

Date of Hearing: June 27, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 1416 (McGuire) – As Amended April 4, 2018

SENATE VOTE: 33-1

SUBJECT: Local government: nuisance abatement.

SUMMARY: Allows, until January 1, 2024, cities and counties to recover fines through nuisance abatement liens and special assessments and requires fines recovered to be used for specified purposes. Specifically, **this bill:**

- 1) Allows the legislative body of a city or county to collect fines related to nuisance abatement by using a nuisance abatement lien or a special assessment.
- 2) Requires fines that are collected through a special assessment or nuisance abatement lien to only be used to support local enforcement of state and local building and fire codes and municipal codes related to nuisances, and to facilitate compliance with state and local building and fire code standards, including through establishment of a revolving loan fund at the municipal level for rehabilitating substandard housing.
- 3) Repeals the above provisions on January 1, 2024.

EXISTING LAW:

- 1) Allows a county or city to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.
- 2) Allows counties and cities to adopt ordinances that establish local procedures for abating nuisances and to recover abatement costs, including administrative costs, by using a special assessment, abatement lien, or both.
- 3) Defines a nuisance as anything that is injurious to health, indecent or offensive to the senses, obstructs the free use of property, or unlawfully obstructs free passage.
- 4) Allows, as an alternative to civil and criminal enforcement mechanisms, a local agency's legislative body to make any violation of any of its ordinances subject to an administrative fine or penalty.
- 5) Allows the legislative body of a city, county, or city and 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.

- 6) 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.
- 7) Provides that violation of a county or city ordinance is a misdemeanor, unless by ordinance it is made an infraction.
- 8) Provides that a violation of a county or city ordinance may be prosecuted by county or city authorities in the name of the people of the State of California, or redressed by civil action.
- 9) Provides that every violation of a county or city 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.
- 10) Provides that a violation of local building and safety codes 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 \$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.

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary.** This bill allows a city or county to collect fines related to nuisance abatement by using a nuisance abatement lien or a special assessment, and requires those funds to only be used for the following purposes: to support enforcement of state and local building and fire codes and municipal codes related to nuisances; and, to facilitate compliance with state and local building and fire code standards, including through establishment of a revolving loan fund at the municipal level for rehabilitating substandard housing. These provisions sunset on January 1, 2024. This bill is sponsored by the author.
- 2) **Author's Statement.** According to the author, "Local governments use various enforcement strategies to make buildings safer. One important strategy is to fine slumlords for having nuisances on their properties. Fines hit bad actors where it hurts: their pocketbook. If they don't fix it, the city or county can abate the nuisance for them. For example, one of the

contributing factors to the Ghost Ship fire was the accumulation of flammable material in and around the building. These materials can constitute a nuisance and – more importantly – intensify fires. However, local agencies can only recover the costs of abating the nuisance through a special assessment against the property; they can’t make the landlord pay the fines in the same way – they have to go to court. These fines accumulate into large debts, which hinder cities' and counties' efforts to protect their residents from unsafe buildings.

"SB 1416 helps prevent unsafe conditions, including those like occurred at the Ghost Ship, by encouraging property owners to take care of nuisances on their property. It allows local governments to recover nuisance abatement fines through assessments and liens on properties. This is similar to existing practice – it just allows local officials to use the same mechanism they already use to recover abatement costs to also recover fines. This ensures that local governments can collect the fines that they impose, instead of letting violators off the hook for maintaining unsafe conditions and ensures that local governments have the tools they need to protect public health and safety."

- 3) **Background.** A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. This "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 and cities to establish ordinances, and makes violations of ordinances misdemeanors, unless by ordinance the county or city makes them infractions. The violation of an ordinance may be prosecuted by county or city 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 (last adjusted in 1983)	Amount of fine for building and safety code violations that are infractions (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

- 4) **Nuisance Abatement.** Both cities and counties are allowed, via ordinance, to establish administrative procedures for abating nuisances that include the ability to recover abatement costs via special assessments and abatement liens. A public nuisance is generally defined as "Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment

of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway." In addition, a city's legislative body may declare what constitutes a nuisance via ordinance.

A city ordinance establishing a procedure for nuisance abatement and making the cost of abatement of a nuisance upon a parcel of land a special assessment against that parcel must include notice, by certified mail, to the property owner. The notice must be given at the time of imposing the assessment and must specify that the property may be sold after three years by the tax collector for unpaid delinquent assessments.

The assessment can be collected on the property tax bill, subject to the same penalties, procedures, and sale in case of delinquency as provided for ordinary municipal taxes. All laws regarding the levy, collection, and enforcement of municipal taxes apply to the special assessment. However, if the real property is sold, or becomes foreclosed, before the first installment of the taxes becomes delinquent, then the cost of abatement transfers to the unsecured tax roll for collection.

