

Date of Hearing: June 9, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 427 (Eggman) – As Amended April 12, 2021

SENATE VOTE: 36-0

SUBJECT: Water theft: enhanced penalties.

SUMMARY: Allows water agencies and districts to adopt an ordinance with enhanced penalties for water theft. Specifically, **this bill:**

- 1) Authorizes the legislative body of a local agency, as specified, that provides water services, to adopt an ordinance that prohibits water theft and makes a violation of an ordinance enacted by the local agency regarding water theft subject to an administrative fine or penalty.
- 2) Requires the local agency to adopt an ordinance that sets forth the administrative procedure that shall govern the imposition, enforcement, collection, and administrative review by the local agency of the administrative fines or penalties of water theft.
- 3) Specifies that the local agency shall establish a process for granting a hardship waiver to reduce the amount of the fine imposed for water theft upon a showing by the responsible party that payment of the full amount of the fine would impose an undue financial burden on the responsible party.
- 4) Provides that if the water theft is committed via meter tampering in violation of an ordinance, it is punishable as follows:
 - a) A fine not exceeding \$130 for a first violation.
 - b) A fine not exceeding \$700 for a second violation of the same ordinance within one year of the first violation.
 - c) A fine not exceeding \$1,300 for the third violation and each additional violation of the same ordinance within one year of the first violation.
- 5) Specifies that all other forms of water theft in violation of an ordinance are punishable as follows:
 - a) A fine not exceeding \$1,000 for a first violation.
 - b) A fine not exceeding \$2,000 for a second violation of the same ordinance within one year.
 - c) A fine not exceeding \$3,000 for each additional violation of the same ordinance within one year.
- 6) Defines “water theft” as an action to divert, tamper, or reconnect water utility services, as defined in section 498 of the Penal Code.

FISCAL EFFECT: None.

COMMENTS:

- 1) **Bill Summary and Author's Statement.** This bill authorizes water agencies to adopt an ordinance that prohibits water theft, and to increase the administrative fine or penalty in excess of the existing limitations. This bill places limitations on the amount of fine for a violation of a water theft ordinance depending upon the type of violation and the number of violations within one year. Lastly, this bill requires a local agency to establish a process for granting a hardship waiver to reduce the amount of the fine imposed for water theft on parties who can demonstrate an undue financial burden. The author is the sponsor of this bill.

According to the author, "SB 427 aims to protect the health and safety of communities and their water systems. It grants authority to water agencies to increase the penalties for water theft in order to more closely match the potential fines with the risk posed to health and safety by illegal connections. As typically carried out water theft poses a serious public health and safety risk and an economic risk to communities. During water theft, contamination can occur when non-potable sources are illegally connected to a drinking water system. All it takes is one illegal connection to contaminate the water source and cause it to be unsafe for people to use. The bill also requires the agency to allow for hardship waivers and to establish an administrative review process if they wish to enact these enhanced penalties. Having these protections in place will ensure that the new authority granted by this bill is balanced with new guardrails. Protecting the safety of water systems is a crucial issue, and this bill does that without allowing for excessively punitive fines relative to the ability to pay."

- 2) **Penalties for Ordinance Violations.** Under state law, a violation of a local ordinance is a misdemeanor unless by ordinance it is made an infraction. In general, every ordinance violation that is determined to be an infraction is punishable by:
- 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.

As one of the exceptions to the general limits on fines for infractions, a violation of local building and safety codes determined to be an infraction is punishable by:

- a) A fine not exceeding \$130 for a first violation.
- b) A fine not exceeding \$700 for a second violation of the same ordinance within one year.
- c) A fine not exceeding \$1,300 for each additional violation of the same ordinance within one year.

- d) A fine not succeeding \$2,500 for subsequent violations within two years of first violation, if the property is a commercial property that has an existing building at the time of the violation and the violation is due to failure by the owner to remove visible refuse or failure to prohibit unauthorized use of the property.

