

**Senate Bill No. 1322**

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Passed the Senate August 5, 2008

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*Secretary of the Senate*

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Passed the Assembly August 4, 2008

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2008, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Sections 38135, 44932, 44939, 45303, and 88122 of, and to repeal Section 38136 of, the Education Code, and to amend Sections 1028, 1360, 3103, and 18150 of, to add Section 1225.5 to, and to repeal Sections 1027.5 and 1028.1 of, the Government Code, relating to public employment and property.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1322, Lowenthal. Public employment and property.

(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. That act 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 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. These other provisions have been declared unconstitutional.

This bill would delete those unconstitutional provisions.

(2) Existing law 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, in addition, permit the school board to require the furnishing of information as it deems reasonably necessary to determine that the use of school property for which application is made would not violate that provision.

(3) Under existing law, a permanent or classified school employee, or a classified community college employee may be suspended or dismissed from employment for specified causes,

including, but not limited to, knowing membership in the Communist Party.

This bill would delete provisions that a permanent or classified school employee, or a classified community college employee may be suspended or dismissed from employment if he or she is a knowing member of the Communist Party.

(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.

(5) The California Constitution requires Members of the Legislature, and all public officers and employees, to take a specified oath of office. The California Constitution permits inferior officers and employees to be exempted by law from this requirement.

This bill would require that a public employee or applicant seeking public employment be permitted to decline to take and subscribe to the oath of office based on religious beliefs that conflict with his or her ability to take and subscribe to the oath without mental reservation, provided that he or she is otherwise willing and able to uphold the United States Constitution and the constitution and laws of this state and to complete the duties of employment. The bill would require that person to take and subscribe a specified statement to that effect. The bill would except from these provisions a public officer, employee, or applicant for public employment who is elected or who serves at the pleasure of an elected official. The bill would also make conforming changes and make a statement of findings.

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

SECTION 1. The Legislature hereby finds and declares the following:

(a) From 1946 to 1991, the United States of America was locked in a precarious and potentially deadly “Cold War” with the Soviet Union.

(b) At the height of the Cold War, California responded to the perceived threat of a Communist takeover and enacted a number of statutes subjecting members of the Communist Party, or others who refused to testify against themselves under oath, to termination of employment.

(c) Though Communists who attempted to harm the United States and collude with her enemies during the Cold War were prosecuted for their actions, many innocent persons suffered due to nothing more than their personal political convictions or relationships.

(d) Although the Cold War is long over and the threat of a communist takeover of the state or federal government no longer exists, these statutes remain current law.

(e) The United States Constitution and longstanding tradition guarantee all Americans the right to freely associate with others of similar beliefs no matter how unpopular those beliefs might be.

(f) These statutes are inconsistent with constitutional protections of free speech, political affiliation, and the right to remain silent.

(g) While this act repeals statutes that subject persons to termination based on their affiliation with a political party, the act maintains existing laws that allow for termination of an employee who is knowingly a member of an organization that advocates the overthrow of the state or federal government by force or violence.

SEC. 2. The Legislature further finds and declares the following:

(a) Section 3 of Article XX of the California Constitution requires that Members of the Legislature and all public officers and employees take and subscribe to the oath that is set forth in its provisions and defines public officer or employee for these purposes.

(b) Section 3 of Article XX of the California Constitution permits the Legislature to make exceptions from the oath requirement for “inferior officers and employees.”

(c) The California Supreme Court, in the case of *Vogel v. County of Los Angeles* (1967) 68 Cal.2d 18, struck down the second paragraph of the oath set forth in the provisions of Section 3 of Article XX of the California Constitution as an unconstitutional violation of the rights guaranteed by the First Amendment of the United States Constitution.

(d) Some applicants for public employment who are loyal citizens and well qualified for their respective jobs are precluded by their religious beliefs from taking oaths.

(e) It is necessary to create an appropriate exemption for loyal and qualified employees and applicants for public employment based on the fundamental American value of freedom of religion.

SEC. 3. Section 38135 of the Education Code is amended to read:

38135. Any use, by any individual, society, group, or organization for the commission of any act intended to further any 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 shall not be permitted or suffered.

