

AMENDED IN SENATE AUGUST 21, 2012

AMENDED IN ASSEMBLY MAY 30, 2012

AMENDED IN ASSEMBLY MAY 25, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1575

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

February 1, 2012

An act to ~~amend Section 35186 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, and to amend Section 905 of the Government Code, relating to pupil fees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1575, as amended, Lara. Pupil fees.

(1) Existing law requires the Legislature to provide for a system of common schools by which a free school is required to 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 pupil enrolled in a public school from being required to pay a pupil fee, as defined, for participation in an educational activity, as defined, as specified. The bill would provide that this prohibition is not to be interpreted to prohibit solicitation of voluntary donations, voluntary participation in fundraising activities, or school districts, schools, and other entities from providing pupils prizes or other recognition for voluntarily participating in fundraising activities.

The bill would specify that these provisions apply to all public schools, including, but not limited to, charter schools and alternative schools, are declarative of existing law, and should not be interpreted to prohibit the imposition of a fee, deposit, or other charge otherwise allowed by law.

The bill would require the State Department of Education, commencing with the 2014–15 fiscal year, and every 3 years thereafter, to develop and distribute guidance for county—and district superintendents of schools, *district superintendents*, and charter school administrators regarding the imposition of pupil fees for participation in educational activities in public schools. The bill would require the department to post the guidance on its Internet Web site and would provide that the guidance does not constitute a regulation subject to specified law.

~~(2) 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 and a charter school 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 also would 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. If the report finds a violation, the bill would require the Superintendent to require the offending school district, charter school, or school to fully reimburse all affected pupils, parents,~~

~~or guardians. The bill also would require the classroom notice to include certain information about the prohibition against charging pupil fees for participation in educational activities. The bill would require a school district, county office of education, and charter school to establish local policies and procedures, post notices, and implement the uniform complaint process provisions regarding the imposition of pupil fees for participation in educational activities by March 1, 2013. By imposing additional duties on local educational agencies, this bill would impose a state-mandated local program.~~

(2) Existing regulations establish uniform complaint procedures that require each local educational agency to adopt policies and procedures for the investigation and resolution of complaints regarding violations of state and federal laws and regulations governing educational programs.

This bill would authorize a complaint of noncompliance with the provisions of this bill to be filed with the principal of a school under those uniform complaint procedures. The bill would authorize a complaint to be filed anonymously if specified circumstances exist. The bill would authorize a complainant not satisfied with a public school's decision to appeal that decision to the State Department of Education and receive a written appeal decision within 60 days of the department's receipt of the appeal. If merit is found in either the complaint or appeal, the bill would require the public school to provide a remedy to all affected pupils, parents, and guardians that, where applicable, includes reasonable efforts by the public school to ensure full reimbursement. The bill would require information regarding the requirements of this bill to be included in a specified annual notification. The bill would require public schools to establish local policies and procedures to implement these complaint procedures by March 1, 2013. By imposing new requirements on local educational agencies, the bill would impose a state-mandated local program.

(3) Existing law excepts certain claims from the requirement that all claims for money or damages against local public entities be presented in accordance with specified law.

This bill would additionally except specified claims for reimbursement of pupil fees for participation in educational activities.

(4) 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.

Vote: majority. 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 35186 of the Education Code is amended~~
2 ~~to read:~~

3 ~~35186. (a) A school district shall use the uniform complaint~~
4 ~~process it has adopted as required by Chapter 5.1 (commencing~~
5 ~~with Section 4600) of Division 1 of Title 5 of the California Code~~
6 ~~of Regulations, with modifications, as necessary, to help identify~~
7 ~~and resolve any deficiencies related to instructional materials,~~
8 ~~emergency or urgent facilities conditions that pose a threat to the~~
9 ~~health and safety of pupils or staff, teacher vacancy or~~
10 ~~misassignment, intensive instruction and services provided pursuant~~
11 ~~to Section 37254 to pupils who have not passed one or both parts~~
12 ~~of the high school exit examination after the completion of grade~~
13 ~~12, and the imposition of pupil fees for participation in educational~~
14 ~~activities. A charter school shall use the uniform complaint process~~
15 ~~it has adopted as required by Chapter 5.1 (commencing with~~
16 ~~Section 4600) of Division 1 of Title 5 of the California Code of~~
17 ~~Regulations, with modifications, as necessary, to help identify and~~
18 ~~resolve any deficiencies related to the imposition of pupil fees for~~
19 ~~participation in educational activities.~~

