

Introduced by Senator Kuehl

February 23, 2007

An act to amend Section 66473.7 of, *and to add Section 65852.10 to*, the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 821, as amended, 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.

This bill would also establish these same sufficient water supply requirements as a condition in any entitlement for a project, as defined.

(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 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. Section 65852.10 is added to the Government*
2 *Code, to read:*

3 *65852.10. (a) As used in this section, the following definitions*
4 *apply:*

5 *(1) "Entitlement" means a permit, use permit, conditional use*
6 *permit, special use permit, or building permit, whether*
7 *discretionary or ministerial, issued by a local agency for the*
8 *construction of a project, or a development agreement authorized*
9 *pursuant to Article 2.5 (commencing with Section 65864).*

10 *(2) "Local agency" means a city, including a charter city, a*
11 *county, and a city and county.*

12 *(3) "Project" means all of the following:*

13 *(A) A proposed shopping center or business establishment*
14 *employing more than 1,000 persons or having more than 500,000*
15 *square feet of floor space.*

16 *(B) A proposed commercial office building employing more*
17 *than 1,000 persons or having more than 250,000 square feet of*
18 *floor space.*

19 *(C) A proposed hotel or motel, or both, having more than 500*
20 *rooms.*

21 *(D) A proposed industrial, manufacturing, or processing plant,*
22 *or industrial park planned to house more than 1,000 persons,*
23 *occupying more than 40 acres of land, or having more than*
24 *650,000 square feet of floor area.*

1 (E) A mixed-use project that includes one or more of the projects
2 specified in this paragraph.

3 (F) A project that would demand an amount of water equivalent
4 to, or greater than, the amount of water required by 500 dwelling
5 units.

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

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

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

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

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

28 (D) The amount of water that the water supplier can reasonably
29 rely on receiving from other water supply projects, such as
30 conjunctive use, reclaimed water, water conservation, and water
31 transfer, including programs identified under federal, state, and
32 local water initiatives such as CALFED and Colorado River
33 tentative agreements, to the extent that these water supplies meet
34 the criteria of subdivision (d).

35 (b) (1) A local agency shall include, as a condition in any
36 entitlement for a project, a requirement that a sufficient water
37 supply be available. Proof of the availability of a sufficient water
38 supply shall be requested by the applicant or local agency, at the
39 discretion of the local agency, and shall be based on written

1 verification from the applicable public water system within 90
2 days of a request.

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

7 (3) If the written verification provided by the applicable public
8 water system indicates that the public water system is unable to
9 provide a sufficient water supply that will meet the projected
10 demand associated with the proposed project, then the local agency
11 may make a finding, after consideration of the written verification
12 by the applicable public water system, that additional water
13 supplies not accounted for by the public water system are, or will
14 be, available prior to completion of the project that will satisfy
15 the requirements of this section. This finding shall be made on the
16 record and supported by substantial evidence.

17 (4) If the written verification is not provided by the public water
18 system, notwithstanding the local agency or other interested party
19 securing a writ of mandamus to compel compliance with this
20 section, then the local agency may make a finding that sufficient
21 water supplies are, or will be, available prior to completion of the
22 project that will satisfy the requirements of this section. This
23 finding shall be made on the record and supported by substantial
24 evidence.

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

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

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

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

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

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

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

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

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

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

23 (f) In making any findings or determinations under this section,
24 a local agency, or designated advisory agency, may work in
25 conjunction with the project applicant and the public water system
26 to secure water supplies sufficient to satisfy the demands of the
27 proposed project. If the local agency secures water supplies
28 pursuant to this subdivision, which supplies are acceptable to and
29 approved by the governing body of the public water system as
30 suitable for delivery to customers, it shall work in conjunction
31 with the public water system to implement a plan to deliver that
32 water supply to satisfy the long-term demands of the proposed
33 project.

34 (g) The written verification prepared under this section shall
35 also include a description, to the extent that data is reasonably
36 available based on published records maintained by federal and
37 state agencies, and public records of local agencies, of the
38 reasonably foreseeable impacts of the proposed project on the
39 availability of water resources for agricultural and industrial uses
40 within the public water system's service area that are not currently

1 receiving water from the public water system but are utilizing the
2 same sources of water. To the extent that those reasonably
3 foreseeable impacts have previously been evaluated in a document
4 prepared pursuant to the California Environmental Quality Act
5 (Division 13 (commencing with Section 21000) of the Public
6 Resources Code) or the National Environmental Policy Act (Public
7 Law 91-190) for the proposed project, the public water system
8 may utilize that information in preparing the written verification.

9 (h) When a water supply for a proposed project includes
10 groundwater, the public water system serving the proposed project
11 shall evaluate, based on substantial evidence, the extent to which
12 it or the landowner has the right to extract the additional
13 groundwater needed to supply the proposed project. Nothing in
14 this subdivision is intended to modify state law with regard to
15 groundwater rights.

16 (i) This section shall not apply to any residential subdivision
17 or mixed-use project proposed for a site that is within an urbanized
18 area and has been previously developed for urban uses, or where
19 the immediate contiguous properties surrounding the residential
20 subdivision or mixed-use project site are, or previously have been,
21 developed for urban uses, or housing projects that are exclusively
22 for very low and low-income households.

23 (j) The determinations made pursuant to this section shall be
24 consistent with the obligation of a public water system to grant a
25 priority for the provision of available and future water resources
26 or services to proposed housing developments that help meet the
27 city's or county's share of the regional housing needs for lower
28 income households, pursuant to Section 65589.7.

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

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

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

1 *(n) The Legislature finds and declares that the availability of*
2 *sufficient water supplies is a matter of statewide concern and not*
3 *a municipal affair as that term is used in Section 5 of Article XI*
4 *of the California Constitution. Accordingly, this section applies*
5 *to every city, including a charter city, county, and city and county.*

6 ~~SECTION 1. It is the intent of the Legislature to include~~
7 ~~commercial and industrial developments in the provisions of~~
8 ~~Section 66473.7 of the Government Code.~~

9 SEC. 2. Section 66473.7 of the Government Code is amended
10 to read:

11 66473.7. (a) For the purposes of this section, the following
12 definitions apply:

13 (1) “Subdivision” means a proposed residential development
14 of more than 250 dwelling units, except that for a public water
15 system that has fewer than 5,000 service connections, “subdivision”
16 means any proposed residential development that would account
17 for an increase of 10 percent or more in the number of the public
18 water system’s existing service connections.

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

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

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

32 (C) The reduction in water supply allocated to a specific water
33 use sector pursuant to a resolution or ordinance adopted, or a
34 contract entered into, by the public water system, as long as that
35 resolution, ordinance, or contract does not conflict with Section
36 354 of the Water Code.

37 (D) The amount of water that the water supplier can reasonably
38 rely on receiving from other water supply projects, such as
39 conjunctive use, reclaimed water, water conservation, and water
40 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.

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

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

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

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

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

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

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

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

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

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

39 (f) In making any findings or determinations under this section,
40 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.~~

9 *SEC. 3. No reimbursement is required by this act pursuant to*
10 *Section 6 of Article XIII B of the California Constitution because*
11 *a local agency or school district has the authority to levy service*
12 *charges, fees, or assessments sufficient to pay for the program or*
13 *level of service mandated by this act, within the meaning of Section*
14 *17556 of the Government Code.*