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

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

SEC. 4. Section 38136 of the Education Code is repealed.

SEC. 5. Section 44932 of the Education Code is amended to read:

44932. (a) 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.

(9) Violation of Section 51530 or conduct specified in Section 1028 of the Government Code.

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

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

SEC. 6. Section 44939 of the Education Code is amended to read:

44939. (a) Upon the filing of written charges, duly signed and verified by the person filing them with the governing board of a school district, or upon a written statement of charges formulated by the governing board, charging a permanent employee of the district with immoral conduct, conviction of a felony or of any crime involving moral turpitude, with incompetency due to mental disability, with willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, or with violation of Section 51530, the governing board may, if it deems action necessary, immediately suspend the employee from his or her duties and give notice to him or her of his or her suspension, and that 30 days after service of the notice, he or she will be dismissed, unless he or she demands a hearing.

(b) If a permanent employee demands a hearing within the 30-day period, he or she shall continue to be paid his or her regular salary during the period of suspension and until the entry of the decision of the Commission on Professional Competence, if and during that time as he or she furnishes to the school district a suitable bond, or other security acceptable to the governing board, as a guarantee that the employee will repay to the school district

the amount of salary so paid to him or her during the period of suspension in case the decision of the Commission on Professional Competence is that he or she shall be dismissed. If it is determined that the employee may not be dismissed, the school board shall reimburse the employee for the cost of the bond.

SEC. 7. Section 45303 of the Education Code is amended to read:

45303. In addition to any causes for suspension or dismissal which are designated by rule of the commission, employees in the classified service shall be suspended and dismissed in the manner provided by law for conduct specified in Section 1028 of the Government Code.

SEC. 8. Section 88122 of the Education Code is amended to read:

88122. In addition to any causes for suspension or dismissal which are designated by rule of the commission, employees in the classified service shall be suspended and dismissed in the manner provided by law for conduct specified in Section 1028 of the Government Code.

SEC. 9. Section 1027.5 of the Government Code is repealed.

SEC. 10. Section 1028 of the Government Code is amended to read:

1028. It shall be sufficient cause for the dismissal of any public employee when that public employee advocates or is knowingly a member of an organization which during the time of his or her membership he or she knows advocates overthrow of the government of the United States or of any state by force or violence.

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

SEC. 12. Section 1225.5 is added to the Government Code, to read:

1225.5. (a) Notwithstanding any other provision of law to the contrary, a public employee or applicant seeking public employment shall be permitted to decline to take and subscribe to the oath required by Section 3 of Article XX of the California Constitution based on religious beliefs that conflict with his or her ability to take and subscribe to the oath without mental reservation, provided that he or she is otherwise willing and able to uphold the United States Constitution and the constitution and laws of this state and to complete the duties of employment. Any person

exempted from taking the oath pursuant to this section shall instead take and subscribe the following statement:

“I, \_\_\_\_\_, do solemnly affirm that I will uphold the Constitution of the United States and the Constitution and all other laws of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.”

(b) The option to decline to take and subscribe to the oath required by Section 3 of Article XX of the California Constitution based on religious beliefs provided by this section shall not apply to a public officer, employee, or applicant for public employment who is elected or who serves at the pleasure of an elected official.

SEC. 13. Section 1360 of the Government Code is amended to read:

1360. Unless otherwise provided, and subject to the limitations of Section 1225.5, before any officer enters on the duties of his or her office, he or she shall take and subscribe the oath or affirmation set forth in Section 3 of Article XX of the Constitution of California.

SEC. 14. Section 3103 of the Government Code is amended to read:

3103. Subject to the limitations of Section 1225.5, the oath or affirmation required by this chapter is the oath or affirmation set forth in Section 3 of Article XX of the Constitution of California.

SEC. 15. Section 18150 of the Government Code is amended to read:

18150. Subject to the limitations of Section 1225.5, the oath required by this chapter is the oath set forth in Section 3 of Article XX of the Constitution of California.















Approved \_\_\_\_\_, 2008

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*Governor*