

AMENDED IN ASSEMBLY APRIL 26, 2010

AMENDED IN ASSEMBLY APRIL 7, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2613**

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**Introduced by Assembly Member Beall**

February 19, 2010

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An act to amend ~~Sections 25845 and~~ *Section* 53069.4 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2613, as amended, Beall. Local government: fines and penalties: assessments.

Existing law authorizes the legislative body of a local agency to make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty, as specified.

This bill would authorize a ~~local agency~~ *city, county, or city and county* to, after notice and public hearing, specially assess any fines or penalties not paid after demand by the ~~local agency~~ *city, county, or city and county* against real property owned by the person owing those fines or penalties. The bill would provide that the assessment may be collected at the same time and in the same manner as ordinary county taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as are provided for ordinary county taxes, and would authorize the local agency to record a lien against the property. This bill would authorize a ~~local agency~~ *city, county, or city and county* to appoint a hearing officer to hear and decide issues regarding ordinance violations and the imposition of administrative fines and penalties.

Existing law authorizes a board of supervisors to delegate its powers and duties to establish a nuisance abatement procedure to a hearing officer appointed pursuant to specific statutory requirements regarding a county office of county hearing officer.

This bill would authorize a board of supervisors, with respect to nuisance abatement procedures, to appoint a hearing officer without complying with existing statutory requirements regarding county hearing officer.

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

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

1 SECTION 1. ~~Section 25845 of the Government Code is~~  
2 ~~amended to read:~~

3 25845. (a) ~~The board of supervisors, by ordinance, may~~  
4 ~~establish a procedure for the abatement of a nuisance. The~~  
5 ~~ordinance shall, at a minimum, provide that the owner of the parcel,~~  
6 ~~and anyone known to the board of supervisors to be in possession~~  
7 ~~of the parcel, be given notice of the abatement proceeding and an~~  
8 ~~opportunity to appear before the board of supervisors and be heard~~  
9 ~~prior to the abatement of the nuisance by the county. However,~~  
10 ~~nothing in this section prohibits the summary abatement of a~~  
11 ~~nuisance upon order of the board of supervisors, or upon order of~~  
12 ~~any other county officer authorized by law to summarily abate~~  
13 ~~nuisances, if the board or officer determines that the nuisance~~  
14 ~~constitutes an immediate threat to public health or safety.~~

15 (b) ~~In any action to abate a nuisance, whether by administrative~~  
16 ~~proceedings, judicial proceedings, or summary abatement, the~~  
17 ~~owner of the parcel upon which the nuisance is found to exist shall~~  
18 ~~be liable for all costs of abatement incurred by the county,~~  
19 ~~including, but not limited to, administrative costs, and any and all~~  
20 ~~costs incurred in the physical abatement of the nuisance. Recovery~~  
21 ~~of costs pursuant to this section shall be in addition to and shall~~  
22 ~~not limit any prevailing party's right to recover costs pursuant to~~  
23 ~~Sections 1032 and 1033.5 of the Code of Civil Procedure or any~~  
24 ~~other provision of law.~~

25 (c) ~~A county may, by ordinance, provide for the recovery of~~  
26 ~~attorney's fees in any action, administrative proceeding, or special~~  
27 ~~proceeding to abate a nuisance. If the ordinance provides for the~~

1 ~~recovery of attorney's fees, it shall provide for recovery of~~  
2 ~~attorney's fees by the prevailing party, rather than limiting recovery~~  
3 ~~of attorney's fees to the county if it prevails. The ordinance may~~  
4 ~~limit recovery of attorney's fees by the prevailing party to those~~  
5 ~~individual actions or proceedings in which the county elects, at~~  
6 ~~the initiation of that individual action or proceeding, to seek~~  
7 ~~recovery of its own attorney's fees. In no action, administrative~~  
8 ~~proceeding, or special proceeding shall an award of attorney's fees~~  
9 ~~to a prevailing party exceed the amount of reasonable attorney's~~  
10 ~~fees incurred by the county in the action or proceeding.~~

11 (d) ~~If the owner fails to pay the costs of the abatement upon~~  
12 ~~demand by the county, the board of supervisors may order the cost~~  
13 ~~of the abatement to be specially assessed against the parcel. The~~  
14 ~~assessment may be collected at the same time and in the same~~  
15 ~~manner as ordinary county taxes are collected, and shall be subject~~  
16 ~~to the same penalties and the same procedure and sale in case of~~  
17 ~~delinquency as are provided for ordinary county taxes. All laws~~  
18 ~~applicable to the levy, collection, and enforcement of county taxes~~  
19 ~~are applicable to the special assessment.~~

