

AMENDED IN SENATE JUNE 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 129

Introduced by Assembly Member Beall

January 11, 2011

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

LEGISLATIVE COUNSEL’S DIGEST

AB 129, 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 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.

This bill would provide that the powers given to the legislative body of a city, county, or city and county under these provisions are in addition to any other powers of a city, county, or city and county under its charter.

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 53069.4 of the Government Code is
2 amended to read:

3 53069.4. (a) (1) The legislative body of a local agency, as the
4 term “local agency” is defined in Section 54951, may by ordinance
5 make any violation of any ordinance enacted by the local agency
6 subject to an administrative fine or penalty. The local agency shall
7 set forth by ordinance the administrative procedures that shall
8 govern the imposition, enforcement, collection, and administrative
9 review by the local agency of those administrative fines or
10 penalties. Where the violation would otherwise be an infraction,
11 the administrative fine or penalty shall not exceed the maximum
12 fine or penalty amounts for infractions set forth in subdivision (b)
13 of Section 25132 and subdivision (b) of Section 36900. *The powers*
14 *given to the legislative body of a city, county, or city and county*
15 *under this section are in addition to any other powers of a city,*
16 *county, or city and county under its charter.*

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

25 (B) Pursuant to Chapter 14 (commencing with Section 27720)
26 of Part 3 of Division 1 of Title 3, or other applicable law, the
27 administrative procedures adopted by ordinance pursuant to
28 paragraph (1) may authorize the appointment of one or more

1 hearing officers to hear and decide issues regarding ordinance
2 violations and the imposition of administrative fines or penalties.

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

7 (3) (A) If the owner of real property fails to pay fines or
8 penalties upon demand by a city, county, or city and county, the
9 city, county, or city and county may, after notice and public
10 hearing, order the fines or penalties to be specially assessed against
11 the parcel if the fines or penalties are related to ordinance violations
12 on the real property upon which the fines or penalties would be
13 specially assessed and the ordinance violations constitute a public
14 nuisance or threat to public health and safety. The assessment may
15 be collected at the same time and in the same manner as ordinary
16 county taxes are collected, and shall be subject to the same
17 penalties and the same procedure and sale in case of delinquency
18 as are provided for ordinary county taxes. All laws applicable to
19 the levy, collection, and enforcement of county taxes are applicable
20 to the special assessment. ~~The assessment does not constitute an~~
21 ~~assessment lien pursuant to Part 1 (commencing with Section~~
22 ~~53930) of Division 2 assessment, except that the special assessment~~
23 ~~is not subject to the priority for special assessment liens provided~~
24 ~~for in Article 13 (commencing with Section 53930) of Chapter 4~~
25 ~~of Part 1 of Division 2.~~ The assessment does not constitute a lien
26 on real property until a notice of lien is recorded pursuant to this
27 section.

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

36 (C) Recordation of a notice of lien pursuant to subparagraph
37 (B) has the same effect as recordation of an abstract of a money
38 judgment recorded pursuant to Article 2 (commencing with Section
39 697.310) of Chapter 2 of Division 2 of Title 9 of Part 2 of the Code
40 of Civil Procedure. The lien created against the parcel has the same

1 force, effect, and priority as a judgment lien on real property. Upon
2 order of the city, county, or city and county, or any officer
3 authorized by the city, county, or city and county to act on its
4 behalf, a lien created under this section may be released or
5 subordinated in the same manner as a judgment lien on real
6 property may be released or subordinated.

7 (b) (1) Notwithstanding the provisions of Section 1094.5 or
8 1094.6 of the Code of Civil Procedure, within 20 days after service
9 of the final administrative order or decision of the local agency is
10 made pursuant to an ordinance enacted in accordance with this
11 section regarding the imposition, enforcement, or collection of the
12 administrative fines or penalties, a person contesting that final
13 administrative order or decision may seek review by filing an
14 appeal to be heard by the superior court, where the same shall be
15 heard de novo, except that the contents of the local agency's file
16 in the case shall be received in evidence. A proceeding under this
17 subdivision is a limited civil case. A copy of the document or
18 instrument of the local agency providing notice of the violation
19 and imposition of the administrative fine or penalty shall be
20 admitted into evidence as prima facie evidence of the facts stated
21 therein. A copy of the notice of appeal shall be served in person
22 or by first-class mail upon the local agency by the contestant.

23 (2) The fee for filing the notice of appeal shall be as specified
24 in Section 70615. The court shall request that the local agency's
25 file on the case be forwarded to the court, to be received within
26 15 days of the request. The court shall retain the fee specified in
27 Section 70615 regardless of the outcome of the appeal. If the court
28 finds in favor of the contestant, the amount of the fee shall be
29 reimbursed to the contestant by the local agency. Any deposit of
30 the fine or penalty shall be refunded by the local agency in
31 accordance with the judgment of the court.

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

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

39 (d) If the fine or penalty has not been deposited and the decision
40 of the court is against the contestant, the local agency may proceed

- 1 to collect the penalty pursuant to the procedures set forth in its
- 2 ordinance.

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