

Introduced by Senator LowenthalFebruary 20, 2008

An act to amend Sections 38135, 44932, 44939, 45303, and 88122 of, and to repeal Sections 38136 and 51530 of, the Education Code, and to amend Section 1028 of, and to repeal Sections 1027.5 and 1028.1 of, the Government Code, relating to communism.

LEGISLATIVE COUNSEL'S DIGEST

SB 1322, as introduced, Lowenthal. Communism.

(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, and clubs or associations organized to promote youth and school activities. Existing law also prohibits an individual, society, group, or organization from using school property for the commission of any act intended to further a program or movement the purpose of which is to accomplish the overthrow of the government of the United States or of the state by force, violence, or other unlawful means.

This bill would permit the school board to require the furnishing of information as it deems necessary to determine that the use of school property for which application is made would not violate that provision. This bill would also delete provisions regarding 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 a Communist action organization or Communist front organization required to be registered with the Attorney General of the United States or does not, to the best of that person's knowledge, advocate the overthrow of the government of the United States or of the State of California by force, violence, or other unlawful means.

(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 provisions that a permanent or classified school employee, or a classified community college employee may be dismissed from employment if he or she is a knowing member of 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 provisions that prohibit a teacher giving instruction in a school or on property belonging to an agency included in the public school system from teaching communism with the intent to indoctrinate or to inculcate in the mind of any pupil a preference for communism. The bill would also delete provisions that a teacher may be dismissed from employment if he or she teaches communism in that way.

(4) 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. The bill would also delete related findings and declarations by the Legislature regarding communism and the Communist Party.

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

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

1 SECTION 1. Section 38135 of the Education Code is amended
2 to read:
3 38135. Any use, by any individual, society, group, or
4 organization for the commission of any act intended to further any
5 program or movement the purpose of which is to accomplish the
6 overthrow of the government of the United States or of the state
7 by force, violence, or other unlawful means shall not be permitted
8 or suffered.

1 Any individual, society, group, or organization which commits
 2 any act intended to further any program or movement the purpose
 3 of which is to accomplish the overthrow of the government by
 4 force, violence, or other unlawful means while using school
 5 property pursuant to the provisions of this chapter is guilty of a
 6 misdemeanor.

7 *The school board may require the furnishing of information as*
 8 *it deems necessary to make the determination that the use of school*
 9 *property for which application is made would not violate this*
 10 *section.*

11 SEC. 2. Section 38136 of the Education Code is repealed.

12 ~~38136. No governing board of a school district shall grant the~~
 13 ~~use of any school property to any person or organization for any~~
 14 ~~use in violation of Section 38135.~~

15 ~~For the purpose of determining whether or not any individual,~~
 16 ~~society, group, or organization applying for the use of the school~~
 17 ~~property intends to violate Section 38135, the governing board~~
 18 ~~shall require the making and delivery to the governing board, by~~
 19 ~~the applicant of a written statement of information in the following~~
 20 ~~form:~~

21
 22 STATEMENT OF INFORMATION
 23

24 ~~The undersigned states that, to the best of his or her knowledge,~~
 25 ~~the school property for use of which application is hereby made~~
 26 ~~will not be used for the commission of any act intended to further~~
 27 ~~any program or movement the purpose of which is to accomplish~~
 28 ~~the overthrow of the government of the United States by force,~~
 29 ~~violence or other unlawful means;~~

30 ~~That _____, the organization on whose behalf he or she is making~~
 31 ~~application for use of school property, does not, to the best of his~~
 32 ~~or her knowledge, advocate the overthrow of the government of~~
 33 ~~the United States or of the State of California by force, violence,~~
 34 ~~or other unlawful means, and that, to the best of his or her~~
 35 ~~knowledge, it is not a Communist action organization or~~
 36 ~~Communist front organization required by law to be registered~~
 37 ~~with the Attorney General of the United States. This statement is~~
 38 ~~made under the penalties of perjury.~~

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(Signature)

~~The school board may require the furnishing of additional information as it deems necessary to make the determination that the use of school property for which application is made would not violate Section 38135.~~

~~Any person applying for the use of school property on behalf of any society, group, or organization shall be a member of the applicant group and, unless he or she is an officer of the group, must present written authorization from the applicant group to make the application.~~

~~The governing board of any school district may, in its discretion, consider any statement of information or written authorization made pursuant to the requirements of this section as being continuing in effect for the purposes of this section for the period of one year from the date of the statement of information or written authorization.~~

SEC. 3. Section 44932 of the Education Code is amended to read:

44932. (a) ~~No~~A permanent employee shall *not* be dismissed except for one or more of the following causes:

- (1) Immoral or unprofessional conduct.
- (2) Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188 of the Statutes of 1919, or in any amendment thereof.
- (3) Dishonesty.
- (4) Unsatisfactory performance.
- (5) Evident unfitness for service.
- (6) Physical or mental condition unfitting him or her to instruct or associate with children.
- (7) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her.
- (8) Conviction of a felony or of any crime involving moral turpitude.

