

AMENDED IN SENATE MAY 11, 2016

AMENDED IN SENATE APRIL 27, 2016

SENATE BILL

No. 1262

Introduced by Senators Pavley and Wieckowski

February 18, 2016

An act to amend Section 66473.7 of the Government Code, and to amend Section 10910 of the Water Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 1262, as amended, Pavley. Water supply planning.

(1) Existing law requires a city or county that determines a project, as defined, is subject to the California Environmental Quality Act to identify certain water systems that may supply water for the project and to request those public water systems to prepare and approve a specified water supply assessment. Under existing law, if no public water system is identified, the city or county is required to prepare and approve the water supply assessment. Existing law provides that if, as a result of its assessment, the public water system or city or county concludes that its water supplies are, or will be, insufficient, the public water system or city or county is required to provide its plans for acquiring additional water supplies, as prescribed.

Existing law, the Sustainable Groundwater Management Act, requires all groundwater basins designated as high- or medium-priority basins by the Department of Water Resources that are designated as basins subject to critical conditions of overdraft to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans by January 31, 2020, and requires all other groundwater basins designated as high- or medium-priority basins to be managed under a groundwater sustainability plan or coordinated

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groundwater sustainability plans by January 31, 2022, except as specified. The act authorizes the State Water Resources Control Board to designate a basin as a probationary basin if the state board makes a certain determination and to develop an interim plan for the probationary basin.

This bill would require a city or county that determines a project is subject to the California Environmental Quality Act to identify any water system whose service area includes the project site and any water system adjacent to the project site. ~~This bill would require, if a water source for a proposed project includes water of a quality not sufficient to meet certain drinking water standards, that prescribed additional information be included in a water supply assessment.~~ This bill would provide that hauled water or groundwater from a probationary basin are not sources of water for the purposes of a water supply ~~assessment.~~ *assessment, as specified.* This bill would, if a water supply for a proposed project includes groundwater, require certain additional information to be included in the water supply assessment. By imposing additional duties on cities and counties, this bill would impose a state-mandated local program.

(2) Existing law, 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 for subdivisions of land, as specified. Existing law requires a city or county to deny approval of a tentative map, or parcel map for which a tentative map was not required, if it makes certain findings relating to the proposed subdivision. Existing law requires a city or county to include as a condition in any tentative map that includes a subdivision a requirement that a sufficient water supply be available. Existing law requires proof of the availability of a sufficient water supply, as prescribed, and that the written verification of a public water system's ability or inability to provide a sufficient water supply be supported by substantial evidence.

This bill would revise the definition of sufficient water supply to include additional factors relating to a proposed subdivision that relies in whole or in part on groundwater. This bill would provide that groundwater from a probationary basin is not a water supply for these ~~purposes.~~ *purposes, as specified.*

(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.

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:

3 66473.7. (a) For the purposes of this section, the following
4 definitions apply:

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

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

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

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

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

29 (D) The amount of water that the water supplier can reasonably
30 rely on receiving from other water supply projects, such as

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1 conjunctive use, reclaimed water, water conservation, and water
2 transfer, including programs identified under federal, state, and
3 local water initiatives such as CALFED and Colorado River
4 tentative agreements, to the extent that these water supplies meet
5 the criteria of subdivision (d).

6 (E) If a proposed subdivision relies in whole or in part on
7 groundwater, the following factors:

8 (i) For a basin for which a court or the State Water Resources
9 Control Board has adjudicated the rights to pump groundwater,
10 the order or decree adopted by the court or the State Water
11 Resources Control Board.

12 (ii) For a basin that has not been adjudicated, as follows:

13 (I) For a basin designated as high- or medium-priority pursuant
14 to Section 10722.4 of the Water Code, the most recently adopted
15 or revised adopted groundwater sustainability plan or approved
16 alternative. *If there is no adopted groundwater sustainability plan
17 or approved alternative, information as to whether the Department
18 of Water Resources has identified the basin or basins as
19 overdrafted or has projected that the basin will become overdrafted
20 if present management conditions continue.*

21 (II) For a basin designated as low- or very low priority pursuant
22 to Section 10722.4 of the Water Code, information as to whether
23 the Department of Water Resources has identified the basin or
24 basins as overdrafted or has projected that the basin will become
25 overdrafted if present management conditions continue.

