

AMENDED IN ASSEMBLY APRIL 23, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1408

Introduced by Assembly Member Krekorian

February 27, 2009

An act to amend Section 66473.7 of the Government Code, relating to subdivision map approvals.

LEGISLATIVE COUNSEL'S DIGEST

AB 1408, as amended, Krekorian. Subdivisions: Water Conservation Mitigation Fund.

(1) The Subdivision Map Act establishes a statewide regulatory framework for controlling the subdividing of land. The act generally requires a subdivider to submit, and have approved by the city, county, or city and county in which the land is situated, a tentative map. The act requires the legislative body of a city or county or the advisory agency, to the extent that it is authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, to include as a condition in any tentative map that includes a subdivision a requirement that a sufficient water supply be available. The act authorizes the legislative body to request written verification of sufficient water supply, and, when the written verification relies on projected water supplies that are not currently available to the public water system to provide a sufficient water supply to the subdivision, requires that the written verification as to those projected water supplies be based on prescribed elements.

~~This bill would establish a Water Conservation Mitigation Fund to be administered, as specified, by a public water system. A, instead,~~ *require the* legislative body of a city or county or the advisory agency,

to the extent that it is authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, ~~would be required~~ to include as a condition in any tentative map that includes a subdivision a requirement that the subdivision have a sufficient water supply ~~be~~ available or that sufficient water supplies will be made available through a Water Conservation Mitigation Fund, *as defined*, held by the public water system. The *bill would require the* amount of funding needed for voluntary participation by the subdivision applicant in the Water Conservation Mitigation Fund ~~would be required~~ to be based on offsetting at least 100 percent of the projected water demand associated with the subdivision, as determined by the public water system. The *bill would authorize the public water supplier to collect fees necessary to provide additional analysis of extraordinary water conservation measures. The bill also would require the* public water system ~~would be required~~ to expend all funds in the Water Conservation Mitigation Fund on water conservation measures that will offset at least 100 percent of the projected demand associated with the subdivision, as specified. By adding to the duties of public water system officials, this bill would 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.~~

~~(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 66473.7 of the Government Code is
2 amended to read:

1 66473.7. (a) For purposes of this section, the following
2 definitions apply:

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

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

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

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

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

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

34 (3) "Public water system" means the water supplier that is, or
35 may become as a result of servicing the subdivision included in a
36 tentative map pursuant to subdivision (b), a public water system,
37 as defined in Section 10912 of the Water Code, that may supply
38 water for a subdivision.

39 (4) "Projected water demand associated with the subdivision"
40 means the projected water demand associated with the subdivision

1 based on physical characteristics of the subdivision, including, but
2 not limited to, lot size and use, water using fixtures, current local
3 ordinances, statutory and regulatory requirements, and permanently
4 fixed extraordinary water conservation measures, as determined
5 by the public water system.

6 (5) “Water Conservation Mitigation Fund” means the fund used
7 to finance conservation measures that would achieve water savings
8 equivalent to the projected water demand associated with the
9 subdivision, as determined by the public water system.

10 (b) (1) The legislative body of a city or county or the advisory
11 agency, to the extent that it is authorized by local ordinance to
12 approve, conditionally approve, or disapprove the tentative map,
13 shall include as a condition in any tentative map that includes a
14 subdivision a requirement that a sufficient water supply shall be
15 available or that sufficient water supplies will be made available
16 through a Water Conservation Mitigation Fund held by the public
17 water system. The amount of funding needed for voluntary
18 participation by the subdivision applicant in the Water
19 Conservation Mitigation Fund shall be based on offsetting at least
20 100 percent of the projected water demand associated with the
21 subdivision, as determined by the public water system. Proof of
22 the availability of a sufficient water supply and, where applicable,
23 participation in the Water Conservation Mitigation Fund shall be
24 requested by the subdivision applicant or local agency, at the
25 discretion of the local agency, and shall be based on written
26 verification from the applicable public water system within 90
27 days of a request.

