

AMENDED IN ASSEMBLY JULY 16, 2001  
AMENDED IN ASSEMBLY JUNE 25, 2001  
AMENDED IN SENATE JUNE 4, 2001  
AMENDED IN SENATE MAY 30, 2001  
AMENDED IN SENATE MAY 17, 2001  
AMENDED IN SENATE MAY 8, 2001  
AMENDED IN SENATE APRIL 26, 2001

**SENATE BILL**

**No. 221**

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**Introduced by Senator Kuehl**  
**(Coauthors: Senators Machado and Perata)**  
*(Coauthors: Assembly Members Chan, Goldberg, Pavley,  
Strom-Martin, and Thomson)*

February 14, 2001

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An act to amend Section 11010 of the Business and Professions Code, and to amend ~~Sections 65867.5 and 66474~~ *Section 65867.5* of, and to add ~~Section~~ *Sections 66455.3 and 66473.7* to, the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 221, as amended, Kuehl. Land use: water supplies.

(1) Under the Subdivision Map Act, a legislative body of a city or county is required to deny approval of a tentative map, or a parcel map for which a tentative map is not required, if it makes any of a number of specified findings. Under the Planning and Zoning Law, a city, county, or city and county may not approve a development agreement

unless the legislative body finds that the agreement is consistent with the general plan and any applicable specific plan.

This bill would prohibit approval of a tentative map, or a parcel map for which a tentative map was not required, or a development agreement for a subdivision of property of more than ~~200 residential~~ 500 dwelling units, *except as specified*, including the design of the subdivision or the type of improvement, unless the legislative body of a city or county or the designated advisory agency provides written verification from the applicable water service provider that a sufficient water supply is available or, in addition, a specified finding is made by the local agency that sufficient water supplies are, or will be, available prior to completion of the project.

By increasing the duties of local legislative bodies and local planning agencies and commissions, the bill would impose a state-mandated local program.

(2) Existing law requires any person who intends to offer subdivided lands within California for sale or lease to file with the Department of Real Estate an application for a public report consisting of a notice of intention and a completed questionnaire that includes, among other things, a true statement of the provisions, if any, that have been made for public utilities in the proposed subdivision, including water, electricity, gas, telephone, and sewerage facilities.

This bill would provide that for proposed subdivisions subject to specified requirements of the Subdivision Map Act, the true statement of the provisions that have been made for water is satisfied by submitting a copy of the written verification of the availability of a sufficient water supply, obtained pursuant to specified requirements as described in (1) above.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



*The people of the State of California do enact as follows:*

1 SECTION 1. *The Legislature hereby finds and declares both*  
2 *of the following:*

3 (a) *It is necessary to identify a sufficient supply of water to*  
4 *serve new residential subdivisions prior to granting approval of a*  
5 *final subdivision map to protect the public health and welfare of*  
6 *the people of California.*

7 (b) *The approval of a new residential subdivision without a*  
8 *sufficient supply of water to serve the new subdivision could have*  
9 *significant negative impacts on existing residential, commercial,*  
10 *industrial, and agricultural users.*

11 SEC. 2. Section 11010 of the Business and Professions Code  
12 is amended to read:

13 11010. (a) Except as otherwise provided pursuant to  
14 subdivision (c) or elsewhere in this chapter, any person who  
15 intends to offer subdivided lands within this state for sale or lease  
16 shall file with the Department of Real Estate an application for a  
17 public report consisting of a notice of intention and a completed  
18 questionnaire on a form prepared by the department.

19 (b) The notice of intention shall contain the following  
20 information about the subdivided lands and the proposed offering:

- 21 (1) The name and address of the owner.  
22 (2) The name and address of the subdivider.  
23 (3) The legal description and area of lands.  
24 (4) A true statement of the condition of the title to the land,  
25 particularly including all encumbrances thereon.

26 (5) A true statement of the terms and conditions on which it is  
27 intended to dispose of the land, together with copies of any  
28 contracts intended to be used.