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

31 (b) (1) The legislative body of a city or county or the advisory
32 agency, to the extent that it is authorized by local ordinance to
33 approve, conditionally approve, or disapprove the tentative map,
34 shall include as a condition in any tentative map that includes a
35 subdivision a requirement that a sufficient water supply shall be
36 available. Proof of the availability of a sufficient water supply
37 shall be requested by the subdivision applicant or local agency, at
38 the discretion of the local agency, and shall be based on written
39 verification from the applicable public water system within 90
40 days of a request.

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

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

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

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

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

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

35 (3) A groundwater sustainability plan adopted or alternative
36 approved pursuant to Part 2.74 (commencing with Section 10720)
37 of Division 6 of the Water Code.

38 (4) Other information relating to the sufficiency of the water
39 supply that contains analytical information that is substantially

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1 similar to the assessment required by Section 10635 of the Water
2 Code.

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

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

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

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

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

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

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

36 (g) The written verification prepared under this section shall
37 also include a description, to the extent that data is reasonably
38 available based on published records maintained by federal and
39 state agencies, and public records of local agencies, of the
40 reasonably foreseeable impacts of the proposed subdivision on the

1 availability of water resources for agricultural and industrial uses
2 within the public water system's service area that are not currently
3 receiving water from the public water system but are utilizing the
4 same sources of water. To the extent that those reasonably
5 foreseeable impacts have previously been evaluated in a document
6 prepared pursuant to the California Environmental Quality Act
7 (Division 13 (commencing with Section 21000) of the Public
8 Resources Code) or the National Environmental Policy Act (Public
9 Law 91-190) for the proposed subdivision, the public water system
10 may utilize that information in preparing the written verification.

11 (h) (1) Where a water supply for a proposed subdivision
12 includes groundwater, the public water system serving the proposed
13 subdivision shall evaluate, based on substantial evidence, the extent
14 to which it or the landowner has the right to extract the additional
15 groundwater needed to supply the proposed subdivision. Nothing
16 in this subdivision is intended to modify state law with regard to
17 groundwater rights.

18 (2) Groundwater from a basin designated by the State Water
19 Resources Control Board as a probationary basin pursuant to
20 Chapter 11 (commencing with Section 10735) of Part 2.74 of
21 Division 6 of the Water Code is not considered as a water supply
22 for the purposes of this section. *This paragraph does not apply to*
23 *groundwater from any portion of a basin excluded from*
24 *probationary status pursuant to subdivision (e) of Section 10735.2*
25 *of the Water Code.*

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

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

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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 SEC. 2. Section 10910 of the Water Code is amended to read:

1 10910. (a) Any city or county that determines that a project,
2 as defined in Section 10912, is subject to the California
3 Environmental Quality Act (Division 13 (commencing with Section
4 21000) of the Public Resources Code) under Section 21080 of the
5 Public Resources Code shall comply with this part.

6 (b) The city or county, at the time that it determines whether an
7 environmental impact report, a negative declaration, or a mitigated
8 negative declaration is required for any project subject to the
9 California Environmental Quality Act pursuant to Section 21080.1
10 of the Public Resources Code, shall identify any water system
11 whose service area includes the project site and any water system
12 adjacent to the project site that is, or may become as a result of
13 supplying water to the project identified pursuant to this
14 subdivision, a public water system, as defined in Section 10912,
15 that may supply water for the project. If the city or county is not
16 able to identify any public water system that may supply water for
17 the project, the city or county shall prepare the water assessment
18 required by this part after consulting with any entity serving
19 domestic water supplies whose service area includes the project
20 site, the local agency formation commission, and any public water
21 system adjacent to the project site.