20 (e) ~~If the board of supervisors specially assesses the cost of the~~  
21 ~~abatement against the parcel, the board also may cause a notice of~~  
22 ~~abatement lien to be recorded. The notice shall, at a minimum,~~  
23 ~~identify the record owner or possessor of property, set forth the~~  
24 ~~last known address of the record owner or possessor, set forth the~~  
25 ~~date upon which abatement of the nuisance was ordered by the~~  
26 ~~board of supervisors and the date the abatement was complete,~~  
27 ~~and include a description of the real property subject to the lien~~  
28 ~~and the amount of the abatement cost.~~

29 (f) ~~However, if the board of supervisors does not cause the~~  
30 ~~recording of a notice of abatement lien pursuant to subdivision~~  
31 ~~(e), and any real property to which the costs of abatement relates~~  
32 ~~has been transferred or conveyed to a bona fide purchaser for value,~~  
33 ~~or a lien on a bona fide encumbrancer for value has been created~~  
34 ~~and attaches to that property, prior to the date on which the first~~  
35 ~~installment of county taxes would become delinquent, then the~~  
36 ~~cost of abatement shall not result in a lien against that real property~~  
37 ~~but shall be transferred to the unsecured roll for collection.~~

38 (g) ~~Recording of a notice of abatement lien pursuant to~~  
39 ~~subdivision (e) has the same effect as recording of an abstract~~  
40 ~~of a money judgment recorded pursuant to Article 2 (commencing~~

1 with Section 697.310) of Chapter 2 of Division 2 of Title 9 of Part  
 2 2 of the Code of Civil Procedure. The lien created has the same  
 3 priority as a judgment lien on real property and continues in effect  
 4 until released. Upon order of the board of supervisors, or any  
 5 county officer authorized by the board of supervisors to act on its  
 6 behalf, an abatement lien created under this section may be released  
 7 or subordinated in the same manner as a judgment lien on real  
 8 property may be released or subordinated.

9 (h) The board of supervisors may delegate the hearing required  
 10 by subdivision (a), prior to abatement of a public nuisance, to a  
 11 hearing board designated by the board of supervisors. The hearing  
 12 board shall make a written recommendation to the board of  
 13 supervisors. The board of supervisors may adopt the  
 14 recommendation without further notice of hearing, or may set the  
 15 matter for a de novo hearing before the board of supervisors.

16 (i) Notwithstanding Chapter 14 (commencing with Section  
 17 27720) of Part 3 of Division 1 of Title 3, the board of supervisors  
 18 may, by ordinance, delegate the powers and duties specified by  
 19 this section to one or more hearing officers.

20 **SEC. 2.**

21 *SECTION 1.* Section 53069.4 of the Government Code is  
 22 amended to read:

23 53069.4. (a) (1) The legislative body of a local agency, as the  
 24 term "local agency" is defined in Section 54951 city, county, or  
 25 city and county, may by ordinance make any violation of any  
 26 ordinance enacted by the local agency city, county, or city and  
 27 county subject to an administrative fine or penalty. The local  
 28 agency city, county, or city and county shall set forth by ordinance  
 29 the administrative procedures that shall govern the imposition,  
 30 enforcement, collection, and administrative review by the local  
 31 agency city, county, or city and county of those administrative  
 32 fines or penalties. Where the violation would otherwise be an  
 33 infraction, the administrative fine or penalty shall not exceed the  
 34 maximum fine or penalty amounts for infractions set forth in  
 35 subdivision (b) of Section 25132 and subdivision (b) of Section  
 36 36900.

37 (2) (A) The administrative procedures set forth by ordinance  
 38 adopted by the local agency city, county, or city and county  
 39 pursuant to paragraph (1) shall provide for a reasonable period of  
 40 time, as specified in the ordinance, for a person responsible for a

1 continuing violation to correct or otherwise remedy the violation  
2 prior to the imposition of administrative fines or penalties, when  
3 the violation pertains to building, plumbing, electrical, or other  
4 similar structural or zoning issues, that do not create an immediate  
5 danger to health or safety.

6 ~~(B) Notwithstanding~~ Pursuant to Chapter 14 (commencing with  
7 Section 27720) of Part 3 of Division 1 of Title 3, the administrative  
8 procedures adopted by ordinance pursuant to paragraph (1) may  
9 authorize the appointment of one or more hearing officers to hear  
10 and decide issues regarding ordinance violations and the imposition  
11 of administrative fines or penalties.

12 (C) ~~A local agency~~ *city, county, or city and county* may, by  
13 ordinance, combine the administrative procedures adopted pursuant  
14 to paragraph (1) with nuisance abatement procedures adopted by  
15 ordinance pursuant to Section 25845.