29 (6) A true statement of the provisions, if any, that have been  
30 made for public utilities in the proposed subdivision, including  
31 water, electricity, gas, telephone, and sewerage facilities. For  
32 ~~subdivisions of more than 200 residential units subdivided lands~~  
33 *that were subject to the imposition of a condition pursuant to*  
34 *subdivision (a) of Section 66473.7 of the Government Code, the*  
35 *true statement of the provisions made for water shall be satisfied*  
36 *by submitting a copy of the written verification of the available*  
37 *water supply obtained pursuant to subdivision (a) of Section*  
38 *66473.7 of the Government Code.*



- 1 (7) A true statement of the use or uses for which the proposed  
2 subdivision will be offered.
- 3 (8) A true statement of the provisions, if any, limiting the use  
4 or occupancy of the parcels in the subdivision.
- 5 (9) A true statement of the amount of indebtedness that is a lien  
6 upon the subdivision or any part thereof, and that was incurred to  
7 pay for the construction of any onsite or offsite improvement, or  
8 any community or recreational facility.
- 9 (10) A true statement or reasonable estimate, if applicable, of  
10 the amount of any indebtedness which has been or is proposed to  
11 be incurred by an existing or proposed special district, entity,  
12 taxing area, assessment district, or community facilities district  
13 within the boundaries of which, the subdivision, or any part  
14 thereof, is located, and that is to pay for the construction or  
15 installation of any improvement or to furnish community or  
16 recreational facilities to that subdivision, and which amounts are  
17 to be obtained by ad valorem tax or assessment, or by a special  
18 assessment or tax upon the subdivision, or any part thereof.
- 19 (11) (A) As to each school district serving the subdivision, a  
20 statement from the appropriate district that indicates the location  
21 of each high school, junior high school, and elementary school  
22 serving the subdivision, or documentation that a statement to that  
23 effect has been requested from the appropriate school district.
- 24 (B) In the event that, as of the date the notice of intention and  
25 application for issuance of a public report are otherwise deemed  
26 to be qualitatively and substantially complete pursuant to Section  
27 11010.2, the statement described in subparagraph (A) has not been  
28 provided by any school district serving the subdivision, the person  
29 who filed the notice of intention and application for issuance of a  
30 public report immediately shall provide the department with the  
31 name, address, and telephone number of that district.
- 32 (12) The location of all existing airports, and of all proposed  
33 airports shown on the general plan of any city or county, located  
34 within two statute miles of the subdivision.
- 35 (13) A true statement, if applicable, referencing any soils or  
36 geologic report or soils and geologic reports that have been  
37 prepared specifically for the subdivision.
- 38 (14) A true statement of whether or not fill is used, or is  
39 proposed to be used in the subdivision and a statement giving the



1 name and the location of the public agency where information  
2 concerning soil conditions in the subdivision is available.

3 (15) Any other information that the owner, his or her agent, or  
4 the subdivider may desire to present.

5 (c) The commissioner may, by regulation, or on the basis of the  
6 particular circumstances of a proposed offering, waive the  
7 requirement of the submission of a completed questionnaire if the  
8 commissioner determines that prospective purchasers or lessees of  
9 the subdivision interests to be offered will be adequately protected  
10 through the issuance of a public report based solely upon  
11 information contained in the notice of intention.

12 ~~SEC. 2.—~~

13 *SEC. 3.* Section 65867.5 of the Government Code is amended  
14 to read:

15 65867.5. (a) A development agreement is a legislative act  
16 that shall be approved by ordinance and is subject to referendum.

17 (b) A development agreement shall not be approved unless the  
18 legislative body finds that the provisions of the agreement are  
19 consistent with the general plan and any applicable specific plan.

20 (c) A development agreement that includes a subdivision of  
21 ~~more than 200 residential units~~, as defined in Section 66473.7,  
22 shall not be approved unless the agreement provides that any  
23 tentative map prepared for the subdivision will comply with the  
24 provisions of Section 66473.7.

25 ~~SEC. 3.—~~

26 *SEC. 4.* Section 66455.3 is added to the Government Code, to  
27 read:

28 66455.3. *Not later than five days after a city or county has*  
29 *determined that a tentative map application for a proposed*  
30 *subdivision, as defined in Section 66473.7, is complete pursuant*  
31 *to Section 65943, the local agency shall send a notice of this*  
32 *determination to any applicable water service provider serving the*  
33 *area in which the subdivision is proposed to be located. The notice*  
34 *shall identify information about the location of the proposed*  
35 *subdivision, the number of units, density, and any other*  
36 *information that would be relevant to the applicable water service*  
37 *provider.*

38 *SEC. 5.* Section 66473.7 is added to the Government Code, to  
39 read:



1 66473.7. (a) The legislative body of a city or county or the  
2 advisory agency, to the extent that it is authorized by local  
3 ordinance to approve, conditionally approve, or disapprove the  
4 tentative map, shall include as a condition in ~~all tentative maps for~~  
5 ~~200 or more residential units~~ *any tentative map that includes a*  
6 *subdivision* a requirement that a sufficient water supply shall be  
7 available. Proof of the availability of a sufficient water supply  
8 shall be based on ~~either of the following:~~