22 (c) (1) The city or county, at the time it makes the determination
23 required under Section 21080.1 of the Public Resources Code,
24 shall request each public water system identified pursuant to
25 subdivision (b) to determine whether the projected water demand
26 associated with a proposed project was included as part of the most
27 recently adopted urban water management plan adopted pursuant
28 to Part 2.6 (commencing with Section 10610).

29 (2) If the projected water demand associated with the proposed
30 project was accounted for in the most recently adopted urban water
31 management plan, the public water system may incorporate the
32 requested information from the urban water management plan in
33 preparing the elements of the assessment required to comply with
34 subdivisions (d), (e), (f), and (g).

35 (3) If the projected water demand associated with the proposed
36 project was not accounted for in the most recently adopted urban
37 water management plan, or the public water system has no urban
38 water management plan, the water supply assessment for the project
39 shall include a discussion with regard to whether the public water
40 system's total projected water supplies available during normal,

1 single dry, and multiple dry water years during a 20-year projection
2 will meet the projected water demand associated with the proposed
3 project, in addition to the public water system's existing and
4 planned future uses, including agricultural and manufacturing uses.

5 (4) If the city or county is required to comply with this part
6 pursuant to subdivision (b), the water supply assessment for the
7 project shall include a discussion with regard to whether the total
8 projected water supplies, determined to be available by the city or
9 county for the project during normal, single dry, and multiple dry
10 water years during a 20-year projection, will meet the projected
11 water demand associated with the proposed project, in addition to
12 existing and planned future uses, including agricultural and
13 manufacturing uses.

14 (d) (1) The assessment required by this section shall include
15 an identification of any existing water supply entitlements, water
16 rights, or water service contracts relevant to the identified water
17 supply for the proposed project, and a description of the quantities
18 of water received in prior years by the public water system, or the
19 city or county if either is required to comply with this part pursuant
20 to subdivision (b), under the existing water supply entitlements,
21 water rights, or water service contracts.

22 (2) An identification of existing water supply entitlements, water
23 rights, or water service contracts held by the public water system,
24 or the city or county if either is required to comply with this part
25 pursuant to subdivision (b), shall be demonstrated by providing
26 information related to all of the following:

27 (A) Written contracts or other proof of entitlement to an
28 identified water supply.

29 (B) Copies of a capital outlay program for financing the delivery
30 of a water supply that has been adopted by the public water system.

31 (C) Federal, state, and local permits for construction of necessary
32 infrastructure associated with delivering the water supply.

33 (D) Any necessary regulatory approvals that are required in
34 order to be able to convey or deliver the water supply.

35 (e) If no water has been received in prior years by the public
36 water system, or the city or county if either is required to comply
37 with this part pursuant to subdivision (b), under the existing water
38 supply entitlements, water rights, or water service contracts, the
39 public water system, or the city or county if either is required to
40 comply with this part pursuant to subdivision (b), shall also include

1 in its water supply assessment pursuant to subdivision (c), an
2 identification of the other public water systems or water service
3 contractholders that receive a water supply or have existing water
4 supply entitlements, water rights, or water service contracts, to the
5 same source of water as the public water system, or the city or
6 county if either is required to comply with this part pursuant to
7 subdivision (b), has identified as a source of water supply within
8 its water supply assessments.

9 (f) If a water supply for a proposed project includes
10 groundwater, the following additional information shall be included
11 in the water supply assessment:

12 (1) A review of any information contained in the urban water
13 management plan relevant to the identified water supply for the
14 proposed project.

15 (2) (A) A description of any groundwater basin or basins from
16 which the proposed project will be supplied.

17 (B) For those basins for which a court or the board has
18 adjudicated the rights to pump groundwater, a copy of the order
19 or decree adopted by the court or the board and a description of
20 the amount of groundwater the public water system, or the city or
21 county if either is required to comply with this part pursuant to
22 subdivision (b), has the legal right to pump under the order or
23 decree.