16 (3) (A) If the owner of real property fails to pay ~~the~~ fines or  
17 penalties upon demand by ~~the local agency, the local agency city,~~  
18 *county, or city and county, the city, county, or city and county* may,  
19 after notice and public hearing, order the fines or penalties to be  
20 specially assessed against the parcel *if the fines or penalties are*  
21 *related to ordinance violations on the real property upon which*  
22 *the fines or penalties would be specially assessed.* The assessment  
23 may be collected at the same time and in the same manner as  
24 ordinary county taxes are collected, and shall be subject to the  
25 same penalties and the same procedure and sale in case of  
26 delinquency as are provided for ordinary county taxes. All laws  
27 applicable to the levy, collection, and enforcement of county taxes  
28 are applicable to the special assessment.

29 (B) ~~If the local agency~~ *a city, county, or city and county* specially  
30 assesses the cost of ~~the abatement~~ *administrative fines or penalties*  
31 against the parcel, ~~the agency~~ *city, county, or city and county* also  
32 may cause a notice of abatement lien to be recorded. The notice  
33 shall, at a minimum, identify the record owner or possessor of  
34 property, set forth the last known address of the record owner or  
35 possessor, set forth the date upon which assessment was ordered  
36 by ~~the local agency~~ *city, county, or city and county*, and include a  
37 description of the real property subject to the lien and the amount  
38 of the lien.

39 (C) If ~~the local agency~~ *city, county, or city and county* does not  
40 cause the recordation of a notice of lien pursuant to subdivision

1 (B), and any real property on which the assessment has been  
2 imposed has been transferred or conveyed to a bona fide purchaser  
3 for value, or a lien on a bona fide encumbrancer for value has been  
4 created and attaches to that property, prior to the date on which  
5 the first installment of county taxes would become delinquent,  
6 then the assessment shall not result in a lien against that real  
7 property but shall be transferred to the unsecured roll for collection.

8 (D) Recordation of a notice of ~~abatement~~ lien pursuant to  
9 subparagraph (B) has the same effect as recordation of an abstract  
10 of a money judgment recorded pursuant to Article 2 (commencing  
11 with Section 697.310) of Chapter 2 of Division 2 of Title 9 of Part  
12 2 of the Code of Civil Procedure. The lien created has the same  
13 priority as a judgment lien on real property and continues in effect  
14 until released. Upon order of the ~~local agency city, county, or city~~  
15 ~~and county~~, or any officer authorized by the ~~local agency city,~~  
16 ~~county, or city and county~~ to act on its behalf, ~~an abatement~~ a lien  
17 created under this section may be released or subordinated in the  
18 same manner as a judgment lien on real property may be released  
19 or subordinated.

20 (b) (1) Notwithstanding the provisions of Section 1094.5 or  
21 1094.6 of the Code of Civil Procedure, within 20 days after service  
22 of the final administrative order or decision of the ~~local agency~~  
23 ~~city, county, or city and county~~ is made pursuant to an ordinance  
24 enacted in accordance with this section regarding the imposition,  
25 enforcement or collection of the administrative fines or penalties,  
26 a person contesting that final administrative order or decision may  
27 seek review by filing an appeal to be heard by the superior court,  
28 where the same shall be heard de novo, except that the contents  
29 of the ~~local agency's city's, county's, or city and county's~~ file in  
30 the case shall be received in evidence. A proceeding under this  
31 subdivision is a limited civil case. A copy of the document or  
32 instrument of the ~~local agency city, county, or city and county~~  
33 providing notice of the violation and imposition of the  
34 administrative fine or penalty shall be admitted into evidence as  
35 prima facie evidence of the facts stated therein. A copy of the  
36 notice of appeal shall be served in person or by first-class mail  
37 upon the local agency by the contestant.

38 (2) The fee for filing the notice of appeal shall be as specified  
39 in Section 70615. The court shall request that the ~~local agency's~~  
40 ~~city's, county's, or city and county's~~ file on the case be forwarded

1 to the court, to be received within 15 days of the request. The court  
2 shall retain the fee specified in Section 70615 regardless of the  
3 outcome of the appeal. If the court finds in favor of the contestant,  
4 the amount of the fee shall be reimbursed to the contestant by the  
5 ~~local agency~~ *city, county, or city and county*. Any deposit of the  
6 fine or penalty shall be refunded by the ~~local agency~~ *city, county,*  
7 *or city and county* in accordance with the judgment of the court.

8 (3) The conduct of the appeal under this section is a subordinate  
9 judicial duty that may be performed by traffic trial commissioners  
10 and other subordinate judicial officials at the direction of the  
11 presiding judge of the court.

12 (c) If no notice of appeal of the ~~local agency's~~ *city's, county's,*  
13 *or city and county's* final administrative order or decision is filed  
14 within the period set forth in this section, the order or decision  
15 shall be deemed confirmed.

16 (d) If the fine or penalty has not been deposited and the decision  
17 of the court is against the contestant, the ~~local agency~~ *city, county,*  
18 *or city and county* may proceed to collect the penalty pursuant to  
19 the procedures set forth in its ordinance.