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

32 (3) If the written verification provided by the applicable public
33 water system indicates that the public water system is unable to
34 provide a sufficient water supply that will meet the projected
35 demand associated with the proposed subdivision, then the local
36 agency may make a finding, after consideration of the written
37 verification by the applicable public water system, that additional
38 water supplies not accounted for by the public water system are,
39 or will be, available prior to completion of the subdivision that

will satisfy the requirements of this section. This finding shall be made on the record and supported by substantial evidence.

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

(5) The public water system shall include in the written verification of its assessment of the projected demand associated with the subdivision its ability or inability to provide a sufficient water supply. If the public water system bases its assessment of the projected water demand associated with the subdivision on inclusion of permanently fixed extraordinary water conservation measures, the assessment shall be conditioned with appropriate measures to ensure that the extraordinary water conservation measures will be retained and that actual long-term water demand associated with the subdivision will be consistent with the water demand projection. The conditions shall include adoption of legally enforceable mechanisms, such as inclusion in covenants, conditions, and restrictions. Water savings and demand projections associated with permanently fixed extraordinary water conservation measures may be calculated using the water savings projections adopted by the California Urban Water Conservation Council. Water savings and demand projections for measures for which the California Urban Water Conservation Council does not have adopted findings shall be based on substantial evidence in the record.

(6) A public water system may impose a more stringent requirement than provided for in this section. *The public water supplier may collect fees, pursuant to Section 66014, that are necessary to provide additional analysis of extraordinary water conservation measures required by this section.*

(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

1 substantial evidence. The substantial evidence may include, but is
2 not limited to, any of the following:

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

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

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

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

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

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

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

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

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

35 (f) In making any findings or determinations under this section,
36 a local agency, or designated advisory agency, may work in
37 conjunction with the project applicant and the public water system
38 to secure water supplies sufficient to satisfy the demands of the
39 proposed subdivision. If the local agency secures water supplies
40 pursuant to this subdivision, which supplies are acceptable to and

1 approved by the governing body of the public water system as
2 suitable for delivery to customers, it shall work in conjunction
3 with the public water system to implement a plan to deliver that
4 water supply to satisfy the long-term demands of the proposed
5 subdivision.

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

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

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

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

1 (k) 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 a
5 comprehensive regional strategy and a coordinated economic
6 development and growth management program has been developed
7 pursuant to Proposition C as approved by the voters of the County
8 of San Diego in November 1988, which required the development
9 of a regional growth management plan and directed the
10 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 subdivisions, as defined in this section, 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 projected
23 water supplies to provide a sufficient water supply, for a proposed
24 subdivision.

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

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

32 (n) Nothing in this section is intended to change existing law
33 concerning a public water system's obligation to provide water
34 service to its existing customers or to any potential future
35 customers.

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

39 (p) When the written verification pursuant to subdivision (b)
40 relies on voluntary participation in the Water Conservation

1 Mitigation Fund held by the by the public water system, the written
2 verification shall include an assessment by the public water system
3 of funds needed for the public water system to implement water
4 conservation measures that offset at least 100 percent of the
5 projected water demand associated with the subdivision and proof
6 that the funds have been voluntarily deposited in a Water
7 Conservation Mitigation Fund held by the public water system.
8 The public water system's assessment of funds shall include
9 identification and quantification of the water savings resulting
10 from the water conservation measures that the public water system
11 will implement to offset at least 100 percent of the projected water
12 demand associated with the subdivision.

13 (q) For purposes of a Water Conservation Mitigation Fund held
14 by a public water system, the public water system shall be required
15 to expend all funds from the Water Conservation Mitigation Fund
16 on water conservation measures that will offset at least 100 percent
17 of the projected demand associated with the subdivision. The
18 expenditures may be made within the subdivision or elsewhere
19 within the service area of the public water supplier, at its discretion.

20 (1) Not less than ____percent of the proceeds from the Water
21 Conservation Mitigation Fund shall be directed to water
22 conservation programs in any disadvantaged community, as defined
23 in Section 75005 of the Public Resources Code, within the service
24 area of the public water system.