20 ~~(1) A complaint may be filed anonymously. A complainant who~~
21 ~~identifies himself or herself is entitled to a response if he or she~~
22 ~~indicates that a response is requested. A complaint form shall~~
23 ~~include a space to mark to indicate whether a response is requested.~~
24 ~~If Section 48985 is otherwise applicable, the response, if requested,~~
25 ~~and report shall be written in English and the primary language in~~
26 ~~which the complaint was filed. All complaints and responses are~~
27 ~~public records.~~

28 ~~(2) The complaint form shall specify the location for filing a~~
29 ~~complaint. A complainant may add as much text to explain the~~
30 ~~complaint as he or she wishes.~~

1 ~~(3) Except as provided pursuant to paragraph (4), a complaint~~
2 ~~shall be filed with the principal of the school or his or her designee.~~
3 ~~A complaint about problems beyond the authority of the school~~
4 ~~principal shall be forwarded in a timely manner but not to exceed~~
5 ~~10 working days to the appropriate school district or charter school~~
6 ~~official for resolution.~~

7 ~~(4) A complaint regarding any deficiencies related to intensive~~
8 ~~instruction and services provided pursuant to Section 37254 to~~
9 ~~pupils who have not passed one or both parts of the high school~~
10 ~~exit examination after the completion of grade 12 shall be~~
11 ~~submitted to the district official designated by the district~~
12 ~~superintendent. A complaint may be filed at the school district~~
13 ~~office, or it may be filed at the schoolsite and shall be immediately~~
14 ~~forwarded to the designee of the district superintendent.~~

15 ~~(b) The principal or the designee of the district superintendent~~
16 ~~or charter school, as applicable, shall make all reasonable efforts~~
17 ~~to investigate any problem within his or her authority. The principal~~
18 ~~or designee of the district superintendent or charter school shall~~
19 ~~remedy a valid complaint within a reasonable time period but not~~
20 ~~to exceed 30 working days from the date the complaint was~~
21 ~~received. The principal or designee of the district superintendent~~
22 ~~or charter school shall report to the complainant the resolution of~~
23 ~~the complaint within 45 working days of the initial filing. If the~~
24 ~~principal makes this report, the principal shall also report the same~~
25 ~~information in the same timeframe to the designee of the district~~
26 ~~superintendent or charter school.~~

27 ~~(e) A complainant not satisfied with the resolution of the~~
28 ~~principal or the designee of the district superintendent or charter~~
29 ~~school has the right to describe the complaint to the governing~~
30 ~~board of the school district or the governing body of the charter~~
31 ~~school at a regularly scheduled hearing of the governing board or~~
32 ~~body. As to complaints involving a condition of a facility that~~
33 ~~poses an emergency or urgent threat, as defined in paragraph (1)~~
34 ~~of subdivision (e) of Section 17592.72, or complaints involving~~
35 ~~the imposition of pupil fees for participation in educational~~
36 ~~activities, a complainant who is not satisfied with the resolution~~
37 ~~proffered by the principal or the designee of the district~~
38 ~~superintendent or charter school has the right to file an appeal to~~
39 ~~the Superintendent, who shall provide a written report to the state~~
40 ~~board and the complainant no later than 30 working days after the~~

1 date the appeal was received by the Superintendent describing the
2 basis for the complaint and, as appropriate, a proposed remedy for
3 the issue described in the complaint. If the report finds that a school
4 district, charter school, or school has unlawfully imposed a pupil
5 fee for participation in educational activities, the Superintendent
6 shall require the school district, charter school, or school to fully
7 reimburse all affected pupils, parents, or guardians.

8 (d) A school district or charter school shall report summarized
9 data on the nature and resolution of all complaints on a quarterly
10 basis to the county superintendent of schools and the governing
11 board of the school district or the governing body of the charter
12 school. The summaries shall be publicly reported on a quarterly
13 basis at a regularly scheduled meeting of the governing board of
14 the school district or the governing body of the charter school. The
15 report shall include the number of complaints by general subject
16 area with the number of resolved and unresolved complaints. The
17 complaints and written responses shall be available as public
18 records.

