

Date of Hearing: April 30, 2025

**ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT**

Juan Carrillo, Chair

AB 782 (Quirk-Silva) – As Amended March 24, 2025

**SUBJECT:** Subdivision Map Act: security.

**SUMMARY:** Prohibits, for the purposes of the Subdivision Map Act (Map Act), a local agency from requiring security in connection with the performance of any act, or conditioning the subdivision as a whole on that security, related to an improvement that will be privately owned and maintained. Specifically, **this bill**:

- 1) Provides that a local agency shall not do either of the following:
  - a) Require the furnishing of security in connection with the performance of any act or agreement related to an improvement that will be privately owned and maintained.
  - b) Condition the subdivision or any approval necessary for the development or construction of the project as a whole on the furnishing of security in connection with the performance of any act or agreement related to an improvement that will be privately owned and maintained.
- 2) Specifies that nothing in this bill shall limit or otherwise affect the authority of the Real Estate Commissioner or the Department of Real Estate (DRE), including, but not limited to, with respect to issuing a public report and determining the adequacy of financial arrangements for all offsite improvements and any community, recreational, or other facilities included in the offer for sale or lease of a subdivision.

**EXISTING LAW:**

- 1) Establishes the Map Act which governs how local officials regulate the division of real property into smaller parcels for sale, lease, or financing. [Government Code (GOV) §§ 66410-66499.41]
- 2) Provides that whenever the Map Act or a local ordinance authorizes or requires the furnishing of security in connection with the performance of any act or agreement, if the developer is not a nonprofit corporation, the security shall be one of the following at the option of and subject to the approval of the local agency and if the developer is a nonprofit corporation, the security shall be one of the following, subject to the approval of the local agency (GC § 66499):
  - a) Bond or bonds by one or more duly authorized corporate sureties.
  - b) A deposit, either with the local agency or a responsible escrow agent or trust company, at the option of the local agency, of money or negotiable bonds of the kind approved for securing deposits of public moneys.
  - c) An instrument of credit from an agency of the state, federal, or local government when any agency of the state, federal, or local government provides at least 20% of the

financing for the portion of the act or agreement requiring security, or from one or more financial institutions subject to regulation by the state or federal government and pledging that the funds necessary to carry out the act or agreement are on deposit and guaranteed for payment, or a letter of credit issued by such a financial institution.

- d) A lien upon the property to be divided, created by contract between the owner and the local agency, if the local agency finds that it would not be in the public interest to require the installation of the required improvement sooner than two years after the recordation of the map.
  - e) Any form of security, including security interests in real property, which is acceptable to the local agency and specified by ordinance.
- 3) Specifies that any contract or security interest in real property entered into as security for performance as described in d) and e) of 1), above, shall be recorded with the county recorder of the county in which the subject real property is located. (GC § 66499).
- 4) Provides that the local agency may at any time release all or any portion of the property subject to any lien or security interest or subordinate the lien or security interest to other liens or encumbrances, if it determines that security for performance is sufficiently secured by a lien on other property or that the release or subordination of the lien will not jeopardize the completion of agreed upon improvements (GC § 66499).
- 5) Specifies that security to guarantee the performance of any act or agreement shall be in the following amounts (GC § 66499.3):
- a) An amount determined by the legislative body, not less than 50 percent nor more than 100 percent of the total estimated cost of the improvement or of the act to be performed, conditioned upon the faithful performance of the act or agreement.
  - b) An additional amount determined by the legislative body, not less than 50 percent nor more than 100 percent of the total estimated cost of the improvement or the performance of the required act, securing payment to the contractor, to the subcontractors, and to persons furnishing labor, materials, or equipment to them for the improvement or the performance of the required act.
- 6) Provides that, if the required subdivision improvements are financed and installed pursuant to special assessment proceedings, the local agency at its option may provide by local ordinance that, upon the furnishing by the contractor of the faithful performance and labor and material bonds required by the special assessment act being used, the improvement security of the subdivider may be reduced by an amount corresponding to the amount of such bonds so furnished by the contractor (GC § 66499.5).
- 7) Specifies the process and timeline in which the security furnished by the subdivider shall be released (GC § 66499.7).

- 8) Provides that in all cases where the performance of the obligation for which the security is required is subject to the approval of another agency, the local agency shall not release the security until the obligation is performed to the satisfaction of such other agency, unless otherwise specified (GC § 66499.8).
- 9) Provides that any liability upon the security given for the faithful performance of any act or agreement shall be limited to (GC § 66499.9):
  - a) The performance of the work covered by the agreement between the subdivider and the legislative body or the performance of the required act.
  - b) The performance of any changes or alterations in such work; provided, that all such changes or alterations do not exceed 10% of the original estimated cost of the improvement.
  - c) The guarantee and warranty of the work, for a period of one year following completion and acceptance thereof, against any defective work or labor done or defective materials furnished, in the performance of the agreement with the legislative body or the performance of the act.
  - d) Costs and reasonable expenses and fees, including reasonable attorneys' fees.
- 10) Establishes the Subdivided Lands Act (Lands Act) which is administered by DRE and requires subdividers of planned developments, community apartment projects, condominiums, and stock cooperatives to file extensive financial and other disclosures with the Commissioner before the sale or lease of subdivided lands (Business and Professions Code §§ 11000-11200).

