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## Judiciary Committee

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### HB 2251

**Title:** An act relating to subversive activities.

**Brief Description:** Removing provisions relating to subversive activities.

**Sponsors:** Representatives Fitzgibbon, Pedersen, Ladenburg, Moscoso, Ryu and Kenney.

<p style="text-align: center;"><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• Repeals chapter 9.81 RCW, Washington's subversive activities statute.</li></ul>
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**Hearing Date:** 1/16/12

**Staff:** Oliver Stiefel (786-5793).

**Background:**

*Washington's Subversive Activities Statute.*

In 1951, Washington adopted the Subversive Activities Act (Act), codified at chapter 9.81 RCW. Aimed at combating sedition, the Act makes subversive activities and membership in a subversive organization a felony. Subversive activities are described as acts in which a person knowing and willfully:

- commits; advises, teaches, abets, or advocates another to commit; or aides another in the commission of any act intended to overthrow or alter the constitutional form of government by revolution, force, or violence;
- assists in the formation of, participates in the management of, or contributes to a subversive organization; or
- destroys books or records, or secretes funds of, a subversive organization.

The Act defines a subversive organization as an entity that engages in or teaches about subversive activities. The Communist Party is declared such an organization. A subversive

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person is defined as one who commits, aids in the commission of, or advises or teaches another to commit a subversive activity.

The Act also contains a loyalty oath provision. Washington had adopted a loyalty oath in 1931 for all teachers in public institutions. The State then expanded the requirement to encompass all public employees as part of the Subversive Activities Act. The loyalty oath provision requires all state employees or applicants for state employment to state under oath whether or not he or she is a member of the Communist party or other subversive organization. Refusal to submit to such an oath is cause for an immediate termination.

#### *Constitutionality.*

As a means of thwarting subversive activities during the Cold War era, state and local governments had imposed loyalty oath requirements on government employees as a condition of employment. Fears of the domestic influence of communism led to the adoption of loyalty oaths in forty two states during the 1940s and 50s.

On the heels of other court decisions questioning the constitutionality of loyalty oath statutes, a 1964 Supreme Court (Court) decision, *Baggett v. Bullitt*, found Washington's loyalty oath unconstitutional on grounds of vagueness and over-breadth. While conceding that a state may take measures to safeguard the public from disloyal conduct, the Court noted that such measures must allow public servants to know what is and what is not disloyal. By way of example, the Court described a situation where one could not confidently assert whether her teaching or advising of a member of the Communist Party may at some future date aid the activities of the Party. Because the Washington oath implicated such a situation, the Court held that it violated due process of law as it forbade certain conduct in language that was unduly vague, uncertain, and broad.

In holding the loyalty oath provision unconstitutional, the Court took principal issue with the definitions of subversive person and subversive organizations, and the fact that the statute proscribed acts of subversion in vague terms. To the extent that other provisions of the statute rely on these vague provisions, their constitutionality is questionable as well.

#### **Summary of Bill:**

Washington's subversive activities statute, chapter 9.81 RCW, is repealed.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.