1 (9) ~~Violation of Section 51530 or conduct~~ *Conduct* specified in
2 Section 1028 of the Government Code, ~~added by Chapter 1418 of~~
3 ~~the Statutes of 1947.~~

4 (10) ~~Knowing membership by the employee in the Communist~~
5 ~~Party.~~

6 (11) ~~—~~

7 (10) Alcoholism or other drug abuse which makes the employee
8 unfit to instruct or associate with children.

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

18 SEC. 4. Section 44939 of the Education Code is amended to
19 read:

20 44939. (a) Upon the filing of written charges, duly signed and
21 verified by the person filing them with the governing board of a
22 school district, or upon a written statement of charges formulated
23 by the governing board, charging a permanent employee of the
24 district with immoral conduct, conviction of a felony or of any
25 crime involving moral turpitude, with incompetency due to mental
26 disability, with willful refusal to perform regular assignments
27 without reasonable cause, as prescribed by reasonable rules and
28 regulations of the employing school district, ~~with violation of~~
29 ~~Section 51530, with knowing membership by the employee in the~~
30 ~~Communist Party or with violation of any provision in Sections~~
31 ~~7001 to 7007, inclusive,~~ the governing board may, if it deems such
32 action necessary, immediately suspend the employee from his *or*
33 *her* duties and give notice to him *or her* of his *or her* suspension,
34 and that 30 days after service of the notice, he *or she* will be
35 dismissed, unless he *or she* demands a hearing.

36 ~~If the permanent employee is suspended upon charges of~~
37 ~~knowing membership by the employee in the Communist Party or~~
38 ~~for any violation of Section 7001, 7002, 7003, 7006, 7007, or~~
39 ~~51530, he may within 10 days after service upon him of notice of~~
40 ~~such suspension file with the governing board a verified denial,~~

1 ~~in writing, of the charges. In such event the permanent employee~~
2 ~~who~~

3 ~~(b) If a permanent employee demands a hearing within the~~
4 ~~30-day period, he or she shall continue to be paid his or her regular~~
5 ~~salary during the period of suspension and until the entry of the~~
6 ~~decision of the Commission on Professional Competence, if and~~
7 ~~during such that time as he or she furnishes to the school district~~
8 ~~a suitable bond, or other security acceptable to the governing board,~~
9 ~~as a guarantee that the employee will repay to the school district~~
10 ~~the amount of salary so paid to him or her during the period of~~
11 ~~suspension in case the decision of the Commission on Professional~~
12 ~~Competence is that he or she shall be dismissed. If it is determined~~
13 ~~that the employee may not be dismissed, the school board shall~~
14 ~~reimburse the employee for the cost of the bond.~~

15 SEC. 5. Section 45303 of the Education Code is amended to
16 read:

17 45303. In addition to any causes for suspension or dismissal
18 which are designated by rule of the commission, employees in the
19 classified service shall be suspended and dismissed in the manner
20 provided by law for ~~any one or more of the following causes:~~

21 ~~(a) Knowing membership by the employee in the Communist~~
22 ~~Party.~~

23 ~~(b) Conduct—~~ *conduct* specified in Section 1028 of the
24 Government Code.

25 SEC. 6. Section 51530 of the Education Code is repealed.

26 ~~51530. No teacher giving instruction in any school, or on any~~
27 ~~property belonging to any agencies included in the public school~~
28 ~~system, shall advocate or teach communism with the intent to~~
29 ~~indoctrinate or to inculcate in the mind of any pupil a preference~~
30 ~~for communism.~~

31 ~~In prohibiting the advocacy or teaching of communism with the~~
32 ~~intent of indoctrinating or inculcating a preference in the mind of~~
33 ~~any pupil for such doctrine, the Legislature does not intend to~~
34 ~~prevent the teaching of the facts about communism. Rather, the~~
35 ~~Legislature intends to prevent the advocacy of, or inculcation and~~
36 ~~indoctrination into, communism as is hereinafter defined, for the~~
37 ~~purpose of undermining patriotism for, and the belief in, the~~
38 ~~government of the United States and of this state.~~

39 For the purposes of this section, communism is a political theory
40 that the presently existing form of government of the United States

1 ~~or of this state should be changed, by force, violence, or other~~
2 ~~unconstitutional means, to a totalitarian dictatorship which is based~~
3 ~~on the principles of communism as expounded by Marx, Lenin,~~
4 ~~and Stalin.~~

5 SEC. 7. Section 88122 of the Education Code is amended to
6 read:

7 88122. In addition to any causes for suspension or dismissal
8 which are designated by rule of the commission, employees in the
9 classified service shall be suspended and dismissed in the manner
10 provided by law for any one or more of the following causes:

11 ~~(a) Knowing membership by the employee in the Communist~~
12 ~~Party.~~

13 ~~(b) Conduct—conduct~~ specified in Section 1028 of the
14 Government Code.

