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TITLE 5. LOCAL AGENCIES [50001 - 57607] (Title 5 added by Stats. 1949, Ch. 81.)

DIVISION 2. CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 55821] (Division 2 added by Stats. 1949, Ch. 81.)

PART 1. POWERS AND DUTIES COMMON TO CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 54999.7] (Part 1 added by Stats. 1949, Ch. 81.)

CHAPTER 6.5. Contracts of Sanitation or Sewerage Enterprises [54725 - 54740.6] (Chapter 6.5 added by Stats. 1970, Ch. 1249.)

54725. As used in this chapter, local agency means any city, county, municipal utility district, public utility district, sanitary district, county sanitation district, or any municipal or public corporation or district authorized to acquire, construct, own, or operate a sanitation system, a sewer system, or both.

(Amended by Stats. 1991, Ch. 1191, Sec. 1.)

54726. As used in this chapter, "law" includes the charter of any local agency.

(Added by Stats. 1970, Ch. 1249.)

54727. As used in this chapter, "enterprise" means systems, plants, works, or undertakings used or useful in the collection, treatment, and disposal of waste, refuse, and garbage, or of sewage, waste, and storm water. It includes all parts of any such enterprise and all appurtenances to it, and lands, easements, rights in land, contract rights, franchises, approaches, dams, garbage trucks, equipment, dumps, garbage disposal plants and incinerators or other disposal facilities, sewage treatment plants, sewage disposal plants, intercepting and collecting sewers, outfall sewers, trunk connecting, and other sewer, waste, and storm water mains.

(Added by Stats. 1970, Ch. 1249.)

54728. As used in this chapter, "improve" means reconstruct, replace, extend, repair, better, equip, develop, embellish, or otherwise improve.

(Added by Stats. 1970, Ch. 1249.)

54729. As used in this chapter, "bonds" means bonds issued by a local agency payable exclusively from the revenues of the enterprise for which the bonds are issued.

(Added by Stats. 1970, Ch. 1249.)

54730. If in the opinion of the legislative body it will benefit the local agency to enter the contract, any local agency issuing bonds for the acquisition, construction, extension, or improvement of any sanitation or sewer enterprise may contract with persons to design, construct, extend, improve, maintain, or operate the enterprise.

(Added by Stats. 1970, Ch. 1249.)

54731. All consideration paid under the contract is payable solely from the revenues of the enterprise and the contracts shall expressly provide.

(Added by Stats. 1970, Ch. 1249.)

54732. The duration and terms of the contracts shall be those which the legislative body determines to be for the best interests of the local agency in each case.

(Added by Stats. 1970, Ch. 1249.)

54733. The contracts may be made for any period not exceeding the time when the principal and interest of all bonds of the enterprise have been paid in full.

(Added by Stats. 1970, Ch. 1249.)

54734. When the legislative body determines that an enterprise is necessary and convenient for the preservation of public health, it may adopt a general specification for the enterprise setting forth:

- (a) Definite criteria of capacity and general location of the enterprise.
- (b) General structural requirements.
- (c) Degree of purification and manner of disposal of effluent and sludge.
- (d) The duration of operation under the control, supervision, and responsibility of the contractor after the required performance has been demonstrated.

(Added by Stats. 1970, Ch. 1249.)

54735. The contract shall be awarded to the lowest responsible bidder and shall conform to all other statutes and ordinances applicable to public contracts.

(Added by Stats. 1970, Ch. 1249.)

54736. A local agency shall not by any such contract transfer or attempt to transfer to any person or in any way restrict the exercise of the local agency's legal powers and duties concerning:

- (a) The issuance and sale of the bonds of the enterprise.
- (b) The payment of the principal and interest of the bonds.
- (c) The receipt, handling, and disbursement of and accounting for the proceeds of the bonds.
- (d) The fixing and collection of fees, tolls, rates, rentals, and other charges for the services of the enterprise.
- (e) The handling and disbursement of and accounting for the receipts and other funds of the enterprise.
- (f) The making and enforcing of ordinances and regulations to protect and promote public health and safety in connection with the enterprise and its operation.

(Added by Stats. 1970, Ch. 1249.)

54737. The affirmative vote of four-fifths of the legislative body is required to approve the contracts.

(Added by Stats. 1970, Ch. 1249.)

54738. When determined by its legislative body to be in the public interest or necessary for the protection of the public health, the local agency may enter into and perform contracts, not to exceed a term of 40 years, with any industrial establishment for the provision and operation by the local agency of sewerage facilities to abate or reduce the pollution of water caused by discharges of industrial waste by the industrial establishment and the payment periodically or otherwise by the industrial establishment to the local agency of amounts at least sufficient, in the determination of such legislative body, to compensate the local agency for the cost of providing, including any payment of principal and interest charges, and of operating and maintaining the sewerage facilities serving such industrial establishment, or such portion of such cost as the legislative body determines is fair and equitable. Such contracts may be made irrespective of whether bonds are issued in connection therewith.

(Added by Stats. 1970, Ch. 1249.)

54739. (a) Any local agency listed in Section 54725 may require any of the following:

- (1) Pretreatment of any industrial waste which the local agency determines is necessary in order to meet standards established by the federal or California state government or other regulatory agencies or which the local agency determines is necessary in order to protect its treatment works or the proper and efficient operation thereof or the health or safety of its employees or the environment.
- (2) The prevention of the entry of such industrial waste into the collection system and treatment works.
- (3) The payment of excess costs to the system for supplementary treatment plants, facilities, or operations needed as a result of allowing the entry into the collection system and treatment works of such industrial waste.

