

**Introduced by Senator Kuehl**

February 23, 2007

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An act to amend Section 66473.7 of the Government Code, relating to land use.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 821, as introduced, Kuehl. Land use: water supplies.

(1) Under existing law, the Subdivision Map Act prohibits 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 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 public water system 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. Under these provisions, "subdivision" means a proposed residential development of more than 500 dwelling units, except as specified.

This bill would reduce the number of dwelling units to 250 or more. By this reduction the bill would increase the duties of local planning officials and, thereby, impose a state-mandated local program.

(2) 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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. It is the intent of the Legislature to include  
2 commercial and industrial developments in the provisions of  
3 Section 66473.7 of the Government Code.

4 SEC. 2. Section 66473.7 of the Government Code is amended  
5 to read:

6 66473.7. (a) For the purposes of this section, the following  
7 definitions apply:

8 (1) "Subdivision" means a proposed residential development  
9 of more than ~~500~~ 250 dwelling units, except that for a public water  
10 system that has fewer than 5,000 service connections, "subdivision"  
11 means any proposed residential development that would account  
12 for an increase of 10 percent or more in the number of the public  
13 water system's existing service connections.

14 (2) "Sufficient water supply" means the total water supplies  
15 available during normal, single-dry, and multiple-dry years within  
16 a 20-year projection that will meet the projected demand associated  
17 with the proposed subdivision, in addition to existing and planned  
18 future uses, including, but not limited to, agricultural and industrial  
19 uses. In determining "sufficient water supply," all of the following  
20 factors shall be considered:

21 (A) The availability of water supplies over a historical record  
22 of at least 20 years.

23 (B) The applicability of an urban water shortage contingency  
24 analysis prepared pursuant to Section 10632 of the Water Code  
25 that includes actions to be undertaken by the public water system  
26 in response to water supply shortages.

27 (C) The reduction in water supply allocated to a specific water  
28 use sector pursuant to a resolution or ordinance adopted, or a  
29 contract entered into, by the public water system, as long as that  
30 resolution, ordinance, or contract does not conflict with Section  
31 354 of the Water Code.

32 (D) The amount of water that the water supplier can reasonably  
33 rely on receiving from other water supply projects, such as  
34 conjunctive use, reclaimed water, water conservation, and water  
35 transfer, including programs identified under federal, state, and

1 local water initiatives such as CALFED and Colorado River  
2 tentative agreements, to the extent that these water supplies meet  
3 the criteria of subdivision (d).

4 (3) “Public water system” means the water supplier that is, or  
5 may become as a result of servicing the subdivision included in a  
6 tentative map pursuant to subdivision (b), a public water system,  
7 as defined in Section 10912 of the Water Code, that may supply  
8 water for a subdivision.

9 (b) (1) The legislative body of a city or county or the advisory  
10 agency, to the extent that it is authorized by local ordinance to  
11 approve, conditionally approve, or disapprove the tentative map,  
12 shall include as a condition in any tentative map that includes a  
13 subdivision a requirement that a sufficient water supply shall be  
14 available. Proof of the availability of a sufficient water supply  
15 shall be requested by the subdivision applicant or local agency, at  
16 the discretion of the local agency, and shall be based on written  
17 verification from the applicable public water system within 90  
18 days of a request.

19 (2) If the public water system fails to deliver the written  
20 verification as required by this section, the local agency or any  
21 other interested party may seek a writ of mandamus to compel the  
22 public water system to comply.

23 (3) If the written verification provided by the applicable public  
24 water system indicates that the public water system is unable to  
25 provide a sufficient water supply that will meet the projected  
26 demand associated with the proposed subdivision, then the local  
27 agency may make a finding, after consideration of the written  
28 verification by the applicable public water system, that additional  
29 water supplies not accounted for by the public water system are,  
30 or will be, available prior to completion of the subdivision that  
31 will satisfy the requirements of this section. This finding shall be  
32 made on the record and supported by substantial evidence.

33 (4) If the written verification is not provided by the public water  
34 system, notwithstanding the local agency or other interested party  
35 securing a writ of mandamus to compel compliance with this  
36 section, then the local agency may make a finding that sufficient  
37 water supplies are, or will be, available prior to completion of the  
38 subdivision that will satisfy the requirements of this section. This  
39 finding shall be made on the record and supported by substantial  
40 evidence.

(c) The applicable public water system's written verification of its ability or inability to provide a sufficient water supply that will meet the projected demand associated with the proposed subdivision as required by subdivision (b) shall be supported by substantial evidence. The substantial evidence may include, but is not limited to, any of the following:

(1) The public water system's most recently adopted urban water management plan adopted pursuant to Part 2.6 (commencing with Section 10610) of Division 6 of the Water Code.