9 ~~(1) Written verification from the applicable water service~~  
10 ~~provider.~~

11 ~~(2) Written verification from the applicable water service~~  
12 ~~provider, and a finding made by the local agency that additional~~  
13 ~~written verification from the applicable water service provider~~  
14 ~~within 90 days of a request. If the water service provider fails to~~  
15 ~~deliver the written verification as required by this section, the local~~  
16 ~~agency or any other interested party may seek a writ of mandamus~~  
17 ~~to compel the water service provider to comply. The applicable~~  
18 ~~water service provider shall be the water system that is, or may~~  
19 ~~become, a public water system, as defined in Section 10912 of the~~  
20 ~~Water Code, that may supply water for the project. If the written~~  
21 ~~verification provided by the applicable water service provider~~  
22 ~~indicates that the water service provider is unable to provide a~~  
23 ~~sufficient water supply that will meet the reasonable needs of the~~  
24 ~~proposed subdivision, then the local agency may make a finding,~~  
25 ~~after consideration of the written verification by the applicable~~  
26 ~~water service provider, that additional water supplies not~~  
27 ~~accounted for by the water service provider are, or will be,~~  
28 ~~available prior to completion of the project that will satisfy the~~  
29 ~~requirements of this section. This finding shall be made on the~~  
30 ~~record and supported by substantial evidence. If the water service~~  
31 ~~provider fails to deliver the written verification as required by this~~  
32 ~~section, the local agency may seek a writ of mandamus to compel~~  
33 ~~the water service provider to comply. The applicable water service~~  
34 ~~provider shall be the water system that is, or may become, a public~~  
35 ~~water system, as defined in Section 10912 of the Water Code, that~~  
36 ~~may supply water for the project.~~

37 (b) The applicable water service provider's written verification  
38 of its ability or inability to provide a sufficient water supply that  
39 will meet the reasonable needs of the project as required by  
40 subdivision (a) shall be supported by substantial evidence based



1 upon the water service provider’s most recently adopted urban  
2 water management plan adopted pursuant to Part 2.6  
3 (commencing with Section 10610) of the Water Code *and other*  
4 *information relating to the sufficiency of the water supply.*

5 (c) When the written verification pursuant to subdivision (a)  
6 relies on projected water supplies to provide a sufficient water  
7 supply to the project, the written verification shall be based on all  
8 of the following:

9 (1) Written contracts or other proof of valid rights to the  
10 identified water supply.

11 (2) Copies of a capital outlay program for financing the  
12 delivery of a sufficient water supply that has been adopted by the  
13 *governing body of the applicable water service provider.*

14 (3) Securing of applicable federal, state, and local permits for  
15 construction of necessary infrastructure associated with supplying  
16 a sufficient water supply.

17 (4) Any necessary regulatory approvals that are required in  
18 order to be able to convey or deliver a sufficient water supply to  
19 the project.

20 (d) As used in this section, “sufficient water supply” means  
21 that a water service provider’s total projected water supplies  
22 available during normal, single-dry, and multiple-dry years  
23 included in the 20-year projection, based on the most recently  
24 adopted urban water management plan, will meet the projected  
25 water demand associated with the proposed subdivision, in  
26 addition to the water service provider’s existing and planned future  
27 uses, including, but not limited to, agricultural and industrial uses.  
28 If the water service provider has no urban water management plan,  
29 ~~or if there is no water service provider,~~ a “sufficient water supply”  
30 shall mean the local agency has *prepared a written plan that*  
31 *contains all of the elements described in Section 10635 of the*  
32 *Water Code*, complied with subdivision (c), and has considered  
33 any water supply assessment that was completed pursuant to Part  
34 2.10 (commencing with Section 10910) of Division 6 of the Water  
35 Code. *If there is no water service provider, the local agency shall*  
36 *prepare a written plan that contains all of the elements provided*  
37 *for in Section 10635 of the Water Code, and consider any water*  
38 *supply assessment that was completed pursuant to Part 2.10*  
39 *(commencing with Section 10910) of Division 6 of the Water Code,*  
40 *and shall base its determination of whether there is a “sufficient*



1 *water supply” on these written documents.* The determination that  
2 a sufficient water supply is available ~~may~~ *shall include*  
3 *consideration of the reasonably foreseeable impacts of the*  
4 *proposed subdivision on the availability of water resources that*  
5 *serve agricultural and industrial uses within the water service*  
6 *provider’s service area. The determination may also include water*  
7 *supply reductions, based on an urban water shortage contingency*  
8 *analysis prepared pursuant to Section 10632 of the Water Code,*  
9 *that include identified actions to be undertaken by the water*  
10 *service provider in response to water supply shortages.*