24 (C) For a basin that has not been adjudicated that is a basin
25 designated as high- or medium-priority pursuant to Section
26 10722.4, information regarding the following:

27 (i) Whether the department has identified the basin as being
28 subject to critical conditions of overdraft pursuant to Section 12924.

29 (ii) Whether the board has designated the basin as a probationary
30 basin pursuant to Chapter 11 (commencing with Section 10735)
31 of Part 2.74.

32 (iii) If a groundwater sustainability agency has adopted a
33 groundwater sustainability plan or has an approved alternative, a
34 copy of that alternative or plan.

35 (D) For a basin that has not been adjudicated that is a basin
36 designated as low- or very low priority pursuant to Section 10722.4,
37 information as to whether the department has identified the basin
38 or basins as overdrafted or has projected that the basin will become
39 overdrafted if present management conditions continue, in the
40 most current bulletin of the department that characterizes the

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1 condition of the groundwater basin, and a detailed description by
2 the public water system, or the city or county if either is required
3 to comply with this part pursuant to subdivision (b), of the efforts
4 being undertaken in the basin or basins to eliminate the long-term
5 overdraft condition.

6 (3) A detailed description and analysis of the amount and
7 location of groundwater pumped by the public water system, or
8 the city or county if either is required to comply with this part
9 pursuant to subdivision (b), for the past five years from any
10 groundwater basin from which the proposed project will be
11 supplied. The description and analysis shall be based on
12 information that is reasonably available, including, but not limited
13 to, historic use records.

14 (4) A detailed description and analysis of the amount and
15 location of groundwater that is projected to be pumped by the
16 public water system, or the city or county if either is required to
17 comply with this part pursuant to subdivision (b), from any basin
18 from which the proposed project will be supplied. The description
19 and analysis shall be based on information that is reasonably
20 available, including, but not limited to, historic use records.

21 (5) An analysis of the sufficiency of the groundwater from the
22 basin or basins from which the proposed project will be supplied
23 to meet the projected water demand associated with the proposed
24 project. A water supply assessment shall not be required to include
25 the information required by this paragraph if the public water
26 system determines, as part of the review required by paragraph
27 (1), that the sufficiency of groundwater necessary to meet the initial
28 and projected water demand associated with the project was
29 addressed in the description and analysis required by paragraph
30 (4) of subdivision (b) of Section 10631.

31 (g) (1) Subject to paragraph (2), the governing body of each
32 public water system shall submit the assessment to the city or
33 county not later than 90 days from the date on which the request
34 was received. The governing body of each public water system,
35 or the city or county if either is required to comply with this act
36 pursuant to subdivision (b), shall approve the assessment prepared
37 pursuant to this section at a regular or special meeting.

38 (2) Prior to the expiration of the 90-day period, if the public
39 water system intends to request an extension of time to prepare
40 and adopt the assessment, the public water system shall meet with

1 the city or county to request an extension of time, which shall not
2 exceed 30 days, to prepare and adopt the assessment.

3 (3) If the public water system fails to request an extension of
4 time, or fails to submit the assessment notwithstanding the
5 extension of time granted pursuant to paragraph (2), the city or
6 county may seek a writ of mandamus to compel the governing
7 body of the public water system to comply with the requirements
8 of this part relating to the submission of the water supply
9 assessment.

10 (h) Notwithstanding any other provision of this part, if a project
11 has been the subject of a water supply assessment that complies
12 with the requirements of this part, no additional water supply
13 assessment shall be required for subsequent projects that were part
14 of a larger project for which a water supply assessment was
15 completed and that has complied with the requirements of this part
16 and for which the public water system, or the city or county if
17 either is required to comply with this part pursuant to subdivision
18 (b), has concluded that its water supplies are sufficient to meet the
19 projected water demand associated with the proposed project, in
20 addition to the existing and planned future uses, including, but not
21 limited to, agricultural and industrial uses, unless one or more of
22 the following changes occurs:

23 (1) Changes in the project that result in a substantial increase
24 in water demand for the project.

25 (2) Changes in the circumstances or conditions substantially
26 affecting the ability of the public water system, or the city or county
27 if either is required to comply with this part pursuant to subdivision
28 (b), to provide a sufficient supply of water for the project.

