

AMENDED IN ASSEMBLY APRIL 15, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 583

Introduced by Assembly Member Chávez

February 24, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 583, as amended, Chávez. Military service: employment protections.

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 requires the 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, if the district attorney is reasonably satisfied that the person is entitled to these benefits.

This bill would *reorganize these provisions, and would* extend these protections to members of the National Guard of other states who are called to military service by their respective Governors or by the President of the United States, and who have left a position in private

employment in California. Because this bill would expand the duties of district attorneys, 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:

1 SECTION 1. Section 395.06 of the Military and Veterans Code
2 is amended to read:
3 ~~395.06.—(a) (1) Every officer and enlisted member of the~~
4 ~~California National Guard who, in order to undertake active~~
5 ~~military duty in the service of the state when the Governor has~~
6 ~~issued a proclamation of a state of insurrection pursuant to Section~~
7 ~~143, or a proclamation of a state of extreme emergency or when~~
8 ~~the California National Guard is on active duty pursuant to Section~~
9 ~~146, or a service member called to active service or duty under~~
10 ~~Chapter 7.5 (commencing with Section 400), has left a position,~~
11 ~~other than a temporary position, in private employment, receives~~
12 ~~a certificate of satisfactory service in the California National Guard~~
13 ~~or an equivalent thereof, is still qualified to perform the duties of~~
14 ~~that position, and makes application within 40 days after release~~
15 ~~from service shall be considered as on leave of absence during that~~
16 ~~period and shall be restored by the former employer to the former~~
17 ~~position or to a position of similar seniority, status, and pay without~~
18 ~~loss of retirement or other benefits, unless the employer's~~
19 ~~circumstances have so changed as to make it impossible or~~
20 ~~unreasonable to do so, and shall not be discharged from the position~~
21 ~~without cause within one year after being restored to the position.~~
22 ~~(2) Every officer and enlisted member of the National Guard~~
23 ~~of a state other than California who, in order to undertake active~~
24 ~~military duty in the service of that state when the Governor of that~~
25 ~~state has issued a proclamation of a state of insurrection, or a~~

1 proclamation of a state of extreme emergency or when the National
2 Guard of that state is on active duty, or a service member called
3 to active service or duty by the Governor of that state or into active
4 federal service by the President of the United States pursuant to
5 Title 10 or 32 of the United States Code, has left a position, other
6 than a temporary position, in private employment in California,
7 receives a certification of satisfactory service in the National Guard
8 of another state or an equivalent thereof, is still qualified to perform
9 the duties of that position, and makes application within 40 days
10 after release from service shall be considered as on leave of absence
11 during that period and shall be restored by the former employer
12 to the former position or to a position of similar seniority, status,
13 and pay without loss of retirement or other benefits, unless the
14 employer's circumstances have so changed as to make it impossible
15 or unreasonable to do so, and shall not be discharged from the
16 position without cause within one year after being restored to the
17 position.

18 (b) ~~Every officer and enlisted member of the California National~~
19 ~~Guard, or the National Guard of a state other than California, who~~
20 ~~has left a part-time position in private employment for purposes~~
21 ~~of service pursuant to paragraph (1) or (2) of subdivision (a),~~
22 ~~receives a certificate of satisfactory service in the California~~
23 ~~National Guard, or the National Guard of another state or an~~
24 ~~equivalent thereof, is still qualified to perform the duties of that~~
25 ~~position, and makes application within five days after release from~~
26 ~~service shall be considered as on leave of absence during that~~
27 ~~period and shall be restored by the former employer to the former~~
28 ~~position, or to a position of similar seniority, status, and pay, if~~
29 ~~any exists, and shall not be discharged from the position without~~
30 ~~cause within one year after being restored to the position.~~

31 395.06. (a) *A private employer shall consider a former*
32 *employee who meets the requirements of subdivision (b) as having*
33 *been on a leave of absence during any period of the former*
34 *employee's active service in the National Guard of any state, and*
35 *is subject to both of the following:*

36 (1) *If the former position was a full-time position, and not a*
37 *temporary position, the former employer shall restore the former*
38 *employee to the former position or to a position of similar seniority,*
39 *status, and pay without loss of retirement or other benefits, unless*
40 *the employer's circumstances have so changed as to make it*

1 *impossible or unreasonable to do so, and shall not discharge the*
2 *former employee from the position without cause within one year*
3 *after restoring him or her to the position.*

4 *(2) If the position was a part-time position, and not a temporary*
5 *position, the former employer shall restore the former employee*
6 *to the former position, or to a position of similar seniority, status,*
7 *and pay, if any exists, and shall not discharge the former employee*
8 *from the position without cause within one year after restoring*
9 *him or her to the position.*

10 *(b) To be eligible for the employment protections specified in*
11 *paragraph (1), the former employee shall meet all of the following*
12 *requirements:*

13 *(1) He or she is an officer or enlisted member of the National*
14 *Guard of any state.*

15 *(2) He or she was called to active duty by the Governor of the*
16 *state where he or she serves in the National Guard or by the*
17 *President of the United States.*

18 *(3) He or she received a certificate of satisfactory service in the*
19 *National Guard of the state where he or she serves in the National*
20 *Guard.*

21 *(4) He or she is still qualified to perform the duties of the*
22 *position.*

23 *(5) If he or she left a full-time position, he or she made*
24 *application for reemployment within 40 days of being released*
25 *from service. If he or she left part-time employment, he or she*
26 *made application for reemployment within five days of being*
27 *released from service.*

28 *(c) If any employer fails or refuses to comply with this section,*
29 *the superior court of the county in which the employer maintains*
30 *a place of business may, upon the filing of a motion, petition, or*
31 *other appropriate pleading by the person entitled to the benefits*
32 *of this section, specifically require the employer to comply with*
33 *this section and compensate the person for any loss of wages or*
34 *benefits suffered by reason of the employer's unlawful action. The*
35 *court shall order a speedy hearing and shall advance it on the*
36 *calendar. Upon application to the district attorney of the county*
37 *in which the employer maintains a place of business by any person*
38 *claiming to be entitled to the benefits of this section, the district*
39 *attorney, if reasonably satisfied that the person is entitled to these*
40 *benefits, shall appear and act as attorney for the person in the*

1 amicable adjustment of the claim or in the filing of any motion,
2 petition, or other appropriate pleading and the prosecution thereof
3 to specifically require the employer to comply with this section.
4 No fees or court costs are required to be paid by the person
5 applying for these benefits.

6 (d) Upon application to the city prosecutor of the city in which
7 the employer maintains a place of business by any person claiming
8 to be entitled to the benefits of this section, the city prosecutor, if
9 reasonably satisfied that the person is entitled to these benefits,
10 may appear and act as attorney for the person in the amicable
11 adjustment of the claim or in the filing of any motion, petition, or
12 other appropriate pleading and the prosecution thereof to
13 specifically require the employer to comply with this section. No
14 fees or court costs are required to be paid by the person applying
15 for these benefits.

16 SEC. 2. If the Commission on State Mandates determines that
17 this act contains costs mandated by the state, reimbursement to
18 local agencies and school districts for those costs shall be made
19 pursuant to Part 7 (commencing with Section 17500) of Division
20 4 of Title 2 of the Government Code.