

ASSEMBLY BILL

No. 351

Introduced by Assembly Member Donnelly

February 13, 2013

An act to add Section 145.5 to the Penal Code, relating to civil liberties, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 351, as introduced, Donnelly. Civil liberties: suspension of habeas corpus for American citizens.

The United States Constitution and the California Constitution provide for various civil liberties and other individual rights for a citizen of the United States and the State of California, including the right of habeas corpus, the right to due process, the right to a speedy and public trial, and the right to be informed of criminal charges brought against him or her.

Certain provisions of federal law affirm the authority of the President of the United States to use all necessary and appropriate force to detain specified persons who engaged in terrorist activities.

This bill would enact the California Liberty Preservation Act. The act would provide that an officer, agent, or employee of the United States, or an employee of a corporation providing services to the United States, who enforces or attempts to enforce the provisions of federal law described above would be guilty of a misdemeanor and subject to imprisonment in a county jail for up to one year, or a fine of not more than \$10,000, or both imprisonment and the fine.

In addition, the bill would provide that a public officer or employee of the state who enforces or attempts to enforce those provisions of federal law would also be guilty of a misdemeanor, but would be subject

to imprisonment of up to 6 months, or a fine of up to \$5,000, or both imprisonment and the fine. By creating new crimes, the bill would impose a state-mandated local program.

The bill would require the Attorney General to report to the Governor and the Legislature any attempt by the federal government to implement these provisions, as specified.

The bill would also include specified findings and declarations.

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 no reimbursement is required by this act for a specified reason.

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 145.5 is added to the Penal Code, to read:
- 2 145.5. (a) This act shall be known as the California Liberty
- 3 Preservation Act.
- 4 (b) The Legislature finds and declares all of the following:
- 5 (1) The Tenth Amendment to the United States Constitution
- 6 authorizes the United States federal government to exercise only
- 7 those powers specifically delegated to it under Section 8 of Article
- 8 I of the United States Constitution.
- 9 (2) The guarantee of the constitutional limitations on federal
- 10 power is a matter of contract between the several states, including
- 11 the State of California, and the federal government at the time the
- 12 United States Constitution was ratified and subsequently amended
- 13 by the Bill of Rights.
- 14 (3) Article VI of United States Constitution provides that the
- 15 laws of the United States federal government are the supreme law
- 16 of the land only if those laws are adopted in accordance with the
- 17 powers delegated to the federal government in the United States
- 18 Constitution.
- 19 (4) The President of the United States has asserted that the
- 20 Authorization for the Use of Military Force (Public Law 107-40),
- 21 enacted in 2001, authorizes the President to indefinitely detain,

1 without charge, any person, including a citizen of the United States
2 or a lawful resident alien, regardless of whether the person is
3 apprehended inside or outside the borders of the United States.

4 (5) Sections 1021 and 1022 of the National Defense
5 Authorization Act for Fiscal Year 2012 (Public Law 112-81)
6 authorize all of the following:

7 (A) Indefinite detention of persons apprehended within the
8 United States without charge or trial.

9 (B) Prosecution by military tribunals under the law of war for
10 persons apprehended within the United States.

11 (C) Transfer of persons apprehended within the United States
12 to foreign jurisdictions.

13 (6) In authorizing the actions described in paragraph (5) of this
14 subdivision, Sections 1021 and 1022 of the National Defense
15 Authorization Act for Fiscal Year 2012 (Public Law 112-81) are
16 inimical to the liberty, security, and well-being of the citizens of
17 the State of California by violating all of the following:

18 (A) The California Constitution.

19 (B) The limits of federal power authorized by Section 8 of
20 Article I of the United States Constitution.

21 (C) The legal doctrine of posse comitatus under Section 1385
22 of Title 18 of the United States Code by authorizing the Armed
23 Forces of the United States to police the United States.

24 (D) The following provisions of the United States Constitution:

25 (i) Clause 2 of Section 9 of Article I, ensuring the right to seek
26 habeas corpus.

27 (ii) The First Amendment, ensuring the right to petition the
28 federal government for the redress of grievances.

29 (iii) The Fourth Amendment, ensuring the right to be free from
30 unreasonable search and seizure.

31 (iv) The Fifth Amendment, requiring capital or infamous crimes
32 to be brought before a grand jury before charging the defendant
33 and prohibiting deprivation of life, liberty, or property without due
34 process of law.

35 (v) The Sixth Amendment, ensuring the right to a speedy trial
36 by an impartial jury in the state or district where the offense was
37 alleged to have been committed, the right to be informed of the
38 nature and cause of accusations and charges levied, the right to
39 retain legal counsel, and the right to confront witnesses.

1 (vi) The Eighth Amendment, prohibiting excessive bail and
2 fines and prohibiting cruel and unusual punishment.

3 (vii) The Fourteenth Amendment, prohibiting deprivation of
4 life, liberty, or property without due process of law.

5 (7) The actions described in paragraph (5) of this subdivision
6 as authorized by Sections 1021 and 1022 of the National Defense
7 Authorization Act for Fiscal Year 2012 (Public Law 112-81), and
8 the enforcement of those actions, are illegal within this state.

9 (8) Sections 1021 and 1022 of the National Defense
10 Authorization Act for Fiscal Year 2012 (Public Law 112-81)
11 violate portions of federal law, the United States Constitution, and
12 the California Constitution and are invalid and illegal in this state.

13 (c) It is the policy of this state to refuse to provide material
14 support for or to participate in any way with the implementation
15 within this state of Sections 1021 and 1022 of the National Defense
16 Authorization Act for Fiscal Year 2012 (Public Law 112-81).

17 (d) (1) An officer, agent, or employee of the United States or
18 an employee of a corporation providing services to the United
19 States who enforces or attempts to enforce Section 1021 or 1022
20 of the National Defense Authorization Act for Fiscal Year 2012
21 (Public Law 112-81) is guilty of a misdemeanor and subject to
22 imprisonment in a county jail for up to one year, a fine of not more
23 than ten thousand dollars (\$10,000), or both imprisonment and the
24 fine.

25 (2) A public officer or employee of this state who enforces or
26 attempts to enforce Section 1021 or 1022 of the National Defense
27 Authorization Act for Fiscal Year 2012 (Public Law 112-81) is
28 guilty of a misdemeanor and subject to imprisonment in a county
29 jail for up to 6 months, a fine of not more than five thousand dollars
30 (\$5,000), or both imprisonment and the fine.

31 (e) The Attorney General shall report to the Governor and the
32 Legislature any attempt by the federal government to implement
33 Section 1021 or 1022 of the National Defense Authorization Act
34 for Fiscal Year 2012 (Public Law 112-81) through the Attorney
35 General or another state agency.

36 SEC. 2. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section 17556 of
2 the Government Code, or changes the definition of a crime within
3 the meaning of Section 6 of Article XIII B of the California
4 Constitution.

5 SEC. 3. This act is an urgency statute necessary for the
6 immediate preservation of the public peace, health, or safety within
7 the meaning of Article IV of the Constitution and shall go into
8 immediate effect. The facts constituting the necessity are:

9 In order to ensure that the constitutional rights of the citizens of
10 the United States are protected as soon as possible, it is necessary
11 that this act take effect immediately.

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