AMENDED IN ASSEMBLY APRIL 30, 2009

AMENDED IN ASSEMBLY APRIL 23, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

# ASSEMBLY BILL No. 1408

**Introduced by Assembly Member Krekorian**
***(Coauthors: Assembly Members Skinner and Torlakson)***
*(Coauthor: Senator Hancock)*

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~~ *Demand* 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, 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, to include as a condition in any tentative map that includes a subdivision a requirement that the subdivision have a sufficient water supply available or that sufficient water supplies will be made available through a Water ~~Conservation~~ *Demand* 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~~ *Demand* Mitigation Fund 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 to expend all funds in the Water ~~Conservation~~ *Demand* 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 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:*

*SECTION 1. This act shall be known as the Smart Water Community Development Act.*

*SEC. 2. (a) The Legislature finds and declares all of the following:*

*(1) Water supply reliability is vital to sustain California's economy, agricultural industry, environment, rural communities, and residents, all of which continue to face the possibility of severe water cutbacks during water shortage periods.*

*(2) Increasingly, California communities are finding that declining water supply reliability is compromising their ability to approve water supply verifications for new development.*

*(3) California's water agencies are more frequently required to impose water rationing and water rate increases on their residential and business customers due to reduced water supply reliability.*

*(4) Water supply reliability for all regions of the state has been declining in recent years due to climate change, ecosystem crisis in the Sacramento-San Joaquin Delta and other waterways, extended drought in the Colorado River Basin, contamination of groundwater basins, and increasing demand of water to sustain growth in California.*

*(5) In 2006, the Department of Water Resources issued a report on climate change and California's water resources, concluding that climate change is likely to continue to have significant effects on the state's water supply projects and the Sacramento-San Joaquin Delta.*

*(6) As water supply reliability decreases across the state, every effort should be taken to meet the consumptive needs of the state and protect the environment.*

*(7) Disadvantaged communities in California will be disproportionately impacted by reduced water supply reliability due to the lack of efficient water appliances and infrastructure, as well as a reduced ability to pay increased rates for water supplies.*

*(8) With California's population expected to reach nearly 60 million people by the year 2050, the state must accommodate millions of more residents in coming decades.*

*(9) If unmitigated, new water demands will result in further decreased water supply reliability, significant environmental impacts, and additional financial burdens to existing residents and business.*

*(10) There are a variety of measures available to secure and restore water supply reliability and to meet the need for new growth within California.*

*(11) Bulletin 160-05, the California Water Plan update, projects that urban water conservation can reduce water demand by two to three million acre-feet of water per year by the year 2030.*

*(12) Recycled water, stormwater capture, groundwater treatment, grader, and infrastructure replacement have also been identified as potential water supply reliability management tools.*

*(13) New flexible tools that ensure California communities can accommodate new development, while also increasing water supply reliability and avoiding the significant environmental and economic impacts associated with reduced water supply reliability, will benefit the people, economy, and environment of California.*

*(14) With conservation measures, the water demand of new homes can be reduced by a significant percentage. New homeowners should be made aware of water conservation features of their new homes and should fully understand any commitment to maintain those conservation features. For new developments, covenants, conditions, and restrictions, also known as "CC&RS," on homes provide a method for ensuring the original and subsequent purchasers of those homes are informed of their obligation to retain the approved onsite water conservation measures so the anticipated water conservation savings are realized and maintained over time.*

*(b) It is the intent of the Legislature to provide additional options that allow communities to access the potential of water conservation and enhanced local water development when identifying water supplies for new development.*

~~SECTION 1.~~

*SEC. 3.* Section 66473.7 of the Government Code is amended to read:

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

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

(2) "Sufficient water supply" means the total water supplies available during normal, single-dry, and multiple-dry years within a 20-year projection that will meet the projected demand associated with the proposed subdivision, in addition to existing and planned future uses, including, but not limited to, agricultural and industrial

uses. In determining "sufficient water supply," all of the following factors shall be considered:

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

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

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

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

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

(4) "Projected water demand associated with the subdivision" means the ~~projected~~ *anticipated* water demand associated with the subdivision *that is determined by the public water system and is* based on physical characteristics of the subdivision, including, but ~~not limited to, lot size and use, water using fixtures, current local ordinances, statutory and regulatory requirements, and permanently fixed extraordinary water conservation measures, as determined by the public water system.~~

~~(5) "Water Conservation Mitigation Fund" means the fund used to finance conservation measures that would achieve water savings equivalent to the projected water demand associated with the subdivision, as determined by the public water system.~~ *not limited to, lot size and use, current water conservation standards required by local ordinance or state regulation, and optional water conservation measures that exceed all applicable local and state*

*standards and that are agreed to by the public water system and the subdivision applicant.*