19 (e) The procedure required pursuant to this section is intended
20 to address all of the following in school districts, and the
21 complaints described in paragraph (5) in charter schools:

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

23 (A) A pupil, including an English learner, does not have
24 standards-aligned textbooks or instructional materials or
25 state-adopted or district-adopted textbooks or other required
26 instructional material to use in class.

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

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

31 (2) A complaint related to teacher vacancy or misassignment
32 as follows:

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

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

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

- 1 ~~(3) A complaint related to the condition of facilities that pose~~
2 ~~an emergency or urgent threat to the health or safety of pupils or~~
3 ~~staff as defined in paragraph (1) of subdivision (c) of Section~~
4 ~~17592.72 and any other emergency conditions the school district~~
5 ~~determines appropriate and the requirements established pursuant~~
6 ~~to subdivision (a) of Section 35292.5.~~
- 7 ~~(4) A complaint related to the provision of intensive instruction~~
8 ~~and services pursuant to paragraphs (4) and (5) of subdivision (d)~~
9 ~~of Section 37254.~~
- 10 ~~(5) A complaint related to the imposition of pupil fees for~~
11 ~~participation in educational activities.~~
- 12 ~~(f) (1) In order to identify appropriate subjects of complaint,~~
13 ~~a notice shall be posted in each classroom in each school in the~~
14 ~~school district notifying parents, guardians, pupils, and teachers~~
15 ~~of the following:~~
 - 16 ~~(A) There should be sufficient textbooks and instructional~~
17 ~~materials. For there to be sufficient textbooks and instructional~~
18 ~~materials each pupil, including English learners, must have a~~
19 ~~textbook or instructional materials, or both, to use in class and to~~
20 ~~take home.~~
 - 21 ~~(B) School facilities must be clean, safe, and maintained in good~~
22 ~~repair.~~
 - 23 ~~(C) There should be no teacher vacancies or misassignments as~~
24 ~~defined in paragraphs (3) and (5) of subdivision (h).~~
 - 25 ~~(D) Pupils shall not be charged fees, including security deposits,~~
26 ~~or be required to purchase materials or equipment, to participate~~
27 ~~in a class or an extracurricular activity.~~
 - 28 ~~(E) Pupils who have not passed the high school exit examination~~
29 ~~by the end of grade 12 are entitled to receive intensive instruction~~
30 ~~and services for up to two consecutive academic years after~~
31 ~~completion of grade 12 or until the pupil has passed both parts of~~
32 ~~the high school exit examination, whichever comes first, pursuant~~
33 ~~to paragraphs (4) and (5) of subdivision (d) of Section 37254. The~~
34 ~~information in this paragraph, which is to be included in the notice~~
35 ~~required pursuant to this subdivision, shall only be included in~~
36 ~~notices posted in classrooms in schools with grades 10 to 12,~~
37 ~~inclusive.~~
 - 38 ~~(F) The location at which to obtain a form to file a complaint~~
39 ~~in case of a shortage of complaint forms. Posting a notice~~

1 ~~downloadable from the Internet Web site of the department shall~~
2 ~~satisfy this posting requirement.~~
3 ~~(2) In order to identify appropriate subjects of complaint, a~~
4 ~~notice shall be posted in each classroom of each charter school~~
5 ~~notifying parents, guardians, pupils, and teachers of both of the~~
6 ~~following:~~
7 ~~(A) Pupils shall not be charged fees, including security deposits,~~
8 ~~or be required to purchase materials or equipment, to participate~~
9 ~~in a class or an extracurricular activity.~~
10 ~~(B) The location at which to obtain a form to file a complaint~~
11 ~~in case of a shortage of complaint forms. Posting a notice~~
12 ~~downloadable from the Internet Web site of the department shall~~
13 ~~satisfy this posting requirement.~~
14 ~~(g) (1) A local educational agency shall establish local policies~~
15 ~~and procedures, post notices, and implement this section on or~~
16 ~~before January 1, 2005.~~
17 ~~(2) A school district, county office of education, and charter~~
18 ~~school shall establish local policies and procedures, post notices,~~
19 ~~and implement the provisions of this section regarding the~~
20 ~~imposition of pupil fees for participation in educational activities~~
21 ~~on or before March 1, 2013.~~
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 ~~(2) "Good repair" has the same meaning as specified in~~
26 ~~subdivision (d) of Section 17002.~~
27 ~~(3) "Misassignment" means the placement of a certificated~~
28 ~~employee in a teaching or services position for which the employee~~
29 ~~does not hold a legally recognized certificate or credential or the~~
30 ~~placement of a certificated employee in a teaching or services~~
31 ~~position that the employee is not otherwise authorized by statute~~
32 ~~to hold.~~
33 ~~(4) "Pupil fees" has the same meaning as specified in subdivision~~
34 ~~(b) of Section 49010.~~
35 ~~(5) "Teacher vacancy" means a position to which a single~~
36 ~~designated certificated employee has not been assigned at the~~
37 ~~beginning of the year for an entire year or, if the position is for a~~
38 ~~one-semester course, a position to which a single designated~~
39 ~~certificated employee has not been assigned at the beginning of a~~
40 ~~semester for an entire semester.~~