11 ~~(e) The total available water supplies of the applicable water~~  
12 ~~service provider may also include a long term supply of water~~  
13 ~~secured by the water service provider that will be available prior~~  
14 ~~to completion of the project, including water supplies secured by~~  
15 ~~working in conjunction with the applicant and the city or county~~  
16 ~~or the designated advisory agency, sufficient to satisfy the~~

17 *(e) In making any findings or determinations under this*  
18 *section, a local agency, or designated advisory agency, may work*  
19 *in conjunction with the project applicant and the water service*  
20 *provider to secure projected water supplies, sufficient to satisfy the*  
21 *demands of the proposed project.*

22 (f) Where a water supply for a proposed subdivision includes  
23 groundwater, the amount of water available to find that a  
24 “sufficient water supply” exists shall be determined as follows:

25 (1) For those groundwater basins in which a court or the State  
26 Water Resources Control Board has adjudicated the rights to pump  
27 groundwater, the quantity of groundwater that may legally be  
28 provided under the court or State Water Resources Control Board  
29 order or decree to serve the proposed subdivision.

30 ~~(2) For basins that have not been adjudicated and which the~~  
31 ~~Department of Water Resources has not listed as overdrafted or in~~  
32 ~~critical condition in its Bulletin 118 series, the quantity of~~  
33 ~~groundwater that can be withdrawn within the safe yield of the~~  
34 ~~groundwater basin and without adversely affecting the~~  
35 ~~environment.~~

36 ~~(3) For groundwater basins that have been adjudicated and~~  
37 ~~which the Department of Water Resources has listed as overdrafted~~  
38 ~~or in critical condition in its Bulletin 118 series, it shall be~~

39 *(2) For groundwater basins for which a court or the State Water*  
40 *Resources Control Board has not adjudicated the rights to pump*



1 *groundwater, but which the Department of Water Resources has*  
2 *identified as currently overdrafted or has projected as being*  
3 *subject to a water shortage if present management conditions*  
4 *continue, in an official Department of Water Resources bulletin, it*  
5 *shall be presumed that the use of groundwater will not be*  
6 *considered as part of a “sufficient water supply” absent a showing,*  
7 *based on substantial evidence, that the groundwater pumping is*  
8 *part of a basinwide groundwater management program that will*  
9 *eliminate the long-term overdraft and the pumping will not*  
10 *increase the long-term overdraft of the groundwater basin or*  
11 ~~*adversely affect the environment.*~~ *basin.*

12 *(3) For all other groundwater basins, a quantity of*  
13 *groundwater sufficient to serve the proposed subdivision without*  
14 *resulting in an overdraft or a water shortage if present*  
15 *management conditions continue.*

16 *(4) In making the determinations pursuant to this subdivision,*  
17 *the review shall be based on information that is contained in the*  
18 *urban water management plan and supplemented by information*  
19 *that is reasonably available, including, but not limited to, historic*  
20 *use records.*

21 *(g) This section shall not apply to any residential project*  
22 *proposed for a site that is within an urbanized area, that has been*  
23 *previously developed for urban uses, or where the immediate*  
24 *contiguous properties surrounding the residential project site are,*  
25 *or previously have been, developed for urban uses.*

26 *(h) The determinations made pursuant to this section shall be*  
27 *consistent with the obligation of a water service provider to grant*  
28 *a priority for the provision of available and future water resources*  
29 *or services to proposed housing developments that help meet the*  
30 *city’s or county’s share of the regional housing needs for lower*  
31 *income households, pursuant to Section 65589.7.*

32 *(i) In the event a water service provider verifies that a sufficient*  
33 *water supply is not available to serve the proposed subdivision*  
34 *pursuant to subdivision (a), a copy of the written verification shall*  
35 *be sent by the water service provider to the Department of Housing*  
36 *and Community Development and to the appropriate council of*  
37 *governments. The department and the appropriate council of*  
38 *governments shall consider the lack of a sufficient water supply to*  
39 *support new residential development when determining the*  
40 *distribution of regional housing need pursuant to Section 65584.*



1 (j) The County of San Diego shall be deemed to comply with  
2 this section if the Office of Planning and Research determines that  
3 all of the following conditions have been met:

4 (1) A regional growth management strategy that provides for  
5 a comprehensive regional strategy and a coordinated economic  
6 development and growth management program has been  
7 developed pursuant to Proposition C as approved by the voters of  
8 the County of San Diego in November 1988, which required the  
9 development of a regional growth management plan and directed  
10 the establishment of a regional planning and growth management  
11 review board.