(2) A water supply assessment that was completed pursuant to Part 2.10 (commencing with Section 10910) of Division 6 of the Water Code.

(3) Other information relating to the sufficiency of the water supply that contains analytical information that is substantially similar to the assessment required by Section 10635 of the Water Code.

(d) When the written verification pursuant to subdivision (b) relies on projected water supplies that are not currently available to the public water system, to provide a sufficient water supply to the subdivision, the written verification as to those projected water supplies shall be based on all of the following elements, to the extent each is applicable:

(1) Written contracts or other proof of valid rights to the identified water supply that identify the terms and conditions under which the water will be available to serve the proposed subdivision.

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

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

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

(e) If there is no public water system, the local agency shall make a written finding of sufficient water supply based on the evidentiary requirements of subdivisions (c) and (d) and identify the mechanism for providing water to the subdivision.

(f) In making any findings or determinations under this section, a local agency, or designated advisory agency, may work in

1 conjunction with the project applicant and the public water system  
2 to secure water supplies sufficient to satisfy the demands of the  
3 proposed subdivision. If the local agency secures water supplies  
4 pursuant to this subdivision, which supplies are acceptable to and  
5 approved by the governing body of the public water system as  
6 suitable for delivery to customers, it shall work in conjunction  
7 with the public water system to implement a plan to deliver that  
8 water supply to satisfy the long-term demands of the proposed  
9 subdivision.

10 (g) The written verification prepared under this section shall  
11 also include a description, to the extent that data is reasonably  
12 available based on published records maintained by federal and  
13 state agencies, and public records of local agencies, of the  
14 reasonably foreseeable impacts of the proposed subdivision on the  
15 availability of water resources for agricultural and industrial uses  
16 within the public water system's service area that are not currently  
17 receiving water from the public water system but are utilizing the  
18 same sources of water. To the extent that those reasonably  
19 foreseeable impacts have previously been evaluated in a document  
20 prepared pursuant to the California Environmental Quality Act  
21 (Division 13 (commencing with Section 21000) of the Public  
22 Resources Code) or the National Environmental Policy Act (Public  
23 Law 91-190) for the proposed subdivision, the public water system  
24 may utilize that information in preparing the written verification.

25 (h) Where a water supply for a proposed subdivision includes  
26 groundwater, the public water system serving the proposed  
27 subdivision shall evaluate, based on substantial evidence, the extent  
28 to which it or the landowner has the right to extract the additional  
29 groundwater needed to supply the proposed subdivision. Nothing  
30 in this subdivision is intended to modify state law with regard to  
31 groundwater rights.

32 (i) This section shall not apply to any residential project  
33 proposed for a site that is within an urbanized area and has been  
34 previously developed for urban uses, or where the immediate  
35 contiguous properties surrounding the residential project site are,  
36 or previously have been, developed for urban uses, or housing  
37 projects that are exclusively for very low and low-income  
38 households.

39 (j) The determinations made pursuant to this section shall be  
40 consistent with the obligation of a public water system to grant a

1 priority for the provision of available and future water resources  
2 or services to proposed housing developments that help meet the  
3 city's or county's share of the regional housing needs for lower  
4 income households, pursuant to Section 65589.7.

5 (k) The County of San Diego shall be deemed to comply with  
6 this section if the Office of Planning and Research determines that  
7 all of the following conditions have been met:

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

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

20 (3) The approval or conditional approval of tentative maps for  
21 subdivisions, as defined in this section, by the County of San Diego  
22 and the cities within the county requires written communications  
23 to be made by the public water system to the city or county, in a  
24 format and with content that is substantially similar to the  
25 requirements contained in this section, with regard to the  
26 availability of a sufficient water supply, or the reliance on projected  
27 water supplies to provide a sufficient water supply, for a proposed  
28 subdivision.

29 (l) Nothing in this section shall preclude the legislative body of  
30 a city or county, or the designated advisory agency, at the request  
31 of the applicant, from making the determinations required in this  
32 section earlier than required pursuant to subdivision (b).

33 (m) Nothing in this section shall be construed to create a right  
34 or entitlement to water service or any specific level of water  
35 service.

36 (n) Nothing in this section is intended to change existing law  
37 concerning a public water system's obligation to provide water  
38 service to its existing customers or to any potential future  
39 customers.

1 (o) Any action challenging the sufficiency of the public water  
2 system's written verification of a sufficient water supply shall be  
3 governed by Section 66499.37.

4 SEC. 3. If the Commission on State Mandates determines that  
5 this act contains costs mandated by the state, reimbursement to  
6 local agencies and school districts for those costs shall be made  
7 pursuant to Part 7 (commencing with Section 17500) of Division  
8 4 of Title 2 of the Government Code.

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