement this section on or before  
21 January 1, 2005.

22 (h) For purposes of this section, the following definitions apply:

23 (1) "Educational activity" has the same meaning as specified  
24 in subdivision (a) of Section 49010.

25 ~~(1)~~

26 (2) "Good repair" has the same meaning as specified in  
27 subdivision (d) of Section 17002.

28 ~~(2)~~

29 (3) "Misassignment" means the placement of a certificated  
30 employee in a teaching or services position for which the employee  
31 does not hold a legally recognized certificate or credential or the  
32 placement of a certificated employee in a teaching or services  
33 position that the employee is not otherwise authorized by statute  
34 to hold.

35 (4) "Pupil fees" has the same meaning as specified in  
36 subdivision (b) of Section 49010.

37 ~~(3)~~

38 (5) "Teacher vacancy" means a position to which a single  
39 designated certificated employee has not been assigned at the  
40 beginning of the year for an entire year or, if the position is for a

1 one-semester course, a position to which a single designated  
2 certificated employee has not been assigned at the beginning of a  
3 semester for an entire semester.

4 SEC. 3. Section 41020 of the Education Code is amended to  
5 read:

6 41020. (a) It is the intent of the Legislature to encourage sound  
7 fiscal management practices among local educational agencies for  
8 the most efficient and effective use of public funds for the  
9 education of children in California by strengthening fiscal  
10 accountability at the district, county, and state levels.

11 (b) (1) Not later than the first day of May of each fiscal year,  
12 each county superintendent of schools shall provide for an audit  
13 of all funds under his or her jurisdiction and control and the  
14 governing board of each local educational agency shall either  
15 provide for an audit of the books and accounts of the local  
16 educational agency, including an audit of income and expenditures  
17 by source of funds, or make arrangements with the county  
18 superintendent of schools having jurisdiction over the local  
19 educational agency to provide for that auditing.

20 (2) A contract to perform the audit of a local educational agency  
21 that has a disapproved budget or has received a negative  
22 certification on any budget or interim financial report during the  
23 current fiscal year or either of the two preceding fiscal years, or  
24 for which the county superintendent of schools has otherwise  
25 determined that a lack of going concern exists, is not valid unless  
26 approved by the responsible county superintendent of schools and  
27 the governing board.

28 (3) If the governing board of a local educational agency has not  
29 provided for an audit of the books and accounts of the local  
30 educational agency by April 1, the county superintendent of schools  
31 having jurisdiction over the local educational agency shall provide  
32 for the audit of each local educational agency.

33 (4) An audit conducted pursuant to this section shall comply  
34 fully with the Government Auditing Standards issued by the  
35 Comptroller General of the United States.

36 (5) For purposes of this section, “local educational agency” does  
37 not include community colleges.

38 (c) Each audit conducted in accordance with this section shall  
39 include all funds of the local educational agency, including the  
40 student body and cafeteria funds and accounts and any other funds

1 under the control or jurisdiction of the local educational agency.  
2 Each audit shall also include an audit of pupil attendance  
3 procedures.

4 (d) All audit reports for each fiscal year shall be developed and  
5 reported using a format established by the Controller after  
6 consultation with the Superintendent and the Director of Finance.

7 (e) (1) The cost of the audits provided for by the county  
8 superintendent of schools shall be paid from the county school  
9 service fund and the county superintendent of schools shall transfer  
10 the pro rata share of the cost chargeable to each district from district  
11 funds.

12 (2) The cost of the audit provided for by a governing board shall  
13 be paid from local educational agency funds. The audit of the funds  
14 under the jurisdiction and control of the county superintendent of  
15 schools shall be paid from the county school service fund.

16 (f) (1) The audits shall be made by a certified public accountant  
17 or a public accountant, licensed by the California Board of  
18 Accountancy, and selected by the local educational agency, as  
19 applicable, from a directory of certified public accountants and  
20 public accountants deemed by the Controller as qualified to conduct  
21 audits of local educational agencies, which shall be published by  
22 the Controller not later than December 31 of each year.

