

AMENDED IN SENATE AUGUST 16, 2011

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, *repeal, and add* 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, *until January 1, 2020*, 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. *This bill would require a city, county, or city and county to comply with certain notice requirements.* 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, *until January 1, 2020*, 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 *or any other legal authority*.

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 *or any other legal*
 17 *authority*.
 18 (2) (A) The administrative procedures set forth by ordinance
 19 adopted by the local agency pursuant to paragraph (1) shall provide
 20 for a reasonable period of time, as specified in the ordinance, for
 21 a person responsible for a continuing violation to correct or
 22 otherwise remedy the violation prior to the imposition of
 23 administrative fines or penalties, when the violation pertains to
 24 building, plumbing, electrical, or other similar structural or zoning
 25 issues, that do not create an immediate danger to health or safety.
 26 (B) Pursuant to Chapter 14 (commencing with Section 27720)
 27 of Part 3 of Division 1 of Title 3, or other applicable law, the

1 administrative procedures adopted by ordinance pursuant to
2 paragraph (1) may authorize the appointment of one or more
3 hearing officers to hear and decide issues regarding ordinance
4 violations and the imposition of administrative fines or penalties.

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

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

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

1 (C) Recordation of a notice of lien pursuant to subparagraph
2 (B) has the same effect as recordation of an abstract of a money
3 judgment recorded pursuant to Article 2 (commencing with Section
4 697.310) of Chapter 2 of Division 2 of Title 9 of Part 2 of the Code
5 of Civil Procedure. The lien created against the parcel has the same
6 force, effect, and priority as a judgment lien on real property. Upon
7 order of the city, county, or city and county, or any officer
8 authorized by the city, county, or city and county to act on its
9 behalf, a lien created under this section may be released or
10 subordinated in the same manner as a judgment lien on real
11 property may be released or subordinated.

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

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

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

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

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

8 (e) *This section shall remain in effect only until January 1, 2020,*
9 *and as of that date is repealed, unless a later enacted statute, that*
10 *is enacted before January 1, 2020, deletes or extends that date.*

11 SEC. 2. *Section 53069.4 is added to the Government Code, to*
12 *read:*

13 53069.4. (a) (1) *The legislative body of a local agency, as the*
14 *term “local agency” is defined in Section 54951, may by ordinance*
15 *make any violation of any ordinance enacted by the local agency*
16 *subject to an administrative fine or penalty. The local agency shall*
17 *set forth by ordinance the administrative procedures that shall*
18 *govern the imposition, enforcement, collection, and administrative*
19 *review by the local agency of those administrative fines or*
20 *penalties. Where the violation would otherwise be an infraction,*
21 *the administrative fine or penalty shall not exceed the maximum*
22 *fine or penalty amounts for infractions set forth in subdivision (b)*
23 *of Section 25132 and subdivision (b) of Section 36900.*

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

33 (b) (1) *Notwithstanding the provisions of Section 1094.5 or*
34 *1094.6 of the Code of Civil Procedure, within 20 days after service*
35 *of the final administrative order or decision of the local agency is*
36 *made pursuant to an ordinance enacted in accordance with this*
37 *section regarding the imposition, enforcement or collection of the*
38 *administrative fines or penalties, a person contesting that final*
39 *administrative order or decision may seek review by filing an*
40 *appeal to be heard by the superior court, where the same shall be*

1 *heard de novo, except that the contents of the local agency's file*
2 *in the case shall be received in evidence. A proceeding under this*
3 *subdivision is a limited civil case. A copy of the document or*
4 *instrument of the local agency providing notice of the violation*
5 *and imposition of the administrative fine or penalty shall be*
6 *admitted into evidence as prima facie evidence of the facts stated*
7 *therein. A copy of the notice of appeal shall be served in person*
8 *or by first-class mail upon the local agency by the contestant.*

9 (2) *The fee for filing the notice of appeal shall be as specified*
10 *in Section 70615. The court shall request that the local agency's*
11 *file on the case be forwarded to the court, to be received within*
12 *15 days of the request. The court shall retain the fee specified in*
13 *Section 70615 regardless of the outcome of the appeal. If the court*
14 *finds in favor of the contestant, the amount of the fee shall be*
15 *reimbursed to the contestant by the local agency. Any deposit of*
16 *the fine or penalty shall be refunded by the local agency in*
17 *accordance with the judgment of the court.*

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

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

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

29 (e) *This section shall become operative on January 1, 2020.*