

Date of Hearing: May 10, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 556 (Limón) – As Amended April 24, 2017

SUBJECT: County ordinances: violations: fines.

SUMMARY: Increases the fine amounts that counties may assess for a violation of an event permit requirement that is an infraction. Specifically, **this bill:**

- 1) Provides that a violation of an event permit requirement that is an infraction is punishable by the following:
 - a) A fine not exceeding \$1,000 for the first violation;
 - b) A fine not exceeding \$2,500 for a second occurrence of the same violation by the same owner or operator within five years of the first violation; and,
 - c) A fine not exceeding \$5,000 for each additional occurrence of the same violation by the same owner or operator within five years of the first violation.
- 2) Defines "violation of an event permit requirement" to mean either of the following:
 - a) Failure to obtain a permit required for a professionally organized special event on private property that is commercial in nature, or from which the owner or operator derives a commercial benefit; or,
 - b) Failure to obtain the permit for an event resulted in a significant threat to the public health and safety.
- 3) Includes these increased fines, and existing fines for violations of building and safety codes, in the statutes that allow a local agency to make any violation of any of its ordinances subject to an administrative fine or penalty.

EXISTING LAW:

- 1) Allows the legislative body of a county to collect any fee, cost, or charge incurred in specified activities, including the abatement of public nuisances, enforcement of specified zoning ordinances, inspections and abatement of violations of the State Housing Law, inspections and abatement of violations of the California Building Standards Code, and inspections and abatement of violations related to local ordinances that implement these laws.
- 2) Limits the amount of a fee, cost, or charge described above to the actual cost incurred performing the inspections and enforcement activity, including permit fees, fines, late charges, and interest.
- 3) Provides that a violation of a county ordinance is a misdemeanor, unless by ordinance it is made an infraction.

- 4) Provides that a violation of a county ordinance may be prosecuted by county authorities in the name of the people of the State of California, or redressed by civil action.
- 5) Provides that every violation of a county ordinance determined to be an infraction is punishable by the following:
 - a) A fine not exceeding \$100 for a first violation;
 - b) A fine not exceeding \$200 for a second violation of the same ordinance within one year; and,
 - c) A fine not exceeding \$500 for each additional violation of the same ordinance within one year.
- 6) Provides greater fine amounts for repeat violations of local building and safety codes determined to be an infraction, which are punishable by the following:
 - a) A fine not exceeding \$100 for a first violation;
 - b) A fine not exceeding \$500 for a second violation of the same ordinance within one year; and,
 - c) A fine not exceeding \$1,000 for each additional violation of the same ordinance within one year of the first violation.
- 7) Allows the legislative body of a local agency, by ordinance, to make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty, and requires the local agency to set forth the administrative procedures that govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties.
- 8) Prohibits, for the purposes of administrative fines or penalties where the violation of an ordinance would otherwise be an infraction, the administrative fine or penalty from exceeding the maximum fine or penalty amounts set forth in 5), above.
- 9) Requires the administrative procedures described in 7), above, to provide for a reasonable period of time 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.
- 10) Provides a process for appealing a local agency's decision regarding administrative fines or penalties via civil proceedings, including reimbursement of court filing fees by the local agency if the court finds in favor of the contestant, as specified.
- 11) Provides for an additional state penalty of \$10 for every \$10 or fraction thereof levied upon every fine, penalty or forfeiture imposed and collected by the courts for all criminal offenses, including all offenses, except parking offenses, involving the Vehicle Code. The money collected from the penalty is distributed in specified percentages among the Fish and Game

Preservation Fund, the Restitution Fund, the Peace Officers Training Fund, the Driver Training Penalty Assessment Fund, the Corrections Training Fund, the Local Public Prosecutors and Public Defenders Training Fund, the Victim-Witness Assistance Fund, and the Traumatic Brain Injury Fund.

- 12) Requires a state surcharge of 20% to be levied on every base fine collected by the court, to be deposited in the General Fund.
- 13) Provides that, in each county, there shall be levied an additional penalty of \$7 for every \$10 or fraction thereof upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, including all offenses involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except parking offenses. The money collected shall be placed in any of the following funds if established by a County Board of Supervisors: a Courthouse Construction Fund; a Criminal Justice Facilities Construction Fund; an Automated Fingerprint Identification Fund; an Emergency Medical Services Fund; and, a DNA Identification Fund.
- 14) Generally limits the penalty for a misdemeanor to a fine of \$1,000 or six months in county jail, or both, and generally limits the penalty for an infraction to \$250, but allows specified exceptions to these penalties.