12 (2) Each public water system, as defined in Section 10912 of  
13 the Water Code, within the County of San Diego, has adopted an  
14 urban water management plan pursuant to Part 2.6 (commencing  
15 with Section 10610) of the Water Code.

16 (3) The approval or conditional approval of tentative maps for  
17 200 or more residential dwelling units by the County of San Diego  
18 and the cities within the county requires written communications  
19 to be made by the public water system to the city or county, in a  
20 format and with content that is substantially similar to the  
21 requirements contained in this section, with regard to the  
22 availability of a sufficient water supply, or the reliance on  
23 projected water supplies to provide a sufficient water supply, for  
24 a proposed subdivision.

25 ~~(j)~~

26 (k) Nothing in this section shall preclude the legislative body  
27 of a city or county, or the designated advisory agency, at the request  
28 of the applicant, from making the determinations required in this  
29 section earlier than required pursuant to subdivision (a).

30 ~~(k)~~

31 (l) Nothing in this section shall be construed to create a right or  
32 entitlement to water service or any specific level of water service.

33 ~~(l)~~

34 (m) Nothing in this section is intended to change existing law  
35 concerning a water service provider's obligation to provide water  
36 service to its existing customers or to any potential future  
37 customers.

38 ~~SEC. 4. Section 66474 of the Government Code is amended~~  
39 ~~to read:~~



1 ~~66474. A legislative body of a city or county shall deny~~  
2 ~~approval of a tentative map, or a parcel map for which a tentative~~  
3 ~~map was not required, if it makes any of the following findings:~~

4 ~~(a) The proposed map is not consistent with applicable general~~  
5 ~~and specific plans as specified in Section 65451.~~

6 ~~(b) The design or improvement of the proposed subdivision is~~  
7 ~~not consistent with applicable general and specific plans.~~

8 ~~(c) The site is not physically suitable for the type of~~  
9 ~~development.~~

10 ~~(d) The site is not physically suitable for the proposed density~~  
11 ~~of development.~~

12 ~~(e) The design of the subdivision or the proposed~~  
13 ~~improvements are likely to cause substantial environmental~~  
14 ~~damage or substantially and avoidably injure fish or wildlife or~~  
15 ~~their habitat.~~

16 ~~(f) The design of the subdivision or type of improvements is~~  
17 ~~likely to cause serious public health problems.~~

18 ~~(g) The design of the subdivision or the type of improvements~~  
19 ~~will conflict with easements, acquired by the public at large, for~~  
20 ~~access through or use of, property within the proposed~~  
21 ~~subdivision. In this connection, the governing body may approve~~  
22 ~~a map if it finds that alternate easements, for access or for use, will~~  
23 ~~be provided, and that these will be substantially equivalent to ones~~  
24 ~~previously acquired by the public. This subdivision shall apply~~  
25 ~~only to easements of record or to easements established by~~  
26 ~~judgment of a court of competent jurisdiction and no authority is~~  
27 ~~hereby granted to a legislative body to determine that the public at~~  
28 ~~large has acquired easements for access through or use of property~~  
29 ~~within the proposed subdivision.~~

30 ~~(h) The design of the subdivision or the type of improvement~~  
31 ~~does not comply with the requirements of Section 66473.7.~~

32 ~~(i) The design of the subdivision or the proposed improvements~~  
33 ~~does not incorporate reasonable or practical measures to maintain~~  
34 ~~the physical and economic integrity of agricultural lands.~~

35 ~~SEC. 5.—~~

36 ~~(n) For the purposes of this section, “subdivision” means a~~  
37 ~~proposed residential development of more than 500 dwelling units,~~  
38 ~~except that for a water service provider that has fewer than 5,000~~  
39 ~~service connections, then “subdivision” means any proposed~~  
40 ~~residential development that would account for an increase of 10~~



1 *percent or more in the number of the water service provider's*  
2 *existing service connections.*

3 *SEC. 6.* No reimbursement is required by this act pursuant to  
4 Section 6 of Article XIII B of the California Constitution because  
5 a local agency or school district has the authority to levy service  
6 charges, fees, or assessments sufficient to pay for the program or  
7 level of service mandated by this act, within the meaning of  
8 Section 17556 of the Government Code.

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