1 ~~SEC. 2.~~

2 SECTION 1. Article 5.5 (commencing with Section 49010) is
3 added to Chapter 6 of Part 27 of Division 4 of Title 2 of the
4 Education Code, to read:

5
6 Article 5.5. Pupil Fees
7

8 49010. For purposes of this article, the following terms have
9 the following meanings:

10 (a) "Educational activity" means an activity offered by a school,
11 school district, charter school, or county office of education that
12 constitutes an integral fundamental part of elementary and
13 secondary education, including, but not limited to, curricular and
14 extracurricular activities.

15 (b) "Pupil fee" means a fee, deposit, or other charge imposed
16 on pupils, or a pupil's parents or guardians, in violation of Section
17 49011 and Section 5 of Article IX of the California Constitution,
18 which require educational activities to be provided free of charge
19 to all pupils without regard to their families' ability or willingness
20 to pay fees or request special waivers, as provided for in Hartzell
21 v. Connell (1984) 35 Cal.3d 899. A pupil fee includes, but is not
22 limited to, all of the following:

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

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

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

33 49011. (a) A pupil enrolled in a public school shall not be
34 required to pay a pupil fee for participation in an educational
35 activity.

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

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

40 (2) A fee waiver policy shall not make a pupil fee permissible.

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

6 (4) A school district or school shall not offer course credit or
7 privileges related to educational activities in exchange for money
8 or donations of goods or services from a pupil or a pupil's parents
9 or guardians, and a school district or school shall not remove course
10 credit or privileges related to educational activities, or otherwise
11 discriminate against a pupil, because the pupil or the pupil's parents
12 or guardians did not or will not provide money or donations of
13 goods or services to the school district or school.

14 (c) This article shall not be interpreted to prohibit solicitation
15 of voluntary donations of funds or property, voluntary participation
16 in fundraising activities, or school districts, schools, and other
17 entities from providing pupils prizes or other recognition for
18 voluntarily participating in fundraising activities.

19 (d) This article applies to all public schools, including, but not
20 limited to, charter schools and alternative schools.

21 (e) This article is declarative of existing law and shall not be
22 interpreted to prohibit the imposition of a fee, deposit, or other
23 charge otherwise allowed by law.

24 49012. (a) Commencing with the 2014–15 fiscal year, and
25 every three years thereafter, the department shall develop and
26 distribute guidance for county ~~and district~~ superintendents of
27 schools, *district superintendents*, and charter school administrators
28 regarding the imposition of pupil fees for participation in
29 educational activities in public schools. The department shall post
30 the guidance on the department's Internet Web site.

31 (b) The guidance developed pursuant to subdivision (a) shall
32 not constitute a regulation subject to the requirements of Chapter
33 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
34 Title 2 of the Government Code.

35 49013. (a) *A complaint of noncompliance with the*
36 *requirements of this article may be filed with the principal of a*
37 *school under the Uniform Complaint Procedures set forth in*
38 *Chapter 5.1 (commencing with Section 4600) of Division 1 of Title*
39 *5 of the California Code of Regulations.*

1 (b) A complaint may be filed anonymously if the complaint
2 provides evidence or information leading to evidence to support
3 an allegation of noncompliance with the requirements of this
4 article.