25 (2) The public water system shall be prohibited from using any
26 funds from the Water Conservation Mitigation Fund to supplant
27 funding for water conservation programs required by existing law
28 or paid for by existing customers through water rates and
29 surcharges.

30 (3) The public water system shall be prohibited from using any
31 funds from the Water Conservation Mitigation Fund to comply
32 with requirements of the California Urban Water Conservation
33 Council Memorandum of Understanding, except where funds are
34 directed to disadvantaged communities.

35 (4) The governing body of a public water system shall
36 determine, after a public hearing, that the funds deposited in the
37 Water Conservation Mitigation Fund do not supplant funds for
38 water conservation programs required by existing law, paid for by
39 existing customers through water rates and surcharges, or that are

1 required for participation in the California Urban Water
2 Conservation Council.

3 (5) Actions for which the public water supplier may use water
4 conservation mitigation funding must be quantifiable, verifiable,
5 have a planned completion date that is concurrent with when the
6 buildings within the subdivision will require service, and have a
7 life expectancy of at least 20 years. These actions include all of
8 the following:

- 9 (A) High-efficiency toilet replacements.
- 10 (B) Faucet aerators.
- 11 (C) Prerinse spray valves.
- 12 (D) High-efficiency washing machines.
- 13 (E) Weather-based “smart” timers.
- 14 (F) Rotator spray heads.
- 15 (G) Cash for grass programs.
- 16 (H) Landscape rebates.
- 17 (I) Single-family high water use notifications.
- 18 (J) Home-leak detection kits.
- 19 (K) Water brooms.
- 20 (L) High-efficiency commercial dishwashers.
- 21 (M) Cooling tower conductivity controllers.
- 22 (N) X-ray film processor recirculation systems.
- 23 (O) Connectionless food steamers.
- 24 (P) Steam sterilizers.
- 25 (Q) Dry vacuum pumps.
- 26 (R) Commercial ice ~~machine~~ *machines*.
- 27 (S) School toilet leak detection.
- 28 (T) Water recycling.
- 29 (U) Advanced (automated) metering systems.
- 30 (V) Stormwater capture, graywater systems, and groundwater
31 treatment.
- 32 (W) Other water efficiency measures for which substantial
33 evidence demonstrates the measure will achieve a quantifiable
34 reduction in demand.
- 35 (r) Pursuant to Part 2.6 (commencing with Section 10610) of
36 Division 6 of the Water Code, the public water system shall do all
37 of the following:
 - 38 (1) Document all expenditures from the water conservation
39 mitigation funding, if the public water system holds a Water
40 Conservation Mitigation Fund, in its ~~Urban Water Management~~

1 ~~Plan~~ *urban water management plan* and confirm that the water
2 conservation mitigation funding was not used to supplant funding
3 for water conservation programs required by existing law, paid
4 for by existing customers through water rates and surcharges, or
5 that are required for participation in the California Urban Water
6 Conservation Council.

7 (2) Document the measured annual water use of each subdivision
8 pursuant to this section.

9 (3) Calculate the water savings attributable to the water
10 conservation measures financed by the water conservation
11 mitigation funding from each subdivision.

12 (4) In the event that the calculated water savings in subdivision
13 (q) do not equal or exceed the measured water demand in
14 subdivision (b) over a five-year period, the public water system
15 shall include in its ~~Urban Water Management Plan~~ *urban water*
16 *management plan* a schedule of actions designed to achieve the
17 savings necessary to offset 100 percent of the actual demand of
18 the subdivision.

19 ~~SEC. 2.—If the Commission on State Mandates determines that~~
20 ~~this act contains costs mandated by the state, reimbursement to~~
21 ~~local agencies and school districts for those costs shall be made~~
22 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
23 ~~4 of Title 2 of the Government Code.~~

24 *SEC. 2. No reimbursement is required by this act pursuant to*
25 *Section 6 of Article XIII B of the California Constitution because*
26 *a local agency or school district has the authority to levy service*
27 *charges, fees, or assessments sufficient to pay for the program or*
28 *level of service mandated by this act, within the meaning of Section*
29 *17556 of the Government Code.*