23 (2) Commencing with the 2003–04 fiscal year and except as  
24 provided in subdivision (d) of Section 41320.1, it is unlawful for  
25 a public accounting firm to provide audit services to a local  
26 educational agency if the lead audit partner, or coordinating audit  
27 partner, having primary responsibility for the audit, or the audit  
28 partner responsible for reviewing the audit, has performed audit  
29 services for that local educational agency in each of the six previous  
30 fiscal years. The Education Audits Appeal Panel may waive this  
31 requirement if the panel finds that no otherwise eligible auditor is  
32 available to perform the audit.

33 (3) It is the intent of the Legislature that, notwithstanding  
34 paragraph (2), the rotation within public accounting firms conform  
35 to provisions of the federal Sarbanes-Oxley Act of 2002 (P.L.  
36 107-204; 15 U.S.C. Sec. 7201 et seq.), and upon release of the  
37 report required by the act of the Comptroller General of the United  
38 States addressing the mandatory rotation of registered public  
39 accounting firms, the Legislature intends to reconsider the  
40 provisions of paragraph (2). In determining which certified public

1 accountants and public accountants shall be included in the  
2 directory, the Controller shall use the following criteria:

3 (A) The certified public accountants or public accountants shall  
4 be in good standing as certified by the Board of Accountancy.

5 (B) The certified public accountants or public accountants, as  
6 a result of a quality control review conducted by the Controller  
7 pursuant to Section 14504.2, shall not have been found to have  
8 conducted an audit in a manner constituting noncompliance with  
9 subdivision (a) of Section 14503.

10 (g) (1) The auditor's report shall include each of the following:

11 (A) A statement that the audit was conducted pursuant to  
12 standards and procedures developed in accordance with Chapter  
13 3 (commencing with Section 14500) of Part 9 of Division 1 of  
14 Title 1.

15 (B) A summary of audit exceptions and management  
16 improvement recommendations.

17 (C) Each audit of a local educational agency shall include an  
18 evaluation by the auditor on whether there is substantial doubt  
19 about the ability of the local educational agency to continue as a  
20 going concern for a reasonable period of time. This evaluation  
21 shall be based on the Statement of Auditing Standards (SAS) No.  
22 59, as issued by the AICPA regarding disclosure requirements  
23 relating to the ability of the entity to continue as a going concern.

24 (2) To the extent possible, a description of correction or plan  
25 of correction shall be incorporated in the audit report, describing  
26 the specific actions that are planned to be taken, or that have been  
27 taken, to correct the problem identified by the auditor. The  
28 descriptions of specific actions to be taken or that have been taken  
29 shall not solely consist of general comments such as "will  
30 implement," "accepted the recommendation," or "will discuss at  
31 a later date."

32 (h) Not later than December 15, a report of each local  
33 educational agency audit for the preceding fiscal year shall be filed  
34 with the county superintendent of schools of the county in which  
35 the local educational agency is located, the department, and the  
36 Controller. The Superintendent shall make any adjustments  
37 necessary in future apportionments of all state funds, to correct  
38 any audit exceptions revealed by those audit reports.

39 (i) (1) Commencing with the 2002–03 audit of local educational  
40 agencies pursuant to this section and subdivision (d) of Section

1 41320.1, each county superintendent of schools shall be responsible  
2 for reviewing the audit exceptions contained in an audit of a local  
3 educational agency under his or her jurisdiction related to  
4 attendance, inventory of equipment, internal control, and any  
5 miscellaneous items, and determining whether the exceptions have  
6 been either corrected or an acceptable plan of correction has been  
7 developed.

8 (2) Commencing with the 2004–05 audit of local educational  
9 agencies pursuant to this section and subdivision (d) of Section  
10 41320.1, each county superintendent of schools shall include in  
11 the review of audit exceptions performed pursuant to this  
12 subdivision those audit exceptions related to use of instructional  
13 materials program funds, teacher misassignments pursuant to  
14 Section 44258.9, information reported on the school accountability  
15 report card required pursuant to Section 33126 and shall determine  
16 whether the exceptions are either corrected or an acceptable plan  
17 of correction has been developed.