*(5) "Water conservation measures" means measures for which substantial evidence in the record demonstrates that the measures will result in water efficiency and have a life expectancy of at least 20 years. Substantial evidence may include, but is not limited to, water efficiency projections calculated by the California Urban Water Conservation Council or data that demonstrates that water efficiencies are quantifiable and verifiable.*

*(6) "Water Demand Mitigation Fund" means the fund used to finance water conservation measures implemented by the public water system and funded by the subdivision applicant in sufficient amount to offset 100 percent of the projected water demand associated with the subdivision. Participation in the Water Demand Mitigation Fund shall be at the mutual agreement of the public water system and the subdivision applicant.*

(b) (1) 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, shall include as a condition in any tentative map that includes a subdivision a requirement that a sufficient water supply shall be available or that sufficient water supplies will be made available through a Water ~~Conservation~~ *Demand* Mitigation Fund held by the public ~~water system. The amount of funding needed for voluntary participation by the subdivision applicant in the Water Conservation Mitigation Fund shall be based on offsetting at least 100 percent of the projected water demand associated with the subdivision, as determined by the public water system. Proof of~~ *water system. Proof of* the availability of a sufficient water supply and, where applicable, participation in the Water ~~Conservation~~ *Demand* Mitigation Fund shall be requested by the subdivision applicant or local agency, at the discretion of the local agency, and shall be based on written verification from the applicable public water system within 90 days of a request. *The public water system and the applicant may mutually agree to demonstrate that sufficient water will be made available for a subdivision consistent with these requirements through implementation of water conservation measures achieved with participation by the subdivision applicant in a Water Demand Mitigation Fund. When this option is exercised, the subdivision applicant shall enter into an agreement with the*

*public water system to mitigate demand associated with the subdivision by depositing funds into a Water Demand Mitigation Fund held by the public water system. The amount of funding required for participation by the subdivision applicant in the Water Demand Mitigation Fund shall be determined by the public water system and be based on offsetting at least 100 percent of the projected water demand associated with the subdivision. The funding required for participation in the Water Demand Mitigation Fund shall not exceed the amount necessary to offset the actual water demand impact of the subdivision.*

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

(3) If the written verification provided by the applicable public water system indicates that the public water system is unable to provide a sufficient water supply that will meet the projected demand associated with the proposed subdivision, then the local agency may make a finding, after consideration of the written verification by the applicable public water system, that additional water supplies not accounted for by the public water system 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.

(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~~ *verification of* 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.~~ *water supply an assessment of the projected water demand associated with the subdivision.*

*(6) If the public water system bases its assessment of the projected water demand associated with the subdivision on inclusion of optional water conservation measures that exceed all applicable local and state standards, the assessment shall be conditioned with appropriate measures to ensure that the optional water conservation measures will be retained by future homeowners and that actual long-term water demand associated with the subdivision will be consistent with the water demand projection. These conditions shall be included in the covenants, conditions, and restrictions (CC&Rs), or in an equivalent legally enforceable mechanism.*

*(7) The conditions referred to in paragraph (6) may be enforced by the imposition of financial penalties for any violation of them, pursuant to the existing authority of a public water system to enforce its ordinances.*

*(8) A public water system shall make a determination of the projected water savings for the water conservation measures that exceed all applicable local and state standards that will be incorporated at the subdivision. The public water system's determination of projected water savings shall be made based on substantial evidence in the record. Substantial evidence may include, but is not limited to, water efficiency projections calculated by the California Urban Water Conservation Council, or data that demonstrates that water efficiencies are quantifiable and verifiable.*

*(9) A public water system shall calculate the total projected water savings associated with the optional water conservation measures required by local ordinance or state regulation and*

*conservation measures that exceed all applicable local and state standards. The calculation shall be based on substantial evidence in the record. A public water system shall include the total projected water savings for the conservation measures, as determined in subparagraph (8), in the projected water demand associated with the subdivision.*

~~(6)~~

*(10)* 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 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 conjunction with the project applicant and the public water system to secure water supplies sufficient to satisfy the demands of the proposed subdivision. If the local agency secures water supplies pursuant to this subdivision, which supplies are acceptable to and approved by the governing body of the public water system as suitable for delivery to customers, it shall work in conjunction with the public water system to implement a plan to deliver that water supply to satisfy the long-term demands of the proposed subdivision.

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

(h) Where a water supply for a proposed subdivision includes groundwater, the public water system serving the proposed subdivision shall evaluate, based on substantial evidence, the extent to which it or the landowner has the right to extract the additional

groundwater needed to supply the proposed subdivision. Nothing in this subdivision is intended to modify state law with regard to groundwater rights.

