

Senate Bill No. 221

CHAPTER 642

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

[Approved by Governor October 9, 2001. Filed with Secretary of State October 9, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

SB 221, Kuehl. Land use: water supplies.

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

This bill would prohibit approval of a tentative map, or a parcel map for which a tentative map was not required, or a development agreement for a subdivision of property of more than 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.

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

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

This bill would provide that for proposed subdivisions subject to specified requirements of the Subdivision Map Act, the true statement of the provisions that have been made for water is satisfied by submitting



a copy of the written verification of the availability of a sufficient water supply, obtained pursuant to specified requirements as described in (1) above.

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

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

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

SECTION 1. Section 11010 of the Business and Professions Code is amended to read:

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

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

(1) The name and address of the owner.

(2) The name and address of the subdivider.

(3) The legal description and area of lands.

(4) A true statement of the condition of the title to the land, particularly including all encumbrances thereon.

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

(6) A true statement of the provisions, if any, that have been made for public utilities in the proposed subdivision, including water, electricity, gas, telephone, and sewerage facilities. For subdivided lands that were subject to the imposition of a condition pursuant to subdivision (b) of Section 66473.7 of the Government Code, the true statement of the provisions made for water shall be satisfied by submitting a copy of the written verification of the available water supply obtained pursuant to Section 66473.7 of the Government Code.

(7) A true statement of the use or uses for which the proposed subdivision will be offered.

(8) A true statement of the provisions, if any, limiting the use or occupancy of the parcels in the subdivision.



(9) A true statement of the amount of indebtedness that is a lien upon the subdivision or any part thereof, and that was incurred to pay for the construction of any onsite or offsite improvement, or any community or recreational facility.

(10) A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area, assessment district, or community facilities district within the boundaries of which, the subdivision, or any part thereof, is located, and that is to pay for the construction or installation of any improvement or to furnish community or recreational facilities to that subdivision, and which amounts are to be obtained by ad valorem tax or assessment, or by a special assessment or tax upon the subdivision, or any part thereof.

(11) (A) As to each school district serving the subdivision, a statement from the appropriate district that indicates the location of each high school, junior high school, and elementary school serving the subdivision, or documentation that a statement to that effect has been requested from the appropriate school district.

(B) In the event that, as of the date the notice of intention and application for issuance of a public report are otherwise deemed to be qualitatively and substantially complete pursuant to Section 11010.2, the statement described in subparagraph (A) has not been provided by any school district serving the subdivision, the person who filed the notice of intention and application for issuance of a public report immediately shall provide the department with the name, address, and telephone number of that district.

(12) The location of all existing airports, and of all proposed airports shown on the general plan of any city or county, located within two statute miles of the subdivision.

(13) A true statement, if applicable, referencing any soils or geologic report or soils and geologic reports that have been prepared specifically for the subdivision.

(14) A true statement of whether or not fill is used, or is proposed to be used in the subdivision and a statement giving the name and the location of the public agency where information concerning soil conditions in the subdivision is available.

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

(c) The commissioner may, by regulation, or on the basis of the particular circumstances of a proposed offering, waive the requirement of the submission of a completed questionnaire if the commissioner determines that prospective purchasers or lessees of the subdivision interests to be offered will be adequately protected through the issuance



of a public report based solely upon information contained in the notice of intention.

SEC. 2. Section 65867.5 of the Government Code is amended to read:

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

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

(c) A development agreement that includes a subdivision, as defined in Section 66473.7, shall not be approved unless the agreement provides that any tentative map prepared for the subdivision will comply with the provisions of Section 66473.7.

SEC. 3. Section 66455.3 is added to the Government Code, to read:

66455.3. Not later than five days after a city or county has determined that a tentative map application for a proposed subdivision, as defined in Section 66473.7, is complete pursuant to Section 65943, the local agency shall send a copy of the application to any water supplier that is, or may become, a public water system, as defined in Section 10912 of the Water Code, that may supply water for the subdivision.

SEC. 4. Section 66473.7 is added to the Government Code, to read:

66473.7. (a) For the 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.

(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. Proof of the availability of a sufficient water supply 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.

(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.

(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 (a).

(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.

SEC. 5. 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.

