

Council Meeting of
June 17, 2008

Honorable Mayor and Members
of the Council
City Hall
Torrance, California

Members of the Council:

**SUBJECT: SUPPORT FOR ASSEMBLY BILL 2449 –PROTECTION FOR
CALIFORNIA NATIONAL GUARD AND RESERVE MEMBERS**

Expenditure: None

RECOMMENDATION

The City Attorney recommends that Council authorize the City Attorney to send a letter of support to Assemblymember Mike Davis supporting AB 2449.

FUNDING

Not applicable.

BACKGROUND AND ANALYSIS

Recently, the City Attorney received a letter from Assemblymember, Mike Davis requesting that the City of Torrance express its support for AB 2449.

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) is a Federal law designed to minimize the disadvantages that a service member may face when they are absent from their civilian employment while serving in the United States uniformed services. Elements of USERRA are contained in California law and act as further employment protection for service members serving in the United States uniformed services.

Current California law allows only district attorneys to act on behalf of service members who are seeking redress from employers not complying with USERRA provisions. AB 2449 updates and amends the bill's language to allow any "city prosecutor" to act on behalf of California National Guard and Reserve members. The intent is to allow for greater and quicker access for service members and allow them to process their grievances in a timelier manner.

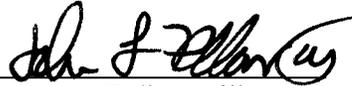
The bill is supported by the following:

California State Commanders Veterans Council
Vietnam Veterans of America
Armed Forces Retirees Association of CA
Air Force Sergeants Association
Military order of the Purple Heart
Jewish War Veterans of the USA

Marina Corps League
The Legion of Valor
City Attorney of Los Angeles
City Attorney of San Diego

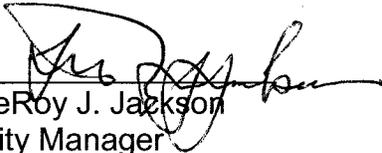
The bill is opposed by the State Department of Finance

Respectfully submitted,



John L. Fellows III
City Attorney

NOTED: *Concur:*



LeRoy J. Jackson
City Manager

- Attachments:
- A. Letter from Mike Davis, Assemblymember, 48th District
 - B. AB 2449

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Assembly
California Legislature



MIKE DAVIS
ASSEMBLYMEMBER, FORTY-EIGHTH DISTRICT

COMMITTEES
APPROPRIATIONS
ARTS, ENTERTAINMENT, SPORTS,
TOURISM, AND INTERNET MEDIA
HUMAN SERVICES
RULES
UTILITIES AND COMMERCE
SELECT COMMITTEES
RAIL TRANSPORTATION CHAIR
PRESERVATION OF CALIFORNIA'S
ENTERTAINMENT INDUSTRY

The Honorable John Fellows III,

I am writing to respectfully ask you to consider supporting AB 2449.

AB 2449 is a bill that I am authoring and is sponsored by the California State Commanders Veterans Council.

AB 2449 is intended to streamline the process for California National Guard and Reserve members and allow any prosecuting city attorney to act on their behalf. This would allow for greater and quicker access for service members and allow them to process their grievances in a timelier manner. This bill is another step in helping those serving the United States uniformed services by protecting their employment rights under the Federal USERRA law.

Attached for your consideration is a background sheet.

We look forward to hearing from you soon, as the bill is scheduled to be heard on June 10th, 2008 in the Senate Judiciary Committee. Your prompt attention to this request would be greatly appreciated.

Do not hesitate to call me or my Legislative Assistant Hervecy Taylor at (916) 319-2048, if we can provide more information to you.

Sincerely,

MIKE DAVIS

Assemblymember, 48th District

BILL NUMBER: AB 2449 AMENDED
BILL TEXT

AMENDED IN SENATE MAY 27, 2008
AMENDED IN SENATE MAY 14, 2008
AMENDED IN ASSEMBLY APRIL 2, 2008

INTRODUCED BY Assembly Member Davis
(Coauthors: Assembly Members DeVore and Portantino)

FEBRUARY 21, 2008

An act to amend Section 395.06 of the Military and Veterans Code, relating to military and veterans.

LEGISLATIVE COUNSEL'S DIGEST

AB 2449, as amended, Davis. Military service: privileges: job protection.

Existing law provides protections for members of the National Guard ordered into active state service by the Governor or active federal service by the President of the United States for emergency purposes, and for reservists called to active duty, as specified.

Existing law provides protections for these persons during their period of military service with respect to their private employment rights upon return from service, and authorizes a district attorney of the county in which an employer maintains a place of business to act as an attorney on behalf of a service member in any action, as specified, against an employer who fails or refuses to comply with those provisions.

This bill would expand those provisions by additionally allowing any ~~prosecuting city attorney~~ *city prosecutor* of the city in which an employer maintains a place of business to act as an attorney on behalf of a service member in any action, as specified, against an employer who fails or refuses to comply with those provisions.

By adding to the duties of ~~prosecuting city attorneys~~ *city prosecutors*, this bill would impose a state-mandated local program.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 395.06 of the Military and Veterans Code is amended to read:

395.06. (a) Every officer and enlisted member of the California National Guard who, in order to undertake active military duty in the service of the state when the Governor has issued a proclamation of

a state of insurrection pursuant to Section 143, or a proclamation of a state of extreme emergency or when the California National Guard is on active duty pursuant to Section 146, or a service member called to active service or duty under Chapter 7.5 (commencing with Section 400), has left a position, other than a temporary position, in private employment, receives a certificate of satisfactory service in the California National Guard or an equivalent thereof, is still qualified to perform the duties of that position, and makes application within 40 days after release from service shall be considered as on leave of absence during that period and shall be restored by the former employer to the former position or to a position of similar seniority, status, and pay without loss of retirement or other benefits, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so, and shall not be discharged from the position without cause within one year after being restored to the position.

(b) Every officer and enlisted member who has left a part-time position in private employment for purposes of service pursuant to subdivision (a), receives a certificate of satisfactory service in the California National Guard or an equivalent thereof, is still qualified to perform the duties of that position, and makes application within five days after release from service shall be considered as on leave of absence during that period and shall be restored by the former employer to the former position, or to a position of similar seniority, status, and pay, if any exists, and shall not be discharged from the position without cause within one year after being restored to the position.

(c) If any employer fails or refuses to comply with this section, the superior court of the county in which the employer maintains a place of business may, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to the benefits of this section, specifically require the employer to comply with this section and compensate the person for any loss of wages or benefits suffered by reason of the employer's unlawful action. The court shall order a speedy hearing and shall advance it on the calendar. Upon application to the district attorney of the county in which the employer maintains a place of business or to any ~~prosecuting city attorney~~ city prosecutor of the city in which the employer maintains a place of business by any person claiming to be entitled to the benefits of this section, the district attorney or any ~~prosecuting city attorney~~ city prosecutor, if reasonably satisfied that the person is entitled to these benefits, shall appear and act as attorney for the person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and the prosecution thereof to specifically require the employer to comply with this section. No fees or court costs are required to be paid by the person applying for these benefits.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.