(b) The provisions of this section shall be in addition to other requirements provided for in the respective enabling acts of those local agencies incorporated by reference in subdivision (a).

(Amended by Stats. 1991, Ch. 1191, Sec. 2.)

54740. (a) Any person who violates any requirement adopted or ordered by a local agency pursuant to paragraph (1) or (2) of subdivision (a) of Section 54739 may be civilly liable in a sum of not to exceed twenty-five thousand dollars (\$25,000) a day for each violation.

(b) The local agency may petition the superior court to impose, assess, and recover the sums provided for in subdivision (a). In determining the amount, the court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the economic benefit derived through any noncompliance, the nature and persistence of the violation, the length of time over which the violation occurs, and corrective action, if any, attempted or taken by the discharger.

(c) Notwithstanding any other provision of law, all civil penalties imposed by the court for a violation of this section shall be distributed to the local agency.

(d) Remedies under this section are in addition to and do not supersede or limit any and all other remedies, civil or criminal, but no liability shall be recoverable under this section for any violation for which liability is recovered under Section 54740.5.

(Amended by Stats. 1991, Ch. 1191, Sec. 3.)

54740.5. (a) The local agency may issue an administrative complaint to any person who violates any requirement adopted or ordered by a local agency pursuant to paragraph (1) or (2) of subdivision (a) of Section 54739. The administrative complaint shall allege the act or failure to act that constitutes the violation of the local agency's requirements, the provisions of law authorizing civil liability to be imposed, and the proposed civil penalty.

(b) The administrative complaint shall be served by personal delivery or certified mail on the person subject to the local agency's discharge requirements, and shall inform the person served that a hearing shall be conducted within 60 days after the person has been served. The hearing shall be before a hearing officer designated by the governing board of the local agency. The person who has been issued an administrative complaint may waive the right to a hearing, in which case the local agency shall not conduct a hearing. A person dissatisfied with the decision of the hearing officer may appeal to the governing board of the local agency within 30 days of notice of the hearing officer's decision.

(c) If after the hearing, or appeal, if any, it is found that the person has violated reporting or discharge requirements, the hearing officer or board may assess a civil penalty against that person. In determining the amount of the civil penalty, the hearing officer or board may take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the economic benefit derived through any noncompliance, the nature and persistence of the violation, the length of time over which the violation occurs and corrective action, if any, attempted or taken by the discharger.

(d) Civil penalties may be imposed by the local agency as follows:

(1) In an amount which shall not exceed two thousand dollars (\$2,000) for each day for failing or refusing to furnish technical or monitoring reports.

(2) In an amount which shall not exceed three thousand dollars (\$3,000) for each day for failing or refusing to timely comply with any compliance schedule established by the local agency.

(3) In an amount which shall not exceed five thousand dollars (\$5,000) per violation for each day for discharges in violation of any waste discharge limitation, permit condition, or requirement issued, reissued, or adopted by the local agency.

(4) In an amount which does not exceed ten dollars (\$10) per gallon for discharges in violation of any suspension, cease and desist order or other orders, or prohibition issued, reissued, or adopted by a local agency.

(5) The amount of any civil penalties imposed under this section which have remained delinquent for a period of 60 days shall constitute a lien against the real property of the discharger from which the discharge originated resulting in the imposition of the civil penalty. The lien provided herein shall have no force and effect until recorded with the county recorder and when recorded shall have the force and effect and priority of a judgment lien and continue for 10 years from the time of recording unless sooner released, and shall be renewable in accordance with the provisions of Sections 683.110 to 683.220, inclusive, of the Code of Civil Procedure.

(e) All moneys collected under this section shall be deposited in a special account of the local agency and shall be made available for the monitoring, treatment, and control of discharges into the local agency's sanitation or sewer system or for other mitigation measures.

(f) Unless appealed, orders setting administrative civil penalties shall become effective and final upon issuance thereof, and payment shall be made within 30 days. Copies of these orders shall be served by personal service or by registered mail upon the party served with the administrative complaint and upon other persons who appeared at the hearing and requested a copy.

(g) The local agency may, at its option, elect to petition the superior court to confirm any order establishing civil penalties and enter judgment in conformity therewith in accordance with the provisions of Sections 1285 to 1287.6, inclusive, of the Code of Civil Procedure.

(h) No penalties shall be recoverable under this section for any violation for which civil liability is recovered under Section 54740.

(Amended by Stats. 1992, Ch. 427, Sec. 67. Effective January 1, 1993.)

54740.6. (a) Any party aggrieved by a final order issued by the governing board of a local agency under Section 54740.5, after granting review of the order of a hearing officer, may obtain review of the order of the board in the superior court by filing in the court a petition for writ of mandate within 30 days following the service of a copy of a decision and order issued by the board. Any party aggrieved by a final order of a hearing officer issued under Section 54740.5, for which the board denies review, may obtain review, of the order of the hearing officer in the superior court by filing in the court a petition for writ of mandate within 30 days following service of a copy of a decision and order denying review by the board.

(b) If no aggrieved party petitions for writ of mandate within the time provided by this section, an order of the board or a hearing officer shall not be subject to review by any court or agency, except that the board may grant review on its own motion of an order issued under Section 54740.5 after the expiration of the time limits set by that section.

(c) The evidence before the court shall consist of the record before the board, including the hearing officer's record, and any other relevant evidence which, in the judgment of the court, should be considered to effectuate and implement policies of this division. In every such case, the court shall exercise its independent judgment on the evidence.

(d) Except as otherwise provided in this section, subdivisions (e) and (f) of Section 1094.5 of the Code of Civil Procedure shall govern proceedings pursuant to this section.

(Added by Stats. 1991, Ch. 1191, Sec. 5.)