

**ACADEMIC SENATE
OF
THE CALIFORNIA STATE UNIVERSITY**

AS-2856-08/FGA/FA
May 8-9, 2008

**Removal of the Requirement of Loyalty Pledges from State Employees and
Support for SB 1322 (Lowenthal. Communism.)**

- RESOLVED: That the Academic Senate CSU urge the legislature to take such action as necessary to eliminate the requirement of loyalty pledges from state employees other than public officials; and be it further:
- RESOLVED: That the Academic Senate California State University (CSU) support SB 1322 (Lowenthal. *Communism.*) that would among other things, according to the Legislative Counsel's Digest, delete the current requirement that a public employee 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; and be it further:
- RESOLVED: That the Academic Senate CSU urge the state legislature to place before the voters an amendment repealing Article XX, Section 3, replacing it with the former 1849 standard oath of allegiance required of public officials; and be it further:
- RESOLVED: That the Academic Senate CSU forward copies of this resolution to all Senators and Members of the Assembly in the Legislature of the State of California.

RATIONALE: As pointed out in the resolution of the California State University Emeritus and Retired Faculty Association on this topic:

For more than 100 years beginning in 1849, the California Constitution contained an oath of office for public officials (but not all public employees) that read as follows: "I do solemnly swear (or affirm, as the case may be) that I will faithfully discharge the duties of the office of _____, according to the best of my ability".

In a climate of fear and suspicion characteristic of the Cold War years, in 1952 Assemblyman Harold Levering put before the voters as a Constitutional Amendment a loyalty oath for all public employees, changing the oath to read as follows: "I _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution 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," which was passed by the voters.

The same 1952 Levering oath contained a second clause requiring a public employee to swear that he/she had not been a member of an organization that advocated the overthrow of the U.S. government. In 1967, this was declared unconstitutional by the U.S. Supreme Court but it remains in the state constitution. Such loyalty oaths are an anachronism remaining from Cold War days, serve no purpose in providing national security, and are counter in spirit to the free speech guarantees in the U.S. Bill of Rights.

The Sacramento Bee and the Los Angeles Times, two of the most influential newspapers in the state, have called upon the state legislature to repeal all legislation passed during the Cold War era requiring loyalty oaths of state employees.

Approved Unanimously – May 8-9, 2008

AMENDED IN SENATE APRIL 7, 2008

AMENDED IN SENATE MARCH 24, 2008

SENATE BILL

No. 1322

Introduced by Senator Lowenthal

February 20, 2008

An act to amend Sections 38135, 44932, 44939, 45303, and 88122 of, and to repeal Section 38136 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 amended, 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. *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.

Existing

(2) ~~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, *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. ~~This bill would also delete 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.~~

(2)

(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, ~~commission of a felony 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.

(3)

(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. The Legislature hereby finds and declares the
2 following:

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

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

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

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

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

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

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

27 SEC. 2. Section 38135 of the Education Code is amended to
28 read:

29 38135. Any use, by any individual, society, group, or
30 organization for the commission of any act intended to further any
31 program or movement the purpose of which is to accomplish the
32 overthrow of the government of the United States or of the state
33 by force, violence, or other unlawful means shall not be permitted
34 or suffered.

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

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

5 SEC. 3. Section 38136 of the Education Code is repealed.

6 SEC. 4. Section 44932 of the Education Code is amended to
7 read:

8 44932. (a) A permanent employee shall not be dismissed
9 except for one or more of the following causes:

- 10 (1) Immoral or unprofessional conduct.
- 11 (2) Commission, aiding, or advocating the commission of acts
12 of criminal syndicalism, as prohibited by Chapter 188 of the
13 Statutes of 1919, or in any amendment thereof.
- 14 (3) Dishonesty.
- 15 (4) Unsatisfactory performance.
- 16 (5) Evident unfitness for service.
- 17 (6) Physical or mental condition unfitting him or her to instruct
18 or associate with children.
- 19 (7) Persistent violation of or refusal to obey the school laws of
20 the state or reasonable regulations prescribed for the government
21 of the public schools by the State Board of Education or by the
22 governing board of the school district employing him or her.
- 23 (8) Conviction of a felony or of any crime involving moral
24 turpitude.
- 25 (9) Violation of Section 51530 or conduct specified in Section
26 1028 of the Government Code.
- 27 (10) Alcoholism or other drug abuse which makes the employee
28 unfit to instruct or associate with children.

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

38 SEC. 5. Section 44939 of the Education Code is amended to
39 read:

1 44939. (a) Upon the filing of written charges, duly signed and
2 verified by the person filing them with the governing board of a
3 school district, or upon a written statement of charges formulated
4 by the governing board, charging a permanent employee of the
5 district with immoral conduct, conviction of a felony or of any
6 crime involving moral turpitude, with incompetency due to mental
7 disability, with willful refusal to perform regular assignments
8 without reasonable cause, as prescribed by reasonable rules and
9 regulations of the employing school district, or with violation of
10 Section 51530, the governing board may, if it deems action
11 necessary, immediately suspend the employee from his or her
12 duties and give notice to him or her of his or her suspension, and
13 that 30 days after service of the notice, he or she will be dismissed,
14 unless he or she demands a hearing.

15 (b) If a permanent employee demands a hearing within the
16 30-day period, he or she shall continue to be paid his or her regular
17 salary during the period of suspension and until the entry of the
18 decision of the Commission on Professional Competence, if and
19 during that time as he or she furnishes to the school district a
20 suitable bond, or other security acceptable to the governing board,
21 as a guarantee that the employee will repay to the school district
22 the amount of salary so paid to him or her during the period of
23 suspension in case the decision of the Commission on Professional
24 Competence is that he or she shall be dismissed. If it is determined
25 that the employee may not be dismissed, the school board shall
26 reimburse the employee for the cost of the bond.

27 SEC. 6. Section 45303 of the Education Code is amended to
28 read:

29 45303. In addition to any causes for suspension or dismissal
30 which are designated by rule of the commission, employees in the
31 classified service shall be suspended and dismissed in the manner
32 provided by law for conduct specified in Section 1028 of the
33 Government Code.

34 SEC. 7. Section 88122 of the Education Code is amended to
35 read:

36 88122. In addition to any causes for suspension or dismissal
37 which are designated by rule of the commission, employees in the
38 classified service shall be suspended and dismissed in the manner
39 provided by law for conduct specified in Section 1028 of the
40 Government Code.

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

2 SEC. 9. Section 1028 of the Government Code is amended to
3 read:

4 1028. It shall be sufficient cause for the dismissal of any public
5 employee when that public employee advocates or is knowingly
6 a member of an organization which during the time of his or her
7 membership he or she knows advocates overthrow of the
8 government of the United States or of any state by force or
9 violence.

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