

AMENDED IN ASSEMBLY APRIL 11, 2007

AMENDED IN ASSEMBLY MARCH 19, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 137

**Introduced by Assembly Member DeVore
(Coauthor: Assembly Member Duvall)**

January 16, 2007

An act to repeal Sections 45303, 51530, and 88122 of, and to repeal and add Sections 38136, 44932, and 44939 of, the Education Code, and to repeal Section 1028.1 of, and to repeal and add Sections 1027.5 and 1028 of, the Government Code, relating to public agencies.

LEGISLATIVE COUNSEL'S DIGEST

AB 137, as amended, DeVore. Public agencies.

(1) The Civic Center Act requires the governing body of a school district to grant the use of school property, when an alternative location is not available, to nonprofit organizations, clubs, or associations organized to promote youth and school activities. *That law also contains other provisions that require a person who intends to use school property on behalf of an organization to deliver a statement, signed under penalty of perjury, that the organization is not an organization that advocates the overthrow of the Government of the United States or of this state by force, violence, or other unlawful means, is not a Communist action organization, and is not a Communist front organization required to be registered with the Attorney General of the United States, as specified. These other provisions have been found unconstitutional.*

This bill would ~~additionally delete these unconstitutional provisions and instead~~ require a person who intends to use school property on behalf of an organization to deliver a statement, signed under penalty of perjury, that the organization is not an organization that advocates the overthrow of the Government of the United States or of this state by force, violence, or other unlawful means. ~~By increasing the duties of requiring a higher level of service from local school officials, this bill would impose a state-mandated local program. In addition, by expanding the definition of existing crimes, this bill would impose a state-mandated local program. The bill would delete obsolete provisions regarding a Communist action organization or Communist front organization required to be registered with the Attorney General of the United States.~~

(2) Under existing law, a permanent or classified school employee, or a classified community college employee may be dismissed from employment for specified causes, including, but not limited to, commission of a felony.

This bill would delete ~~obsolete~~ provisions regarding knowing membership in the Communist Party.

(3) Existing law prohibits a teacher from giving instruction and prohibits a school district from sponsoring any activity that reflects adversely upon a person because of his or her race, sex, color, creed, handicap, national origin, or ancestry.

This bill would delete ~~obsolete~~ provisions regarding communism.

(4) Under existing law, a public employee may be dismissed if he or she advocates or is knowingly a member of an organization which during the time of his or her membership the employee knows advocates overthrow of the Government of the United States or of any state by force or violence. Under existing law, a public employee is required to answer, under oath, specified questions, including, but not limited to, knowing membership in an organization advocating the forceful or violent overthrow of the Government of the United States or of any state.

This bill would delete these provisions and delete ~~obsolete~~ provisions regarding knowing membership in the Communist Party. The bill would instead provide that membership in or knowing financial contributions to a foreign terrorist organization, as defined, is not compatible with state service. The bill would provide that it is sufficient cause for the dismissal of a public employee if he or she is convicted of a specified crime relating to a foreign terrorist organization, and upon the

employees' *employee's* conviction, he or she shall forfeit his or her pay, benefits, and retirement, as specified. The bill would require the employees' *employee's* pay, benefits, and retirement to be restored, with interest, if that conviction is overturned.

(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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 38136 of the Education Code is repealed.

2 SEC. 2. Section 38136 is added to the Education Code, to read:

3 38136. (a) A governing board of a school district may not
4 grant the use of ~~any~~ school property to ~~any~~ a person or organization
5 for any use in violation of Section 38135.

6 (b) For the purpose of determining whether or not ~~any~~ *an*
7 individual, society, group, or organization applying for the use of
8 the school property intends to violate Section 38135, the governing
9 board shall require the making and delivery to the governing board,
10 by the applicant of a written statement of information in the
11 following form:

12
13 STATEMENT OF INFORMATION
14

15 The undersigned states that, to the best of his or her knowledge,
16 the school property for use of which application is hereby made
17 will not be used for the commission of any act intended to further
18 any program or movement the purpose of which is to accomplish
19 the overthrow of the government of the United States by force,
20 violence, or other unlawful means;

21 That _____, the organization on whose behalf he or she is making
22 application for use of school property, does not, to the best of his

1 or her knowledge, advocate the overthrow of the government of
2 the United States or of the State of California by force, violence,
3 or other unlawful means. This statement is made under the penalty
4 of perjury.