Alternatively, a city can, by ordinance, establish a procedure to collect abatement costs, including administrative costs, by a nuisance abatement lien. The ordinance must require that the owner of the parcel on which the nuisance is maintained receive notice before recording the abatement lien. If the owner cannot be served with the notice, it can be posted on the property and published in a newspaper. A nuisance abatement lien must be recorded with the county recorder and has the force, effect, and priority of a judgment lien. The lien may be foreclosed by an action brought by the city for a money judgment.

A county ordinance establishing administrative procedures for nuisance abatement must require that the owner of the parcel, and anyone known to be in possession of the parcel, receive notice of the abatement proceeding and have a hearing before the board of supervisors before the county can abate the nuisance. The county supervisors can delegate the hearing to a hearing board or a hearing officer. A county can abate a nuisance that a board of supervisors or county officer determines constitutes an immediate threat to public health or safety.

If the owner fails to pay the county's abatement costs, the board of supervisors can order the abatement costs to be specially assessed against the parcel. The assessment can be collected on the property tax bill, subject to the same penalties, procedures, and sale in case of delinquency as for ordinary county taxes. All laws regarding the levy, collection, and enforcement of county taxes apply to the special assessment.

If a county specially assesses abatement costs against a parcel, it also can record a notice of abatement lien, which has the same effect as recording an abstract of a money judgment and the same priority as a judgment lien. If no abatement lien is recorded and the real property on which an assessment is imposed is sold, or becomes foreclosed, before the first installment of the taxes becomes delinquent, then the assessment transfers to the unsecured tax roll for collection.

- 5) **Ghost Ship Fire.** Late on the night of December 2, 2016, a fire at a converted warehouse known as the “Ghost Ship,” resulted in the deaths of 36 individuals – the highest death toll for a structural fire in the United States in over ten years. The electrical system was identified as the most likely source of the fire: residents of the Ghost Ship frequently used extension cords in place of functioning wiring inside the Ghost Ship, and power was provided through a connection to a neighboring auto body shop instead of being directly provided to the warehouse. Other safety issues at the Ghost Ship included a high concentration of flammable materials throughout the space.

Over the past year, the Senate Governance and Finance Committee held two hearings on the Ghost Ship fire to identify the challenges that local governments face when trying to identify and fix dangerous buildings. The Committee also convened several working group meetings and identified a set of proposed solutions. This bill is one of those proposals.

- 6) **Previous Legislation.** AB 345 (Ridley-Thomas) of 2017, would have allowed cities and counties to recover nuisance abatement fines through nuisance abatement liens and special assessments, and would have increased the maximum allowable fines for violations of city building and safety codes. AB 345 was subsequently amended to address a different subject.

AB 556 (Limón), Chapter 405, Statutes of 2017, allowed counties to assess increased fines for a violation of an event permit requirement that is an infraction as follows: a fine not exceeding \$150 for the first violation; a fine not exceeding \$700 for a second occurrence of the same violation by the same owner or operator within three years of the first violation; and, a fine not exceeding \$2,500 for each additional occurrence of the same violation by the same owner or operator within three years of the first violation.

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 2317 (Saldana) of 2010, also expanding nuisance abatement liens and special assessments to include administrative penalties, with a sunset date of January 1, 2014. AB 2317 was vetoed with the following message:

"I am returning Assembly Bill 2317 without my signature. It is important that the due process rights of homeowners are balanced against a local government's right to collect a nuisance abatement fine. The current system that requires a local government to seek judicial approval to impose a lien properly balances these opposing interests. For this reason I am unable to sign this bill."

- 7) **Arguments in Support.** The California Association of Code Enforcement Officers, in support, states, "The Golden State experienced the tragic consequences that unabated nuisances can have when the Ghost Ship warehouse caught fire. SB 1416 helps prevent these types of fires by encouraging property owners to take care of nuisances on their property. It enacts a recommendation from the Ghost Ship working group established by the Senate Governance and Finance Committee, which included local officials who have real-world experience with trying to make buildings safer. Using special assessment and abatement liens gives local officials a less expensive and more effective method for collecting unpaid fines and will provide a stronger incentive for property owners to comply with local ordinances. SB 1416 helps local agencies protect the public's health and safety by giving them stronger code enforcement authority that mirrors the authority they already use to collect nuisance abatement costs."
- 8) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Association of Code Enforcement Officers
California Building Officials
California Business Properties Association
County of Riverside

Opposition

None on file

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