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary.** This bill provides increased fine amounts that counties may assess for a violation of an event permit requirement that is an infraction. The amounts are as follows:
 - a) A fine not exceeding \$1,000 for the first violation;
 - b) A fine not exceeding \$2,500 for a second occurrence of the same violation by the same owner or operator within five years of the first violation; and,
 - c) A fine not exceeding \$5,000 for each additional occurrence of the same violation by the same owner or operator within five years of the first violation.

This bill defines "violation of an event permit requirement" to mean either of the following:

- d) Failure to obtain a permit required for a professionally organized special event on private property that is commercial in nature, or from which the owner or operator derives a commercial benefit; or,
- e) Failure to obtain the permit for an event resulted in a significant threat to the public health and safety.

This bill includes these increased fines, as well as existing fines for violations of building and safety codes, in the statutes that allow a local agency to make violations of its ordinances subject to an administrative fine or penalty, thereby allowing counties to pursue these fines using their administrative procedures.

This bill is sponsored by Santa Barbara County.

- 2) **Author's Statement.** According to the author, "Assembly Bill 556 is a narrowly crafted bill that gives counties the flexibility to increase fines for unpermitted, professionally organized commercial events. Unpermitted events can prevent our local communities from appropriately addressing public safety, traffic concerns and other impacts to the neighborhood. This measure will also make it more equitable for entities who do properly attain permits."
- 3) **Background.** Local governments have the authority to enact local planning and land use regulations to protect the public health, safety, and welfare of their residents through their police power. The "police power" provides the right to adopt and enforce zoning regulations, as long as they do not conflict with state laws.

Current law allows counties to establish ordinances, and makes violations of ordinances misdemeanors, unless by ordinance the county makes them infractions. The violation of a county ordinance may be prosecuted by county authorities in the name of the people of the State of California, or redressed by civil action. Current law outlines the following fine structure for ordinance violations, and for building and safety code violations, that are determined to be infractions:

Number of violations within specified time periods	Amount of fine for ordinance violations that are infractions [pursuant to GOV Section 25132 (b); last adjusted in 1983]	Amount of fine for building and safety code violations that are infractions [pursuant to GOV Section 25132 (c); established in 2003]
First violation	Fine does not exceed \$100	Fine does not exceed \$100
Second violation within one year of first violation	Fine does not exceed \$200	Fine does not exceed \$500
Third violation within one year of first violation	Fine does not exceed \$500	Fine does not exceed \$1,000

The fine amounts for ordinance violations, which are contained in Government Code (GOV) section 25132 (b), have not been adjusted since 1983. An attempt to do so was made in 2003, but the Legislature chose instead to establish the increased fine amounts for building and safety code violations, which are contained in GOV section 25132 (c). These fine amounts have not changed since then.

- 4) **Administrative Alternative.** As an alternative to the court process, a county can make any violation of any of its ordinances subject to an administrative fine or penalty. This provision was enacted in 1995 to relieve the courts of some of these cases and offer counties a faster, easier, and less costly means of pursuing remedies for ordinance violations.

In order to make an ordinance violation subject to an administrative fine or penalty, the county must adopt an ordinance specifying the administrative procedures that govern the

imposition, enforcement, collection, and administrative review of the fines or penalties. When a violation pertains to building, plumbing, electrical, or other similar structural and zoning issues that do not create an immediate danger to health or safety, the administrative procedures must grant a reasonable time to remedy a continuing violation before the imposition of administrative fines or penalties.

Within 20 days after service of a final administrative order or decision regarding administrative fines or penalties, a person contesting that final administrative order or decision may appeal in Superior Court. A county must go through a civil court proceeding to collect fines and penalties that are not secured via the administrative process.

Existing law governing this administrative process specifically states, "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." This effectively sets maximum fines for infractions that are enforced through a county's administrative process. These maximum fines are identical to the maximum fines that may be assessed for ordinance violations that are infractions (with the highest fine capped at \$500). It does not include the higher fines for violations of building and safety codes (which carry a maximum of \$1,000).

This bill would add two additional sets of fine amounts to the provisions that govern the administrative process: the higher fines in existing law for a violation of building and safety codes determined to be an infraction [GOV section 25132 (c)]; and, the higher fines for a violation of an event permit requirement determined to be an infraction established by this bill. In effect, a county would be able to pursue these increased fine amounts for violations that are infractions via its administrative process, rather than having to pursue higher fine amounts through the courts.