5
6 _____
7
8 (Signature)
9

10 (c) The school board may require the furnishing of additional
11 information as it deems necessary to make the determination that
12 the use of school property for which application is made would
13 not violate Section 38135.

14 (d) ~~Any~~ A person applying for the use of school property on
15 behalf of any society, group, or organization shall be a member of
16 the applicant group and, unless he or she is an officer of the group,
17 shall present written authorization from the applicant group to
18 make the application.

19 (e) The governing board of ~~any~~ a school district may, in its
20 discretion, consider any statement of information or written
21 authorization made pursuant to the requirements of this section as
22 being continuing in effect for the purposes of this section for the
23 period of one year from the date of the statement of information
24 or written authorization.

25 SEC. 3. Section 44932 of the Education Code is repealed.

26 SEC. 4. Section 44932 is added to the Education Code, to read:
27 44932. (a) A permanent employee may not be dismissed except
28 for one or more of the following causes:

- 29 (1) Immoral or unprofessional conduct.
- 30 (2) Commission, aiding, or advocating the commission of acts
31 of criminal syndicalism, as prohibited by Chapter 188 of the
32 Statutes of 1919, or in any amendment thereof.
- 33 (3) Dishonesty.
- 34 ~~(4) Unsatisfactory performance.~~
- 35 (4) *Unsatisfactory performance.*
- 36 (5) Evident unfitness for service.
- 37 (6) Physical or mental condition unfitting him or her to instruct
38 or associate with children.
- 39 (7) Persistent violation of or refusal to obey the school laws of
40 the state or reasonable regulations prescribed for the governance

1 of the public schools by the State Board of Education or by the
2 governing board of the school district employing him or her.

3 (8) Conviction of a felony or of any crime involving moral
4 turpitude.

5 (9) Alcoholism or other drug abuse which makes the employee
6 unfit to instruct or associate with children.

7 (b) The governing board of a school district may suspend
8 without pay for a specific period of time on grounds of
9 unprofessional conduct a permanent certificated employee or, in
10 a school district with an average daily attendance of less than 250
11 pupils, a probationary employee, pursuant to the procedures
12 specified in Sections 44933, 44934, 44935, 44936, 44937, 44943,
13 and 44944. This authorization shall not apply to any school district
14 that has adopted a collective bargaining agreement pursuant to
15 subdivision (b) of Section 3543.2 of the Government Code.

16 SEC. 5. Section 44939 of the Education Code is repealed.

17 SEC. 6. Section 44939 is added to the Education Code, to read:

18 44939. (a) Upon the filing of written charges, duly signed and
19 verified by the person filing them with the governing board of a
20 school district, or upon a written statement of charges formulated
21 by the governing board, charging a permanent employee of the
22 district with immoral conduct, conviction of a felony or of any
23 crime involving moral turpitude, with incompetency due to mental
24 disability, or with willful refusal to perform regular assignments
25 without reasonable cause, as prescribed by reasonable rules and
26 regulations of the employing school district, the governing board
27 may, if it deems action necessary, immediately suspend the
28 employee from his or her duties and give notice to him or her of
29 his or her suspension, and that 30 days after service of the notice,
30 he or she will be dismissed, unless he or she demands a hearing.

31 (b) A permanent employee who demands a hearing within the
32 30-day period shall continue to be paid his or her regular salary
33 during the period of suspension and until the entry of the decision
34 of the Commission on Professional Competence, if and during that
35 time as he or she furnishes to the school district a suitable bond,
36 or other security acceptable to the governing board, as a guarantee
37 that the employee will repay to the school district the amount of
38 salary so paid to him or her during the period of suspension in case
39 the decision of the Commission on Professional Competence is
40 that he or she shall be dismissed. If it is determined that the

1 employee may not be dismissed, the school board shall reimburse
2 the employee for the cost of the bond.

3 SEC. 7. Section 45303 of the Education Code is repealed.

4 SEC. 8. Section 51530 of the Education Code is repealed.

5 SEC. 9. Section 88122 of the Education Code is repealed.

6 SEC. 10. Section 1027.5 of the Government Code is repealed.

7 SEC. 11. Section 1027.5 is added to the Government Code, to
8 read:

9 1027.5. The Legislature finds and declares all of the following:

10 (a) There exist several worldwide extremist terror networks,
11 many of them confederated, that use terrorism, subversion,
12 sabotage, weapons of mass destruction, and open warfare as a
13 method to carry out a globalized insurgency with the aim of
14 overthrowing the existing world order and replacing it with a
15 reactionary, authoritarian, transnational entity based upon force,
16 violence, and the subjugation of women and religious minorities,
17 rather than upon the impartial rule of law.

