

Assembly Bill No. 2613

Passed the Assembly August 23, 2010

Chief Clerk of the Assembly

Passed the Senate August 20, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 53069.4 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2613, 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 city, county, or city and county to, after notice and public hearing, specially assess any fines or penalties not paid after demand by the city, county, or city and county against real property owned by the person owing those fines or penalties where the fines or penalties are related to ordinance violations on the real property upon which the fines or penalties would be specially assessed, and the ordinance violations constitute a public nuisance or threat to public health and safety. 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 city, county, or city and county to record a lien against the property. This bill would authorize a local agency to appoint a hearing officer to hear and decide issues regarding ordinance violations and the imposition of administrative fines and penalties.

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

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

53069.4. (a) (1) The legislative body of a local agency, as the term "local agency" is defined in Section 54951, may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by ordinance the administrative procedures that shall

govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties. Where the violation would otherwise be an infraction, the administrative fine or penalty shall not exceed the maximum fine or penalty amounts for infractions set forth in subdivision (b) of Section 25132 and subdivision (b) of Section 36900.

(2) (A) The administrative procedures set forth by ordinance adopted by the local agency pursuant to paragraph (1) shall provide for a reasonable period of time, as specified in the ordinance, for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety.

(B) Pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 1 of Title 3, or any other applicable law, the administrative procedures adopted by ordinance pursuant to paragraph (1) may authorize the appointment of one or more hearing officers to hear and decide issues regarding ordinance violations and the imposition of administrative fines or penalties.

(C) A city, county, or city and county may, by ordinance, combine the administrative procedures adopted pursuant to paragraph (1) with nuisance abatement procedures adopted by ordinance pursuant to Sections 25845, 38773.1, and 38773.5.

(3) (A) If the owner of real property fails to pay fines or penalties upon demand by a city, county, or city and county, the city, county, or city and county may, after notice and public hearing, order the fines or penalties to be specially assessed against the parcel if the fines or penalties are related to ordinance violations on the real property upon which the fines or penalties would be specially assessed and the ordinance violations constitute a public nuisance or threat to public health and safety. 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. All laws applicable to the levy, collection, and enforcement of county taxes are applicable to the special assessment. The assessment does not constitute an assessment lien pursuant to Part 1 (commencing with Section 53930) of Division 2. The assessment does not constitute a lien

on real property until a notice of lien is recorded pursuant to this section.

(B) If a city, county, or city and county specially assesses the cost of the administrative fines or penalties against the parcel, the city, county, or city and county also may cause a notice of lien to be recorded to perfect the lien. The notice shall, at a minimum, identify the assessor's parcel number and record owner, set forth the last known address of the record owner, set forth the date upon which assessment was ordered by the city, county, or city and county, and the amount of the lien.

(C) Recordation of a notice of lien pursuant to subparagraph (B) has the same effect as recordation of an abstract of a money judgment recorded pursuant to Article 2 (commencing with Section 697.310) of Chapter 2 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure. The lien created against the parcel has the same force, effect, and priority as a judgment lien on real property. Upon order of the city, county, or city and county, or any officer authorized by the city, county, or city and county to act on its behalf, a lien created under this section may be released or subordinated in the same manner as a judgment lien on real property may be released or subordinated.

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

(2) The fee for filing the notice of appeal shall be as specified in Section 70615. The court shall request that the local agency's file on the case be forwarded to the court, to be received within

15 days of the request. The court shall retain the fee specified in Section 70615 regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the local agency. Any deposit of the fine or penalty shall be refunded by the local agency in accordance with the judgment of the court.

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

(c) If no notice of appeal of the local agency's final administrative order or decision is filed within the period set forth in this section, the order or decision shall be deemed confirmed.

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

Approved _____, 2010

Governor