29 (3) Significant new information becomes available that was not
30 known and could not have been known at the time when the
31 assessment was prepared.

32 (i) For the purposes of this section, the following are not
33 considered as a source of water:

34 (1) Hauled water.

35 (2) Groundwater from a basin designated by the board as a
36 probationary basin pursuant to Chapter 11 (commencing with
37 Section 10735) of Part 2.74. *This paragraph does not apply to*
38 *groundwater from any portion of a basin excluded from*
39 *probationary status pursuant to subdivision (e) of Section 10735.2*
40 *of the Water Code.*

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1 ~~(j) If a water supply for a proposed project includes water of a~~
2 ~~quality not sufficient to meet all primary and secondary drinking~~
3 ~~water standards, the following additional information shall be~~
4 ~~included in the water supply assessment:~~

5 ~~(1) A detailed description of the concentration of contaminants.~~

6 ~~(2) The proposed method for treating, blending, or otherwise~~
7 ~~ensuring that the water will meet drinking water quality standards.~~

8 ~~(3) The project cost to achieve drinking water quality.~~

9 ~~(4) An analysis of the affordability of water for the project's~~
10 ~~anticipated residents.~~

11 SEC. 3. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 a local agency or school district has the authority to levy service
14 charges, fees, or assessments sufficient to pay for the program or
15 level of service mandated by this act, within the meaning of Section
16 17556 of the Government Code.

BILL ANALYSIS

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|SENATE RULES COMMITTEE                               | SB 1262 |  
|Office of Senate Floor Analyses                     |       |  
|(916) 651-1520    Fax: (916)                       |       |  
|327-4478                                             |       |  
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THIRD READING

Bill No: SB 1262
Author: Pavley (D) and Wieckowski (D)
Amended: 5/11/16
Vote: 21

SENATE NATURAL RES. & WATER COMMITTEE: 7-2, 3/29/16
AYES: Pavley, Allen, Hertzberg, Hueso, Jackson, Monning, Wolk
NOES: Stone, Vidak

SENATE GOVERNANCE & FIN. COMMITTEE: 5-2, 4/20/16
AYES: Hertzberg, Beall, Hernandez, Lara, Pavley
NOES: Nguyen, Moorlach

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Water supply planning

SOURCE: Author

DIGEST: This bill revises requirements that new developments must meet in order to demonstrate that its water supplies are sufficient to include consideration of provisions of the Groundwater Sustainability Act.

Senate Floor Amendments of 5/11/16 clarify how to address groundwater in land use planning.

ANALYSIS:

Existing law:

- 1) Requires, pursuant to the California Water Code, every large-scale development project - 500 new residential connections or an equivalent size for other uses - to have a water supply assessment prepared according to the following process:
 - a) A city or county, at the time that it determines that a development is subject to the California Environmental Quality Act (CEQA), must identify any water system that may

supply water for the project.

- b) A water supply assessment must identify any existing water supply entitlements, water rights, or water service contracts relevant to the identified water supply for the proposed project, and describe the quantities of water received in prior years by the public water system or the city or county through its water rights or other sources.
 - c) If the project relies in whole or in part on groundwater, the water supply assessment must include additional information, including a description of any groundwater basins that will supply the project, the court or State Water Resources Control Board (SWRCB or State Board) order if the basin is adjudicated, and an analysis of the sufficiency of the groundwater from the basin or basins.
- 2) Requires that, under CEQA, whenever a city or county determines that a large-scale project, as defined in the California Water Code (above), is subject to CEQA, it must comply with the water supply assessment requirements triggered by that determination.
- 3) Requires, under the Subdivision Map Act, cities and counties to demonstrate that a sufficient water supply is available as a condition in their approval of a tentative map for a subdivision with more than 500 dwelling units.
- a) Sufficient water supply is defined as 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. In determining sufficient water supply, all of the following factors shall be considered:
 - i) The availability of water supplies over a historical record of at least 20 years.
 - ii) The applicability of an urban water shortage contingency analysis that includes actions to be undertaken by the public water system in response to water supply shortages.
 - iii) 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.