18 (b) These extremist terror networks are defined by the United
19 States Department of State pursuant to Section 2656f of Title 22
20 of the United States Code, and the Department of State is required
21 to file an annual report to Congress on terrorism. That annual report
22 designates a list of foreign terrorist organizations followed by a
23 list of other selected terrorist groups deemed of relevance in the
24 global war on terrorism. That annual report includes, but is not
25 limited to, information on terrorist groups and umbrella groups
26 under which a terrorist group falls, regarding all of the following:

27 (1) Whether the terrorist group or umbrella group is responsible
28 for the kidnapping or death of any citizen of the United States
29 during the preceding five years.

30 (2) Any groups known to be financed by state sponsors of
31 terrorism that reported to Congress in the preceding year pursuant
32 to Section 6(j) of the United States Export Administration Act.

33 (3) Any other known international terrorist group that the
34 Secretary of State determines should be the subject of that annual
35 report.

36 (c) These extremist terror networks seek to overthrow the legally
37 constituted governments in numerous foreign countries through
38 terrorism, subversion, sabotage, and open warfare in those nations
39 and across the globe, including, but not limited to, the United
40 States. These extremist terror networks use a variety of methods

1 to cloak their activities, including, but not limited to, acts of
2 treachery, deceit, teaching untruth, together with organized
3 confusion, insubordination, and disloyalty.

4 (d) Within the boundaries of this state, extremist terror networks
5 conduct support operations to raise money for terror operations
6 while also seeking to carry out direct attacks in this state and in
7 the United States at large.

8 (e) One of the objectives of these extremist terror networks is
9 to place its members or sympathizers in state and local government
10 positions and in state supported educational institutions to enhance
11 their ability to raise money, carry out attacks, and teach untruth.

12 (f) The Legislature finds there is a clear and present danger that
13 extremist terror networks will seek employment with this state and
14 its public agencies to hamper, restrict, interfere with, impede, or
15 nullify the efforts of the state and the public agencies of this state
16 to comply with and enforce the laws of this state, to seek to inflict
17 great harm on the citizens of this state, to raise money to support
18 global terrorist operations, and to spread deceit and teach untruth.

19 SEC. 12. Section 1028 of the Government Code is repealed.

20 SEC. 13. Section 1028 is added to the Government Code, to
21 read:

22 1028. (a) Membership in, or knowing financial contributions
23 to, a foreign terrorist organization is not compatible with state
24 service.

25 (b) It shall be sufficient cause for the dismissal of any public
26 employee when that public employee is convicted of a crime
27 pursuant to Chapter 115 (commencing with Section 2381) of Title
28 18 of the United States Code, including, but not limited to, being
29 a member of an organization which during the time of his or her
30 membership he or she knows advocates the overthrow of the
31 Government of the United States or of any state by force or
32 violence, or he or she is convicted of being a member or knowing
33 financial supporter of a foreign terrorist organization.

34 (c) (1) If a public employee is convicted of a crime as described
35 in subdivision (b), the public employee shall forfeit his or her pay,
36 benefits, and retirement from the time when it is determined that
37 his or her membership or financial support of a foreign terrorist
38 organization is concurrent with his or her state employment.

1 (2) If the conviction of the public employee is overturned, the
2 pay, benefits, and retirement of the public employee shall be
3 restored and with interest.

4 (d) For purposes of this section, “foreign terrorist organization”
5 means any of the following:

6 (1) A group or organization designated as a foreign terrorist
7 organization by the United States Department of State.

8 (2) A group or organization identified in the annual report of
9 the United States Department of State that is filed with Congress
10 pursuant to Section 2656f of Title 22 of the United States Code.

11 SEC. 14. Section 1028.1 of the Government Code is repealed.

12 SEC. 15. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution for certain
14 costs that may be incurred by a local agency or school district
15 because, in that regard, this act creates a new crime or infraction,
16 eliminates a crime or infraction, or changes the penalty for a crime
17 or infraction, within the meaning of Section 17556 of the
18 Government Code, or changes the definition of a crime within the
19 meaning of Section 6 of Article XIII B of the California
20 Constitution.

21 However, if the Commission on State Mandates determines that
22 this act contains other costs mandated by the state, reimbursement
23 to local agencies and school districts for those costs shall be made
24 pursuant to Part 7 (commencing with Section 17500) of Division
25 4 of Title 2 of the Government Code.