5 (c) A complainant not satisfied with the decision of a public
6 school may appeal the decision to the department and shall receive
7 a written appeal decision within 60 days of the department's receipt
8 of the appeal.

9 (d) If a public school finds merit in a complaint, or the
10 department finds merit in an appeal, the public school shall provide
11 a remedy to all affected pupils, parents, and guardians that, where
12 applicable, includes reasonable efforts by the public school to
13 ensure full reimbursement to all affected pupils, parents, and
14 guardians, subject to procedures established through regulations
15 adopted by the state board.

16 (e) Information regarding the requirements of this article shall
17 be included in the annual notification distributed to pupils, parents
18 and guardians, employees, and other interested parties pursuant
19 to Section 4622 of Title 5 of the California Code of Regulations.

20 (f) Public schools shall establish local policies and procedures
21 to implement the provisions of this section on or before March 1,
22 2013.

23 ~~SEC. 3.~~

24 SEC. 2. Section 905 of the Government Code is amended to
25 read:

26 905. There shall be presented in accordance with Chapter 1
27 (commencing with Section 900) and Chapter 2 (commencing with
28 Section 910) all claims for money or damages against local public
29 entities except any of the following:

30 (a) Claims under the Revenue and Taxation Code or other statute
31 prescribing procedures for the refund, rebate, exemption,
32 cancellation, amendment, modification, or adjustment of any tax,
33 assessment, fee, or charge or any portion thereof, or of any
34 penalties, costs, or charges related thereto.

35 (b) Claims in connection with which the filing of a notice of
36 lien, statement of claim, or stop notice is required under any law
37 relating to liens of mechanics, laborers, or materialmen.

38 (c) Claims by public employees for fees, salaries, wages,
39 mileage, or other expenses and allowances.

- 1 (d) Claims for which the workers' compensation authorized by
2 Division 4 (commencing with Section 3200) of the Labor Code is
3 the exclusive remedy.
- 4 (e) Applications or claims for any form of public assistance
5 under the Welfare and Institutions Code or other provisions of law
6 relating to public assistance programs, and claims for goods,
7 services, provisions, or other assistance rendered for or on behalf
8 of any recipient of any form of public assistance.
- 9 (f) Applications or claims for money or benefits under any public
10 retirement or pension system.
- 11 (g) Claims for principal or interest upon any bonds, notes,
12 warrants, or other evidences of indebtedness.
- 13 (h) Claims that relate to a special assessment constituting a
14 specific lien against the property assessed and that are payable
15 from the proceeds of the assessment, by offset of a claim for
16 damages against it or by delivery of any warrant or bonds
17 representing it.
- 18 (i) Claims by the state or by a state department or agency or by
19 another local public entity or by a judicial branch entity.
- 20 (j) Claims arising under any provision of the Unemployment
21 Insurance Code, including, but not limited to, claims for money
22 or benefits, or for refunds or credits of employer or worker
23 contributions, penalties, or interest, or for refunds to workers of
24 deductions from wages in excess of the amount prescribed.
- 25 (k) Claims for the recovery of penalties or forfeitures made
26 pursuant to Article 1 (commencing with Section 1720) of Chapter
27 1 of Part 7 of Division 2 of the Labor Code.
- 28 (l) Claims governed by the Pedestrian Mall Law of 1960 (Part
29 1 (commencing with Section 11000) of Division 13 of the Streets
30 and Highways Code).
- 31 (m) Claims made pursuant to Section 340.1 of the Code of Civil
32 Procedure for the recovery of damages suffered as a result of
33 childhood sexual abuse. This subdivision shall apply only to claims
34 arising out of conduct occurring on or after January 1, 2009.
- 35 (n) Claims made pursuant to Section 701.820 of the Code of
36 Civil Procedure for the recovery of money pursuant to Section
37 26680.
- 38 (o) Claims made pursuant to Section ~~35186~~ 49013 of the
39 Education Code for reimbursement of pupil fees for participation
40 in educational activities.

1 ~~SEC. 4.~~

2 *SEC. 3.* If the Commission on State Mandates determines that
3 this act contains costs mandated by the state, reimbursement to
4 local agencies and school districts for those costs shall be made
5 pursuant to Part 7 (commencing with Section 17500) of Division
6 4 of Title 2 of the Government Code.

O