- iv) 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 transfers.
 - b) Proof of sufficient water must be based on a written verification from the applicable public water system. In order to be sufficient, the water supply must be able to meet the demands of existing and future planned uses in addition to the subdivision's demand over the next 20 years.
 - c) The public water system's written verification of its ability or inability to provide a sufficient water supply to meet the projected demand associated with the proposed subdivision must be supported by substantial evidence. The substantial evidence may include, but is not limited to, any of the following:
 - i) The public water system's most recently adopted urban water management plan.
 - ii) A water supply assessment that was completed pursuant to the California Water Code (above).
 - iii) Other information relating to the sufficiency of the water supply that contains analytical information that is substantially similar to the assessment required for urban water management plans.
- 4) Specifies that the Sustainable Groundwater Management Act (SGMA), among other provisions, directs the Department of Water Resources (DWR) to categorize the state's groundwater basins into high, medium, low, and very low priorities, based on factors such as the population overlying the basin, number of wells in the basin, and overlying irrigated acreage. DWR must also identify basins subject to critical overdraft.
- a) Under SGMA, basins designated as high or medium priority must be managed by a groundwater sustainability agency. That agency must develop a groundwater sustainability plan (GSP) to ensure that by 2040, the basin is in a sustainable condition-there can be no undesirable results (such as land sinking) from use of the basin.
 - b) A GSP must include, among other things, a description of the consideration given to the applicable county and city

general plans and a description of the various adopted water resources-related plans and programs within the basin and an assessment of how the GSP may affect those plans.

- c) If a basin does not have a groundwater sustainability agency by July 1, 2017, or the agency fails to adopt or implement a GSP pursuant to SGMA, the State Board may designate the basin as "probationary" and can develop a plan to achieve sustainability for the basin.

This bill:

- 1)Revises the groundwater requirements for a water supply assessment under the California Water Code to include, for high- and medium-priority basins, information regarding the following:
 - a) Whether the DWR has identified the basin as being subject to critical overdraft.
 - b) Whether the State Board has designated the basin as a probationary basin.
 - c) If a groundwater sustainability agency has adopted a GSP or has an approved alternative, a copy of that alternative or plan.
- 2)Excludes from consideration as a source of water under the water supply assessment:
 - a) Hauled water.
 - b) Groundwater from a basin designated by the board as a probationary basin. This exclusion does not apply to groundwater from any portion of a basin excluded from probationary status.
- 3)Adds to the factors for determining sufficient water supply under the Subdivision Map Act, if the subdivision relies in whole or in part on groundwater, the following:
 - a) For a basin for which a court or the State Board has adjudicated the rights to pump groundwater, the order or decree adopted by the court or the State Board.

- b) For a basin that has not been adjudicated, as follows:
 - i) For a basin designated as high- or medium-priority, the most recently adopted or revised adopted GSP or approved alternative. If there is no adopted GSP or approved alternative, information as to whether DWR has identified the basin or basins as overdrafted or has projected that the basin will become overdrafted if present management conditions continue.
 - ii) For a basin designated as low- or very low priority, information as to whether DWR has identified the basin or basins as overdrafted or has projected that the basin will become overdrafted if present management conditions continue.
- 4) Adds to list of supporting materials for the determination of substantial evidence an adopted GSP or alternative approved pursuant to SGMA.
- 5) Excludes from the determination of sufficient water supply under the Subdivision Map Act, groundwater from a basin designated by the board as a probationary basin. This exclusion does not apply to groundwater from any portion of a basin excluded from probationary status.

Background

Show Me the Water. In response to local land use decisions adversely affecting local water supply agencies, the Legislature enacted SB 610 (Costa, Chapter 643, Statutes of 2001) and SB 221 (Kuehl, Chapter 642, Statutes of 2001). Often referred to as the "show-me-the-water" bills, together these two bills formally linked land use planning with water use planning, and vice versa. SB 1262 amends those bills.

