

Senate Bill No. 1019

Passed the Senate May 3, 2010

Secretary of the Senate

Passed the Assembly August 5, 2010

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 66499.7 of the Government Code, relating to subdivided lands.

LEGISLATIVE COUNSEL'S DIGEST

SB 1019, Correa. Subdivisions: release of performance security.

The Subdivision Map Act and local ordinances authorize or require, under specified circumstances, the furnishing of specified types of security with respect to the performance of various acts or agreements subject to the act. Existing law, until January 1, 2011, also sets forth the specific procedures imposed on a local agency for the complete or partial release of a performance security furnished by a subdivider.

This bill would extend the repeal date of the provisions relating to the procedures for releasing a performance security, from January 1, 2011, to January 1, 2016, thereby extending their operation and imposing a state-mandated local program.

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

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. Section 66499.7 of the Government Code is amended to read:

66499.7. The security furnished by the subdivider shall be released in whole or in part in the following manner:

(a) Security given for faithful performance of any act or agreement shall be released upon the performance of the act or final completion and acceptance of the required work. The legislative body may provide for the partial release of the security upon the partial performance of the act or the acceptance of the

work as it progresses, consistent with the provisions of this section. The security may be a surety bond, a cash deposit, a letter of credit, escrow account, or other form of performance guarantee required as security by the legislative body that meets the requirements as acceptable security pursuant to law. If the security furnished by the subdivider is a documentary evidence of security such as a surety bond or a letter of credit, the legislative body shall release the documentary evidence and return the original to the issuer upon performance of the act or final completion and acceptance of the required work. In the event that the legislative body is unable to return the original documentary evidence to the issuer, the security shall be released by written notice sent by certified mail to the subdivider and issuer of the documentary evidence within 30 days of the acceptance of the work. The written notice shall contain a statement that the work for which the security was furnished has been performed or completed and accepted by the legislative body, a description of the project subject to the documentary evidence and the notarized signature of the authorized representative of the legislative body.

(b) At the time that the subdivider believes that the obligation to perform the work for which security was required is complete, the subdivider may notify the local agency in writing of the completed work, including a list of work completed. Upon receipt of the written notice, the local agency shall have 45 days to review and comment or approve the completion of the required work. If the local agency does not agree that all work has been completed in accordance with the plans and specifications for the improvements, it shall supply a list of all remaining work to be completed.

(c) Within 45 days of receipt of the list of remaining work from the local agency, the subdivider may then provide cost estimates for all remaining work for review and approval by the local agency. Upon receipt of the cost estimates, the local agency shall then have 45 days to review, comment, and approve, modify, or disapprove those cost estimates. No local agency shall be required to engage in this process of partial release more than once between the start of work and completion and acceptance of all work; however, nothing in this section prohibits a local agency from allowing for a partial release as it otherwise deems appropriate.

(d) If the local agency approves the cost estimate, the local agency shall release all performance security except for security in an amount up to 200 percent of the cost estimate of the remaining work. The process allowing for a partial release of performance security shall occur when the cost estimate of the remaining work does not exceed 20 percent of the total original performance security unless the local agency allows for a release at an earlier time. Substitute bonds or other security may be used as a replacement for the performance security, subject to the approval of the local agency. If substitute bonds or other security is used as a replacement for the performance security released, the release shall not be effective unless and until the local agency receives and approves that form of replacement security. A reduction in the performance security, authorized under this section, is not, and shall not be deemed to be, an acceptance by the local agency of the completed improvements, and the risk of loss or damage to the improvements and the obligation to maintain the improvements shall remain the sole responsibility of the subdivider until all required public improvements have been accepted by the local agency and all other required improvements have been fully completed in accordance with the plans and specifications for the improvements.

(e) The subdivider shall complete the works of improvement until all remaining items are accepted by the local agency.

(f) Upon the completion of the improvements, the subdivider, or his or her assigns, shall be notified in writing by the local agency within 45 days.

(g) Within 45 days of the issuance of the notification by the local agency, the release of any remaining performance security shall be placed upon the agenda of the legislative body of the local agency for approval of the release of any remaining performance security. If the local agency delegates authority for the release of performance security to a public official or other employee, any remaining performance security shall be released within 60 days of the issuance of the written statement of completion.

(h) Security securing the payment to the contractor, his or her subcontractors and to persons furnishing labor, materials or equipment shall, after passage of the time within which claims of lien are required to be recorded pursuant to Article 3 (commencing with Section 3114) of Chapter 2 of Title 15 of Part 4 of Division

3 of the Civil Code and after acceptance of the work, be reduced to an amount equal to the total claimed by all claimants for whom claims of lien have been recorded and notice thereof given in writing to the legislative body, and if no claims have been recorded, the security shall be released in full.

(i) The release shall not apply to any required guarantee and warranty period required by Section 66499.9 for the guarantee or warranty nor to the amount of the security deemed necessary by the local agency for the guarantee and warranty period nor to costs and reasonable expenses and fees, including reasonable attorneys' fees.

(j) The legislative body may authorize any of its public officers or employees to authorize release or reduction of the security in accordance with the conditions hereinabove set forth and in accordance with any rules that it may prescribe.

(k) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

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

Approved _____, 2010

Governor