**FISCAL EFFECT:** None.

**COMMENTS:**

- 1) **Local Government Police Power.** The California Constitution allows cities and counties to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public—including land use authority. Local governments use their police power to enact zoning ordinances that shape development, such as setting maximum heights and densities for housing units, minimum numbers of required parking spaces, setbacks to preserve privacy, and lot coverage ratios to increase open space, among others. These ordinances can also include conditions on development to address community impacts or other particular site-specific considerations. Local governments have broad authority to define the specific approval processes needed to satisfy these considerations, including the permits the developer must obtain.
- 2) **Subdivision Map Act.** The Map Act governs how local officials regulate the division of real property into smaller parcels for sale, lease, or financing. Cities and counties adopt local subdivision ordinances to carry out the Map Act and local requirements. City councils and county boards of supervisors use the Map Act to control a subdivision's design and

improvements. Local subdivision approvals must be consistent with city and county general plans. Under the Map Act, cities and counties can attach scores of conditions. The Map Act allows local officials to require, as a condition of approving a proposed subdivision, the dedication of property within a subdivision for streets, alleys, drainage, utility easements, and other public easements and improvements. Once subdividers comply with those conditions, local officials must issue final maps.

One of the conditions local officials can require is the furnishing of security, which often is produced as a bond. When a builder or developer builds a new subdivision, he or she provides the local jurisdiction with an improvement or performance bond to insure that the public improvements (i.e., streets, traffic signals, parks, or other infrastructure) that the developer creates and that will be turned over to the public are built to the city's or county's specifications and standards. Local agencies may also require the furnishing of a security to insure the completion of privately owned and maintained offsite improvements. The bond amount is sufficient to permit the construction to the specifications of the local agency. The builder pays a surety company/insurer a premium to obtain the bond. When the work is completed, inspected and accepted by the local jurisdiction, the public works director or the local legislative body releases the bond.

- 3) **Subdivided Lands Act.** The Subdivided Lands Act (Lands Act) is a consumer protection statute. Its purpose is to prevent fraud and misrepresentation in the marketing of subdivided land by requiring disclosure of certain financial, qualitative, and quantitative information to prospective purchasers or lessees. Under the Lands Act, DRE ensures that a property owner who subdivides their property into five or more parcels complies with real estate and subdivision laws. Before marketing a new subdivision, a subdivider must obtain from DRE a public report, which contains information on the covenants, conditions, and restrictions that govern the use of the property, the costs and assessments for maintaining homeowner associations and common areas, and other material disclosures. A subdivider is required to provide a copy of the public report to a prospective buyer before the buyer becomes obligated to purchase a lot or unit.

According to *A Guide to Understanding Residential Subdivisions in California* provided by the DRE, "Given the developers desire to minimize the overall development schedule, home sales often occur well in advance of the completion of off-site, on-site, and common area improvements.

"On-site improvements are generally the improvements within the boundaries of an individual lot or parcel such as buildings, fences, landscaping, and driveways. DRE review is concerned with assuring that, if any of these improvements have not been completed prior to the final public report being issued, adequate provision has been made to assure their completion. A specific provision of the purchase and sale agreement will call for the closing to occur sometime after the home (on-site improvements) has been completed, and the buyer has conducted an inspection of the completed home. Such a provision is sufficient to ensure completion so long as the buyer's purchase money is protected as described above.

"In the context of a single-family home sale, off-site improvements are the overall subdivision improvements such as underground utilities (sewer, water, and storm drain lines) and street improvements (curb, gutter, sidewalk, and landscaping). For off-site improvements that are required by the local agency, i.e., as a condition of the subdivision approval, DRE

will look to the security posted by the developer with the local agency (payment and performance bonds or letter of credit) that ensures completion of the subdivision improvements. In cases where the off-site improvements are not required by the local agency, the DRE will require that the developer post a bond or letter of credit to ensure such completion. Some projects may be within a special tax district (community facilities district or “Mello-Roos” district) or assessment district, the purpose of which is to fund off-site improvements or community services. In such cases, the DRE will require detailed information about the district for adequate assurance that the improvements funded by such a district will actually be completed.

“DRE is particularly concerned with the completion of the common improvements within CIDs. When the common improvements have been completed prior to the issuance of the final public report, the DRE requires that the common improvements be delivered free of mechanics lien claims. When the common improvements have not been completed, the developer must demonstrate that the common improvements will be completed at a reasonable time. The developer must also post completion security for these improvements.”