15 SEC. 8. Section 1027.5 of the Government Code is repealed.

16 ~~1027.5. The Legislature of the State of California finds that:~~

17 ~~(a) There exists a world-wide revolutionary movement to~~
18 ~~establish a totalitarian dictatorship based upon force and violence~~
19 ~~rather than upon law.~~

20 ~~(b) This world-wide revolutionary movement is predicated upon~~
21 ~~and it is designed and intended to carry into execution the basic~~
22 ~~precepts of communism as expounded by Marx, Lenin, and Stalin.~~

23 ~~(c) Pursuant to the objectives of the world communism~~
24 ~~movement, in numerous foreign countries the legally constituted~~
25 ~~governments have been overthrown and totalitarian dictatorships~~
26 ~~established therein against the will of the people, and the~~
27 ~~establishment of similar dictatorships in other countries is~~
28 ~~imminently threatening. The successful establishment of totalitarian~~
29 ~~dictatorships has consistently been aided, accompanied, or~~
30 ~~accomplished by repeated acts of treachery, deceit, teaching of~~
31 ~~false doctrines, teaching untruth, together with organized confusion,~~
32 ~~insubordination, and disloyalty, fostered, directed, instigated, or~~
33 ~~employed by communist organizations and their members in such~~
34 ~~countries.~~

35 ~~(d) Within the boundaries of the State of California there are~~
36 ~~active disciplined communist organizations presently functioning~~
37 ~~for the primary purpose of advancing the objectives of the world~~
38 ~~communism movement, which organizations promulgate, advocate,~~
39 ~~and adhere to the precepts and the principles and doctrines of the~~
40 ~~world communism movement. These communist organizations~~

1 are characterized by identification of their programs, policies, and
2 objectives with those of the world communism movement, and
3 they regularly and consistently cooperate with and endeavor to
4 carry into execution programs, policies and objectives substantially
5 identical to programs, policies, and objectives of such world
6 communism movement.

7 (e) One of the objectives of the world communism movement
8 is to place its members in state and local government positions
9 and in state-supported educational institutions. If this objective is
10 successful, propaganda can be disseminated by the members of
11 these organizations among pupils and students by those members
12 who would have the opportunity to teach them and to whom, as
13 teachers, they would look for guidance, authority, and leadership.
14 The members of such groups would use their positions to advocate
15 and teach their doctrines and teach the prescribed Communist Party
16 line group dogma or doctrine without regard to truth or free inquiry.
17 This type of propaganda is sufficiently subtle to escape detection.

18 There is a clear and present danger, which the Legislature of the
19 State of California finds is great and imminent, that in order to
20 advance the program, policies and objectives of the world
21 communism movement, communist organizations in the State of
22 California and their members will engage in concerted effort to
23 hamper, restrict, interfere with, impede, or nullify the efforts of
24 the State and the public agencies of the State to comply with and
25 enforce the laws of the State of California and their members will
26 infiltrate and seek employment by the State and its public agencies.

27 SEC. 9. Section 1028 of the Government Code is amended to
28 read:

29 1028. It shall be sufficient cause for the dismissal of any public
30 employee when ~~such~~ *that* public employee advocates or is
31 knowingly a member of the Communist Party or of an organization
32 which during the time of his *or her* membership he *or she* knows
33 advocates overthrow of the ~~Government~~ *government* of the United
34 States or of any state by force or violence.

35 SEC. 10. Section 1028.1 of the Government Code is repealed.

36 ~~1028.1. It shall be the duty of any public employee who may~~
37 ~~be subpoenaed or ordered by the governing body of the state or~~
38 ~~local agency by which such employee is employed, to appear~~
39 ~~before such governing body, or a committee or subcommittee~~
40 ~~thereof, or by a duly authorized committee of the Congress of the~~

1 ~~United States or of the Legislature of this State, or any~~
2 ~~subcommittee of any such committee, to appear before such~~
3 ~~committee or subcommittee, and to answer under oath a question~~
4 ~~or questions propounded by such governing body, committee or~~
5 ~~subcommittee, or a member or counsel thereof, relating to:~~
6 ~~(a) Present personal advocacy by the employee of the forceful~~
7 ~~or violent overthrow of the Government of the United States or of~~
8 ~~any state.~~
9 ~~(b) Present knowing membership in any organization now~~
10 ~~advocating the forceful or violent overthrow of the Government~~
11 ~~of the United States or of any state.~~
12 ~~(c) Past knowing membership at any time since October 3, 1945,~~
13 ~~in any organization which, to the knowledge of such employee,~~
14 ~~during the time of the employee's membership advocated the~~
15 ~~forceful or violent overthrow of the Government of the United~~
16 ~~States or of any state.~~
17 ~~(d) Questions as to present knowing membership of such~~
18 ~~employee in the Communist Party or as to past knowing~~
19 ~~membership in the Communist Party at any time since October 3,~~
20 ~~1945.~~
21 ~~(e) Present personal advocacy by the employee of the support~~
22 ~~of a foreign government against the United States in the event of~~
23 ~~hostilities between said foreign government and the United States.~~
24 ~~Any employee who fails or refuses to appear or to answer under~~
25 ~~oath on any ground whatsoever any such questions so propounded~~
26 ~~shall be guilty of insubordination and guilty of violating this section~~
27 ~~and shall be suspended and dismissed from his employment in the~~
28 ~~manner provided by law.~~

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