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

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

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

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

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

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

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

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

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

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

(p) When the written verification pursuant to subdivision (b) relies on voluntary participation in the Water ~~Conservation~~ *Demand* Mitigation Fund held by the by the public water system, the written verification shall include an assessment by the public water system of funds needed for the public water system to implement water conservation measures that offset at least 100 percent of the projected water demand associated with the subdivision and proof that the funds have been voluntarily deposited in a Water ~~Conservation~~ *Demand* Mitigation Fund held by the public water system. The public water system's assessment of funds shall include identification and quantification of the water savings resulting from the water conservation measures that the public water system will implement to offset at least 100 percent of the projected water demand associated with the subdivision.

(q) For purposes of a Water ~~Conservation~~ *Demand* Mitigation Fund held by a public water system, the public water system shall be required to expend all funds from the Water ~~Conservation~~ *Demand* Mitigation Fund on water conservation measures that will offset at least 100 percent of the projected demand associated with the subdivision. *Water conservation measures shall be chosen that are the least expensive and most cost-effective means to yield the applicable amount of water.* The expenditures may be made within the subdivision or elsewhere within the service area of the public water supplier, at its discretion.

(1) Not less than ~~_____~~ *40* percent of the proceeds from the Water ~~Conservation~~ *Demand* Mitigation Fund shall be directed to water

conservation programs in any disadvantaged community, as defined in Section 75005 of the Public Resources Code, within the service area of the public water system.

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

(3) The public water system shall be prohibited from using any funds from the Water ~~Conservation~~ *Demand* Mitigation Fund to comply with requirements of the California Urban Water Conservation Council Memorandum of Understanding, except where funds are directed to disadvantaged communities. *The public water system may use funds from the Water Demand Mitigation Fund to expand existing water conservation programs beyond the requirements of the California Urban Water Conservation Council Memorandum of Understanding.*

(4) The governing body of a public water system shall determine, after a public hearing, that the funds deposited in the Water ~~Conservation~~ *Demand* Mitigation Fund do not supplant funds for ~~water conservation programs required by existing law,~~ *existing water conservation programs* paid for by existing customers through water rates and surcharges, or that are required ~~for participation in~~ *to meet* the California Urban Water Conservation Council. *This determination may be made at the same hearing in which the governing body considers approval of the water supply verification.*

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

~~(A) High-efficiency toilet replacements.~~

~~(B) Faucet aerators.~~

~~(C) Prerinse spray valves.~~

~~(D) High-efficiency washing machines.~~

~~(E) Weather-based "smart" timers.~~

~~(F) Rotator spray heads.~~

~~(G) Cash for grass programs.~~

~~(H) Landscape rebates.~~
~~(I) Single-family high water use notifications.~~
~~(J) Home-leak detection kits.~~
~~(K) Water brooms.~~
~~(L) High-efficiency commercial dishwashers.~~
~~(M) Cooling tower conductivity controllers.~~
~~(N) X-ray film processor recirculation systems.~~
~~(O) Connectionless food steamers.~~
~~(P) Steam sterilizers.~~
~~(Q) Dry vacuum pumps.~~
~~(R) Commercial ice machines.~~
~~(S) School toilet leak detection.~~
~~(T) Water recycling.~~
~~(U) Advanced (automated) metering systems.~~
~~(V) Stormwater capture, graywater systems, and groundwater treatment.~~
~~(W) Other water efficiency measures for which substantial evidence demonstrates the measure will achieve a quantifiable reduction in demand.~~ *demand mitigation funding are water conservation measures that have a planned completion date that is concurrent with when the buildings within the subdivision will require service. These actions shall include, but are not limited to, all of the following:*

*(A) Water efficient appliances.*

*(B) Water efficient landscapes and irrigation controllers.*

*(C) Water recycling.*

*(D) Stormwater capture, grey water systems, and groundwater treatment.*

*(E) Any other water conservation measure for which substantial evidence demonstrates will achieve a quantifiable reduction in water demand.*

(r) Pursuant to Part 2.6 (commencing with Section 10610) of Division 6 of the Water Code, the public water system shall do all of the following:

(1) Document all expenditures from the water conservation mitigation funding, if the public water system holds a Water ~~Conservation~~ *Demand* Mitigation Fund, in its urban water management plan and confirm that the water conservation mitigation funding was not used to supplant funding for water conservation programs required by existing law, paid for by

existing customers through water rates and surcharges, or that are required for participation in the California Urban Water Conservation Council.

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

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

*(3) Calculate the water savings attributable to both of the following:*

*(A) The water conservation measures financed by the water conservation mitigation funding from each subdivision.*

*(B) The water conservation measures implemented in the subdivision that exceed all applicable local and state standards in the absence of a Water Demand Mitigation Fund.*

(4) In the event that the calculated water savings in subdivision (q) do not equal or exceed the measured water demand in subdivision (b) over a five-year period, the public water system shall include in its urban water management plan a schedule of actions designed to achieve the savings necessary to offset 100 percent of the actual demand of the subdivision.

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

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**CORRECTIONS:**

**Text—Page 6.**

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