- 4) **Author’s Statement.** According to the author, “AB 782 eliminates unnecessary double-bonding requirements that drive up housing costs and delay projects. Local governments should not be imposing redundant financial burdens on developers for private improvements they don’t control. This bill ensures that housing construction moves forward efficiently, reducing costs for homeowners and cutting through bureaucratic red tape.”
- 5) **Bill Summary.** This bill prohibits a local agency, on an improvement that will be privately owned and maintained, from requiring security in connection with the performance of any act, or conditioning the subdivision as a whole on that security, related to such an improvement. This bill also specifies that nothing in this bill limit or otherwise affect the authority of the DRE with respect to issuing a public report and determining the sufficiency of financial arrangements for all offsite improvements and community, recreational, or other facilities included in the offer for sale or lease of a subdivision. The California Building Industry Association is the sponsor of this bill.
- 6) **Policy Consideration.** As stated by the author, this bill is intended to preclude the scenario of “double-bonding”. This is where both a city or county and the DRE require a security to be obtained for the same improvements, potentially increasing costs for developers. While it is not entirely clear how often cases of “double-bonding” arise, this bill would seemingly remove the authority of a city or county to condition the approval of a subdivision on the developer furnishing a security sufficient to insure the completion of all privately owned and maintained improvements. However, a local agency is likely to have an interest in the completion of privately owned and maintained improvements, such as streets and utility lines, in order to provide critical services such as fire protection and other emergency services to the residents they represent. Consequently, the Committee may wish to consider if a more targeted approach to explicitly prohibit “double-bonding” is appropriate.
- 7) **Committee Amendments.** In order to respond to the policy consideration, above, the Committee may wish to consider the following amendments:

**Business and Professions Code § 11018(b) Notwithstanding subdivision (a), the Real Estate Commissioner shall not, with respect to issuing a public report for a residential**

**development or project pursuant to this section, require the furnishing of a security in connection with the performance of any act or agreement related to an improvement that will be publicly owned and maintained if the Real Estate Commissioner determines that sufficient security has been furnished to a local agency for the same improvement pursuant to Chapter 5 (commencing with Section 66499) of Division 2 of Title 7 of the Government Code.**

Gov Code § 66499.10.5. (a) Notwithstanding any other law, a local agency shall not do either of the following:

(1) Require the furnishing of security in connection with the performance of any act or agreement related to an improvement that will be privately owned and ~~maintained~~. **maintained if a security has been furnished for the same improvement pursuant to Division 4 (commencing with Section 10000) of the Business and Professions Code, including, but not limited to, pursuant to Section 11018 of the Business and Professions Code with respect to issuing a public report.**

(2) Condition the subdivision or any approval necessary for the development or construction of the project as a whole on the furnishing of security in connection with the performance of any act or agreement related to an improvement that will be privately owned and ~~maintained~~. **maintained if a security has been furnished for the same improvement pursuant to Division 4 (commencing with Section 10000) of the Business and Professions Code, including, but not limited to, pursuant to Section 11018 of the Business and Professions Code with respect to issuing a public report.**

(b) Nothing in this section shall limit or otherwise affect the authority of the Real Estate Commissioner or the Department of Real Estate pursuant to Division 4 (commencing with Section 10000) of the Business and Professions Code, including, but not limited to, pursuant to Section 11018 of the Business and Professions Code with respect to issuing a public report and determining the adequacy of financial arrangements for all offsite improvements and any community, recreational, or other facilities included in the offer for sale or lease of a subdivision.

**(c) This section only applies to residential developments or projects.**

- 8) **Arguments in Support.** According to the California Building Industry Association and a coalition of building interests, “Under current law, both local governments and the California Department of Real Estate (DRE) can require developers to provide financial security—such as bonds, letters of credit, or escrow deposits— for improvements in connection with an approval of a subdivision map. While this requirement makes sense for public improvements that a local agency will own and maintain, some local governments are extending these requirements to private improvements. As a result, developers are required to provide security twice—once to the DRE and again to the local agency—for the exact same private improvements such as sidewalks, lighting, landscaping, clubhouses, swimming pools, and other amenities maintained by a Homeowners Association. The cost of providing the security ranges from 1.25% to 5% of the cost of improvements. This unnecessary duplication drives up housing costs with no additional assurance that the improvements will be made.

“AB 782 provides a straightforward solution by clarifying that local governments cannot require bonding or other security for private improvements that will not be publicly owned. It is important to note that this bill preserves the DRE’s existing authority to require financial assurances for private improvements.”

9) **Arguments in Opposition.** None on file.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Building Industry Association [SPONSOR]  
Building Industry Association of San Diego  
California Apartment Association  
California Chamber of Commerce  
Home Builders Association of the Central Coast  
Orange County Taxpayers Association  
South Pasadena Residents for Responsible Growth  
Southern California Leadership Council

**Opposition**

None on file

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