According to Santa Barbara County, the sponsor of this bill, the County's Board of Supervisors made all violations of the County's zoning and building codes infractions. The County also points to a reluctance on the part of its independently-elected District Attorney to prosecute such violations. The County also chooses to use its authority to enforce its ordinances via the administrative process for infractions only. It does not use its administrative authority to pursue violations that are misdemeanors.

- 5) **Permit Fees vs. Fines.** According to Santa Barbara County, the sponsor of this bill, existing fines for ordinance violations and building and safety code violations are too low to provide incentives for individuals to obtain proper permits. The sponsor contends that the fines are so low that many property owners find it easier to violate the County's land use and development codes and pay the low fine than to obtain a permit.

The sponsor provided an example in the County of a large commercial wedding for out of town residents. The property owner did not obtain the necessary permits for such a large event. The non-residents had the means to acquire the permit, but the fee to accommodate 300 or more guests would have been higher than the fine for failing to obtain proper permitting for this event. The permit review would have addressed public safety and traffic concerns for an event of this size. In this case, the County was only allowed to fine this owner \$100 for the purposeful violation. The County contends that this amount is

insufficient to deter property owners who can easily absorb fines as part of their routine business operating expense.

The County also cited several instances in which wineries held events for which a permit was not obtained, as well as a sporting event that was not properly permitted. The impacts generally associated with these unpermitted events include excessive noise, traffic, parking, excessive nighttime lighting, and so forth. The County reports opening 41 enforcement cases dealing with unpermitted events since January 2011, and issuing 17 fines on 11 separate parcels.

- 6) **Fines in Today's Dollars.** The fine amounts for ordinance violations have not been increased since 1983. The fine amounts for building and safety code violations were established in 2003 and have not been adjusted since then. In today's dollars, these amounts would be approximately as follows:

Number of violations within specified time periods	Amount of fine for ordinance violations (adjusted from 1983)	Amount of fine for building and safety code violations (adjusted from 2003)
First violation	Fine does not exceed \$248	Fine does not exceed \$134
Second violation within one year of first violation	Fine does not exceed \$497	Fine does not exceed \$668
Third violation within one year of first violation	Fine does not exceed \$1,242	Fine does not exceed \$1,336

- 7) **Additional Penalties Levied by the Courts.** Pursuant to the Penal Code and the Government Code, additional penalties are levied on every fine, penalty or forfeiture imposed by and collected by the courts for criminal offenses. Penal Code Section 1464 levies a penalty of \$10 for every \$10 or fraction thereof on every fine, penalty or forfeiture imposed by and collected by the courts for criminal offenses. Penal Code Section 1465.7 requires a state surcharge of 20% to be levied on every base fine collected by the court. Government Code Section 76000 levies an additional penalty of \$7 for every \$10 or fraction thereof upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses. To the extent that a county chooses to prosecute a violation of an event permit requirement through the courts, rather than its administrative procedures, these additional penalties would be added to the fines established by this bill.

- 8) **Policy Considerations.** The Committee may wish to consider the following:

- a) **Inflationary Adjustment Only?** As mentioned above, the fine amounts in existing law have not been adjusted since 1983 and 2003, respectively. The Committee may wish to consider if an inflationary adjustment alone would serve as an appropriate remedy for the problem identified by the sponsor.
- b) **Fine Amounts.** Current law caps fines for infraction violations at amounts ranging from \$100 to \$1,000, depending on the number of violations in a year's time and the type of

ordinance that is violated. This bill raises these amounts significantly for violations of event permits, ranging from a cap of \$1,000 to \$5,000. If existing fines were adjusted for inflation, they would range from about \$134 to about \$1,336. The Committee may wish to consider to what extent fines for the types of violations identified in this bill should be increased.