18 (3) *Commencing with the 2010–11 audit of local educational*  
19 *agencies pursuant to this section and subdivision (d) of Section*  
20 *41320.1, each county superintendent of schools shall include in*  
21 *the review of audit exceptions performed pursuant to this*  
22 *subdivision those audit exceptions related to the imposition of*  
23 *pupil fees for participation in educational activities in violation*  
24 *of Section 49011 and Section 5 of Article IX of the California*  
25 *Constitution and shall determine whether the exceptions are either*  
26 *corrected or an acceptable plan of correction has been developed.*

27 (j) Upon submission of the final audit report to the governing  
28 board of each local educational agency and subsequent receipt of  
29 the audit by the county superintendent of schools having  
30 jurisdiction over the local educational agency, the county office  
31 of education shall do all of the following:

32 (1) Review audit exceptions related to attendance, inventory of  
33 equipment, internal control, and other miscellaneous exceptions.  
34 Attendance exceptions or issues shall include, but not be limited  
35 to, those related to revenue limits, adult education, and independent  
36 study.

37 (2) *Review audit exceptions related to the imposition of pupil*  
38 *fees for participation in educational activities in violation of*  
39 *Section 49011 and Section 5 of Article IX of the California*  
40 *Constitution.*

1     ~~(2)~~

2     (3) If a description of the correction or plan of correction has  
3 not been provided as part of the audit required by this section, then  
4 the county superintendent of schools shall notify the local  
5 educational agency and request the governing board of the local  
6 educational agency to provide to the county superintendent of  
7 schools a description of the corrections or plan of correction by  
8 March 15.

9     ~~(3)~~

10    (4) Review the description of correction or plan of correction  
11 and determine its adequacy. If the description of the correction or  
12 plan of correction is not adequate, the county superintendent of  
13 schools shall require the local educational agency to resubmit that  
14 portion of its response that is inadequate.

15    (k) Each county superintendent of schools shall certify to the  
16 Superintendent and the Controller, not later than May 15, that his  
17 or her staff has reviewed all audits of local educational agencies  
18 under his or her jurisdiction for the prior fiscal year, that all  
19 exceptions that the county superintendent was required to review  
20 were reviewed, and that all of those exceptions, except as otherwise  
21 noted in the certification, have been corrected by the local  
22 educational agency or that an acceptable plan of correction has  
23 been submitted to the county superintendent of schools. In addition,  
24 the county superintendent shall identify, by local educational  
25 agency, any attendance-related audit exception or exceptions  
26 involving state funds, and require the local educational agency to  
27 which the audit exceptions were directed to submit appropriate  
28 reporting forms for processing by the Superintendent.

29    (l) (1) In the audit of a local educational agency for a subsequent  
30 year, the auditor shall review the correction or plan or plans of  
31 correction submitted by the local educational agency to determine  
32 if the exceptions have been resolved. If not, the auditor shall  
33 immediately notify the appropriate county office of education and  
34 the department and restate the exception in the audit report. After  
35 receiving that notification, the department shall either consult with  
36 the local educational agency to resolve the exception or require  
37 the county superintendent of schools to follow up with the local  
38 educational agency.

39    (2) *If, in the audit of a local educational agency for a subsequent*  
40 *year, the auditor determines that an exception related to the*

1 *imposition of pupil fees for participation in educational activities*  
 2 *in violation of Section 49011 and Section 5 of Article IX of the*  
 3 *California Constitution has not been corrected, or that the local*  
 4 *educational agency has a new audit exception related to the*  
 5 *imposition of pupil fees for participation in educational activities*  
 6 *in violation of Section 49011 and Section 5 of Article IX of the*  
 7 *California Constitution, the auditor shall immediately notify the*  
 8 *appropriate county office of education, the Controller, the*  
 9 *Superintendent, and the Director of Finance. Upon receiving this*  
 10 *notification, the Controller shall withhold 1 percent of the amount*  
 11 *authorized for administrative costs, which are expenditures coded*  
 12 *to general administrative functions (codes 7000 to 7999, inclusive)*  
 13 *pursuant to Procedure 325 of Section 300 of the California School*  
 14 *Accounting Manual, from the next principal apportionment to the*  
 15 *local educational agency, until the agency reimburses all pupil*  
 16 *fees collected in violation of Section 49011 and Section 5 of Article*  
 17 *IX of the California Constitution, with applicable interest, as*  
 18 *provided for in subparagraph (D) of paragraph (1) of subdivision*  
 19 *(m).*

