

AMENDED IN SENATE MARCH 24, 2009

SENATE BILL

No. 115

Introduced by Senator Lowenthal

January 29, 2009

An act to amend Sections 1360, 3103, and 18150 of, and to add Section 1225.5 to, the Government Code, relating to public employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 115, as amended, Lowenthal. Public employment.

The California Constitution requires Members of the Legislature, and all public officers and employees, to take and subscribe 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 the oath of office based on moral, ethical, or religious beliefs that conflict with his or her ability to take and subscribe the oath without mental reservation, if 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 *sign a statement that he or she declines to take and subscribe the oath required pursuant to existing law, based on moral, ethical, or religious beliefs that conflict with his or her ability to take that oath, as specified, and to take and subscribe a specified alternate 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 related statement of legislative findings.

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

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

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

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

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

10 (c) The California Supreme Court, in the case of Vogel v.
11 County of Los Angeles (1967) 68 Cal.2d 18, struck down the
12 second paragraph of the oath set forth in the provisions of Section
13 3 of Article XX of the California Constitution as an
14 unconstitutional violation of the rights guaranteed by the First
15 Amendment of the United States Constitution.

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

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

22 SEC. 2. Section 1225.5 is added to the Government Code, to
23 read:

24 1225.5. (a) Notwithstanding any other provision of law to the
25 contrary, a public employee or applicant seeking public
26 employment shall be permitted to decline to take and subscribe
27 the oath required by Section 3 of Article XX of the California
28 Constitution based on moral, ethical, or religious beliefs that
29 conflict with his or her ability to take and subscribe to the oath
30 without mental reservation, if he or she is otherwise willing and
31 able to uphold the United States Constitution and the constitution
32 and laws of this state and to complete the duties of employment.
33 Any person exempted from taking the oath pursuant to this section
34 shall *sign a statement that he or she declines to take and subscribe*
35 *the oath required by Section 3 of Article XX of the California*

1 *Constitution based on moral, ethical, or religious beliefs that*
2 *conflict with his or her ability to take and subscribe the oath*
3 *without mental reservation and instead take and subscribe the*
4 *following statement:*

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

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

16 SEC. 3. Section 1360 of the Government Code is amended to
17 read:

18 1360. Unless otherwise provided, and subject to the limitations
19 set forth in Section 1225.5, before any officer enters on the duties
20 of his or her office, he or she shall take and subscribe the oath or
21 affirmation set forth in Section 3 of Article XX of the Constitution
22 of California.

23 SEC. 4. Section 3103 of the Government Code is amended to
24 read:

25 3103. Subject to the limitations set forth in Section 1225.5, the
26 oath or affirmation required by this chapter is the oath or
27 affirmation set forth in Section 3 of Article XX of the Constitution
28 of California.

29 SEC. 5. Section 18150 of the Government Code is amended
30 to read:

31 18150. Subject to the limitations set forth in Section 1225.5,
32 the oath required by this chapter is the oath set forth in Section 3
33 of Article XX of the Constitution of California.