Comments

Correcting an Oversight. The SGMA legislation in 2014 introduced necessary changes to the local land use planning laws, but inadvertently omitted conforming changes to the "show-me-the-water" legislation. SB 1262 provides the necessary updates to harmonize new development approvals with the requirements of SGMA.

Definition of a Project. This bill does not change the definition of a project subject to the "show-me-the-water" bills. However, there seems to be interest in exploring that

option.

A coalition of environmental justice groups write "Unfortunately, this legislation lets stand the definition of a subdivision (500 or more connections) which effectively precludes most development from this sensible review process. We urge the authors and the committee to consider a substantial reduction in this number in order to protect new communities and ensure that the state will not have to share the burden of supporting them in future droughts."

The California Association of Local Agency Formation Commissions similarly writes, "While we have no magic bullet number to offer in terms of what is the "right size" for a project, we believe a threshold of 500 units for projects at the zoning level (water supply assessment pursuant to SB 610) probably captures less than half of the growth, and therefore, less than half of the demand. The 500 unit threshold for subdivisions (written verification pursuant to SB 221) probably captures a very small percentage of subdivision activity. Most projects are considerably smaller. ? We do feel it is best that thresholds should change." Moreover, "We believe if there was a lower trigger number for a project, the concern regarding phased development and the demand for water required to adequately supply those new phases will be addressed."

The author has indicated that she is willing to explore a different definition as this bill moves forward.

Related Legislation

SB 1263 (Wieckowski/Pavley) strengthens the permitting process for new public water systems to create greater environmental, public health, and financial sustainability of drinking water supplies.

FISCAL EFFECT:	Appropriation:	No	Fiscal
Com.:	YesLocal:	Yes	

SUPPORT: (Verified 5/13/16)

Clean Water Action
Community Water Center
Desert Water Agency
Leadership Counsel for Justice and Accountability
Planning and Conservation League
Sierra Club California
Valley Ag Water Coalition

OPPOSITION: (Verified 5/13/16)

California Apartment Association
California Association of Realtors
California Building Industries Association
California Business Properties Association
California Chamber of Commerce
California Independent Petroleum Association

ARGUMENTS IN SUPPORT: According to the author, "California has a number of interconnecting laws that together attempt to ensure that water supply availability is given proper consideration when making land use decisions, and vice versa. Among those laws are 2002's SBs 610 (Costa) and 221 (Kuehl), also known as the 'show me the water bills.' When we passed the Sustainable Groundwater Management Act (SGMA) in 2014, we updated some water and land use planning laws to reflect SGMA, but not the show me the water bills.

"SB 1262 (Pavley/Wieckowski), in conjunction with SB 1263 (Wieckowski/Pavley), builds on the administration's Affordable Safe Drinking Water Initiative to update the show me the water bills as follows:

Integrates groundwater sustainability agencies and consideration of groundwater sustainability plans into water supply and land use planning.

Prohibits use of groundwater to supply new development if the groundwater basin has been deemed out of compliance with SGMA (i.e., is 'probationary').

Prohibits the use of hauled water to comply with show me the water bills."

ARGUMENTS IN OPPOSITION: A coalition of building, real estate, and other business interests write, "While we agree that water supply and quality issues in the state deserve critical attention, we are concerned with several provisions in the bill:

SB 1262 takes a project-by-project approach as a way to solve issues that are endemic to entire basins. This approach draws a litigation target on greatly needed new housing and employment centers while ignoring the impact of the basin's conditions on other water supply demands. These issues are best dealt with in a plan-based, programmatic way that creates a more level playing field through changes to urban water

management plans.

New construction projects do not have authority or the responsibility to develop, approve and maintain legally valid groundwater sustainability plans. Those duties and the punishment for failing to comply with those duties - designation of the basin as 'probationary' - should fall on the agencies charged with responsibility - not on much-needed new housing.

For these reasons, we oppose SB 1262."

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**** END ****