20 (m) (1) The Superintendent shall be responsible for ensuring  
 21 that local educational agencies have either corrected or developed  
 22 plans of correction for any one or more of the following:

23 (A) All federal and state compliance audit exceptions identified  
 24 in the audit.

25 (B) Any exceptions that the county superintendent certifies as  
 26 of May 15 have not been corrected.

27 (C) Any repeat audit exceptions that are not assigned to a county  
 28 superintendent to correct.

29 (D) *All audit exceptions related to the imposition of pupil fees*  
 30 *for participation in educational activities in violation of Section*  
 31 *49011 and Section 5 of Article IX of the California Constitution.*  
 32 *An audit exception related to the imposition of these pupil fees*  
 33 *shall not be deemed corrected until the local educational agency*  
 34 *has, as a minimum, fully reimbursed all affected parents,*  
 35 *guardians, and pupils, with interest. The amount of the interest*  
 36 *shall be calculated based on the date the unlawful fee was collected*  
 37 *and the applicable interest rate applied to the actual cash held in*  
 38 *the local educational agency's bank account.*

39 (2) In addition, the Superintendent shall be responsible for  
 40 ensuring that county superintendents of schools and each county

1 board of education that serves as the governing board of a local  
2 educational agency either correct all audit exceptions identified in  
3 the audits of county superintendents of schools and of the local  
4 educational agencies for which the county boards of education  
5 serve as the governing boards or develop acceptable plans of  
6 correction for those exceptions.

7 (3) The Superintendent shall report annually to the Controller  
8 on his or her actions to ensure that school districts, county  
9 superintendents of schools, and each county board of education  
10 that serves as the governing board of a school district have either  
11 corrected or developed plans of correction for any of the exceptions  
12 noted pursuant to paragraph (1).

13 (n) To facilitate correction of the exceptions identified by the  
14 audits issued pursuant to this section, commencing with 2002–03  
15 audits pursuant to this section, the Controller shall require auditors  
16 to categorize audit exceptions in each audit report in a manner that  
17 will make it clear to both the county superintendent of schools and  
18 the Superintendent which exceptions they are responsible for  
19 ensuring the correction of by a local educational agency. In  
20 addition, the Controller annually shall select a sampling of county  
21 superintendents of schools and perform a followup of the audit  
22 resolution process of those county superintendents of schools and  
23 report the results of that followup to the Superintendent and the  
24 county superintendents of schools that were reviewed.

25 (o) County superintendents of schools shall adjust subsequent  
26 local property tax requirements to correct audit exceptions relating  
27 to local educational agency tax rates and tax revenues.

28 (p) If a governing board or county superintendent of schools  
29 fails or is unable to make satisfactory arrangements for the audit  
30 pursuant to this section, the Controller shall make arrangements  
31 for the audit and the cost of the audit shall be paid from local  
32 educational agency funds or the county school service fund, as the  
33 case may be.

34 (q) Audits of regional occupational centers and programs are  
35 subject to the provisions of this section.

36 (r) This section does not authorize examination of, or reports  
37 on, the curriculum used or provided for in any local educational  
38 agency.

39 (s) Notwithstanding any other provision of law, a nonauditing,  
40 management, or other consulting service to be provided to a local

1 educational agency by a certified public accounting firm while the  
2 certified public accounting firm is performing an audit of the  
3 agency pursuant to this section must be in accord with Government  
4 Accounting Standards, Amendment No. 3, as published by the  
5 United States General Accounting Office.