- c) **Increase of Fine Caps for Administrative Procedures.** As mentioned above, existing law that governs a county's authority to make a violation of any of its ordinances subject to an administrative fine or penalty caps fines for ordinance violations that are infractions. These caps are significantly lower than the fines that this bill would allow. The Committee may wish to consider the potential impacts of allowing counties to pursue higher fine amounts via their administrative procedures, rather than the courts.
 - d) **Repeat Offenders.** This bill extends the time frame during which a repeated violation of the same event permit requirement would incur an increased fine. Current law limits the time period for repeat offenses to one year. This bill expands it to five years. The Committee may wish to consider whether this extension is necessary.
 - e) **Statewide Application, No Sunset.** The Committee may wish to consider if the provisions of this bill should apply statewide, or if they should be narrowed to apply only to Santa Barbara County. The Committee may also wish to consider adding a sunset date to allow the Legislature to revisit this authority in the future to determine if it does, indeed, encourage proper permitting.
 - f) **Court Action.** Existing law provides that a violation of a county ordinance may be prosecuted by county authorities, or redressed by civil action. The Committee may wish to consider whether this bill is needed, given these avenues of redress.
 - g) **Undefined Terminology.** This bill uses a number of terms that are undefined in the bill or elsewhere in statute, including "professionally organized," "commercial in nature," "owner or operator derives a commercial benefit," and "significant threat to the public health and safety." The Committee may wish to ask the author to define these terms more clearly should the bill move forward.
- 9) **Committee Amendments.** The Committee may wish to amend this bill to address some of the concerns raised above by limiting the new fine amounts as follows:
- a) A fine not exceeding \$150 for the first violation;
 - b) A fine not exceeding \$700 for a second occurrence of the same violation by the same owner or operator within five years of the first violation; and,
 - c) A fine not exceeding \$2,500 for each additional occurrence of the same violation by the same owner or operator within five years of the first violation.
- 10) **Related Legislation.** AB 345 (Ridley-Thomas), which is pending in this Committee, increases the fine amounts that counties and cities may assess for violations of ordinances or building and safety codes.

11) **Previous Legislation.** AB 514 (Williams) of 2015 would have allowed counties to assess larger administrative fines for specified violations of county ordinances determined to be infractions that govern building and safety, brush removal, grading, film permitting, and zoning. AB 514 was vetoed with the following message:

"The public's health and safety is compromised when people willfully violate county ordinances. Deterring such behavior is a worthwhile goal. This bill, however, lacks the balance needed to prevent unintended consequences, especially on those with modest means and those who are unfamiliar with their local ordinances."

AB 683 (Mullin) of 2013 would have authorized counties, cities and special districts, until January 1, 2020, after notice and public hearing, to order unpaid fines or penalties to be specially assessed against a parcel if the fines or penalties were related to ordinance violations on the real property that constitute a threat to public health and safety. AB 683 also would have allowed a lien to be recorded against a property for which fines and penalties were not paid. AB 683 was vetoed with the following message:

"This bill is similar to legislation I vetoed in the previous legislative session. While the state's housing situation has improved, this bill could hamper efforts on the part of distressed homeowners to refinance or sell their property. While the bill requires additional outreach to a homeowner before a lien is recorded, there is no limit on the accrual of fines until that time. Abating the ordinance violation should be the primary goal and there is already an existing process for locals to recover their costs."

AB 129 (Beall) of 2011 would have authorized counties and cities, until January 1, 2020, after notice and public hearing, to order unpaid fines or penalties to be specially assessed against a parcel if the fines or penalties were related to ordinance violations on the real property that constituted a threat to public health and safety. AB 129 was vetoed with the following message:

"At a time when property owners are struggling to pay their mortgages, this bill would weaken the due process requirements for local building departments to obtain property liens. Local governments already have a fair process in place, and I see no reason to change it."

AB 2613 (Beall) of 2010 would have authorized counties and cities, after notice and public hearing, to order unpaid fines or penalties related to ordinance violations on real property to be specially assessed against the parcel. AB 2613 was vetoed with the following message:

"It is important that the due process rights of homeowners are balanced against a local government's right to collect an ordinance violation fine. The current system that requires a local government to seek judicial approval to impose a lien properly balances these opposing interests."

SB 567 (Torlakson), Chapter 60, Statutes of 2003, increased fines for a violation of local building and safety codes determined to be an infraction to \$500 for a second violation of the same ordinance within one year and \$1,000 for each additional violation of the same ordinance within one year.

SB 814 (Alquist), Chapter 898, Statutes of 1995, authorized local agencies to adopt an ordinance to make a violation of any of the local agency's ordinances subject to an administrative fine or penalty.

- 12) **Arguments in Support.** Santa Barbara County, sponsor of this bill, states, "Existing limitations on administrative fines are no longer effective deterrence. Homeowners that use their residential properties for large commercial events, such as a wedding venue, are effectively operating a commercial enterprise in a residential neighborhood. The current \$100 maximum fine for a single occurrence or \$500 maximum after multiple violations of local zoning codes or permit conditions is insufficient and is often just priced into the rental charges.

"AB 556 would allow counties the options to increase these fines to \$1000 for a first time violation and up to \$5000 per violation after three or more violations. As the sponsors of AB 556, we appreciate that the legislation would provide more local control and would benefit counties because they do provide additional deterrence for activities that threaten public health and safety."

- 13) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

Santa Barbara County [SPONSOR]
Ventura County

Opposition

None on file

Analysis Prepared by: Angela Mapp / L. GOV. / (916) 319-3958