As the other exception to the general limits on fines for infractions, a county may assess a fine for a violation of an event permit requirement 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 three years of the first violation.
 - c) 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.
- 3) **Water Theft.** State law establishes “water theft” as a misdemeanor. A person can be found guilty of water theft if they commit any of the following actions without paying for utility services:
- a) Diverts or causes to be diverted utility services, by any means.
 - b) Prevents any utility meter, or other device used in determining the charge for utility services, from accurately performing its measuring function by tampering or by any other means.
 - c) Tampers with any property owned by or used by the utility to provide utility services;
 - d) Makes or causes to be made any connection with or reconnection with property owned or used by the utility to provide utility services without the authorization or consent of the utility; and,
 - e) Uses or receives the direct benefit of all or a portion of utility services with knowledge or reason to believe that the diversion, tampering, or unauthorized connection existed at the time of that use, or that the use or receipt was otherwise without the authorization or consent of the utility.

If the total value of all utility services stolen is more than \$950, or if the defendant has previously been convicted of an offense under this section or other similarly defined sections, then the violation is punishable with up to one year of imprisonment.

- 4) **Policy Consideration.** Current law caps fines for most infraction violations at amounts ranging from \$100 to \$500, depending on the number of violations in a year's time. This bill raises these amounts significantly for violations of water theft ordinances, ranging from \$130 to \$3,000 per violation and dependent upon the number and type of violations. The Committee may wish to consider to what extent fines for the types of violations identified in this bill should be increased.

- 5) **Previous Legislation.** AB 2095 (Cooper) of 2020, was similar to this bill and would have increased the administrative penalty for violations of water theft ordinances to up to \$3,000. This bill was subsequently significantly amended and was not heard in this Committee.

AB 1049 (Glazer) of 2020, would have authorized the legislative body of a city or county, for the violation of a short term rental ordinance that is an infraction, to impose a fine not exceeding \$1,500 for a first violation, \$3,000 for a second violation of the same ordinance within one year, and \$5,000 for each additional violation of the same ordinance within one year of the first violation. This bill died on Senate Concurrence.

AB 2598 (Quirk), Chapter 970, Statutes of 2018, increased the fine amounts that counties and cities may assess for violations of their building and safety codes, and created a new fine for specified violations of building and safety codes on commercial property.

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."

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.

- 6) **Related Legislation.** SB 60 (Glazer) allows specified local agencies to impose a fine of up to \$5,000 for public and health and safety violations of a short-term rental ordinance. This bill is currently pending in this Committee.
- 7) **Arguments in Support.** According to the Association of California Water Agencies, "Water theft can take many forms. Customers have been documented tampering with water meters to avoid paying for water, or using makeshift plumbing to circumvent their water meter altogether. Water users who regularly fill large water tankers (e.g. for construction or dust mitigation) often fill their trucks from fire hydrants. Local agencies typically require a permit

to fill trucks or other large vessels. However, the penalty for doing so without a valid permit is often so low that it is cheaper for the consumer to knowingly break the law and pay a small fine than it is to follow the law. Cross-contamination can occur between the water system and non-potable source connections when anti-backflow devices are not used (these are required under the aforementioned permits), which poses a serious health risk to everyone in the system.

“In addition to posing health risks, water theft makes it more difficult for water agencies to accurately account for the water being used by their ratepayers. The revenue lost from water theft can be passed on to paying customers, having a negative impact on water affordability. Water theft also frustrates efforts by water districts to comply with State water loss standards, such as those mandated in SB 555 (Chapter 679, Statutes of 2015). While there is no way to accurately measure the volume of water that is lost to water theft, the American Water Works Association (AWWA) suggests water suppliers assume that .25% of the volume being supplied is being illegally withdrawn. This can account for thousands of acre-feet and hundreds of thousands of dollars – if not millions – in lost revenue.”

8) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California Water Agencies
Desert Water Agency
Regional Water Authority

Support if Amended

El Dorado Irrigation District
Elsinore Valley Municipal Water District

Opposition

None on file

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