6 SEC. 4. Article 5.5 (commencing with Section 49010) is added  
7 to Chapter 6 of Part 27 of Division 4 of Title 2 of the Education  
8 Code, to read:

9

10 Article 5.5. Pupil Fees

11

12 49010. For purposes of this article, the following terms have  
13 the following meanings:

14 (a) "Educational activity" means an activity that constitutes an  
15 integral fundamental part of elementary and secondary education,  
16 or that amounts to a necessary element of a school activity,  
17 including, but not limited to, curricular and extracurricular  
18 activities.

19 (b) "Pupil fee" means a fee, deposit, or other charge imposed  
20 on pupils, or a pupil's parents or guardians, in violation of Section  
21 49011 and Section 5 of Article IX of the California Constitution,  
22 which require educational activities to be provided free of charge  
23 to all pupils without regard to their families' ability or willingness  
24 to pay fees or request special waivers, as provided for in *Hartzell*  
25 *v. Connell* (1984) 35 Cal.3d 899. A pupil fee includes, but is not  
26 limited to, all of the following:

27 (1) A fee charged to a pupil as a condition for registering for  
28 school or classes, or as a condition for participation in a class or  
29 an extracurricular activity, regardless of whether the class or  
30 activity is elective or compulsory, or is for credit.

31 (2) A security deposit, or other payment, that a pupil is required  
32 to make to obtain a lock, locker, book, class apparatus, musical  
33 instrument, uniform, or other materials or equipment.

34 (3) A purchase that a pupil is required to make to obtain  
35 materials, supplies, equipment, or uniforms associated with an  
36 educational activity.

37 49011. (a) A school district, school, or other entity working  
38 under the supervision of, or in coordination with, a district or  
39 school shall not impose a pupil fee for participation in educational  
40 activities.

1 (b) All of the following requirements apply to the prohibition  
2 identified in subdivision (a):

3 (1) All supplies, materials, and equipment needed to participate  
4 in educational activities shall be provided to pupils free of charge.

5 (2) A waiver process shall not render an otherwise impermissible  
6 pupil fee permissible.

7 (3) School districts and schools shall not establish a two-tier  
8 educational system by requiring a minimal educational standard  
9 and also offering a second, higher educational standard that pupils  
10 may only obtain through payment of a fee or purchase of additional  
11 supplies that the school district or school does not provide.

12 (4) A school district or school shall not offer course credit or  
13 privileges related to educational activities in exchange for money  
14 or donations of goods or services from a pupil or a pupil's parents  
15 or guardians, and a school district or school shall not remove course  
16 credit or privileges related to educational activities, or otherwise  
17 discriminate against a pupil, because the pupil or the pupil's parents  
18 or guardians did not or will not provide money or donations of  
19 goods or services to the school district or school.

20 (c) This article shall not be interpreted to prohibit an entire  
21 school, class, sports team, or club from voluntarily participating  
22 in fundraising or to prohibit school districts and schools from  
23 providing pupils prizes or other recognition for voluntarily  
24 participating in fundraising activities.

25 (d) This article is declarative of existing law and shall not be  
26 interpreted to prohibit a school district or school from imposing a  
27 fee, deposit, or other charge otherwise allowed by law.

28 SEC. 5. If the Commission on State Mandates determines that  
29 this act contains costs mandated by the state, reimbursement to  
30 local agencies and school districts for those costs shall be made  
31 pursuant to Part 7 (commencing with Section 17500) of Division  
32 4 of Title 2 of the Government Code.

33 SEC. 6. This act is an urgency statute necessary for the  
34 immediate preservation of the public peace, health, or safety within  
35 the meaning of Article IV of the Constitution and shall go into  
36 immediate effect. The facts constituting the necessity are:

37 In order to comply with a settlement agreement that requires a  
38 good faith effort to obtain the enactment of legislation that prevents

- 1 and remedies the imposition of unlawful pupil fees as soon as
- 2 possible, it is necessary for this act to take effect immediately.

O