

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 92

Short Title: Maintenance Bond for Subdivision Roads. (Public)

Sponsors: Senators Pate and D. Davis (Primary Sponsors).

Referred to: Rules and Operations of the Senate

February 16, 2017

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A MAINTENANCE BOND PROCESS FOR SUBDIVISION
ROADS DEDICATED FOR PUBLIC USE TO PREVENT DEGRADATION OF
TRANSPORTATION IMPROVEMENTS PRIOR TO ADDITION TO THE STATE
HIGHWAY SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-331 reads as rewritten:

"§ 153A-331. **Contents and requirements of ordinance.**

...

(e) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with county plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements at the time the plat is recorded as provided in subsection (b) of this section. For transportation improvements intended to be designated as public under G.S. 136-102.6, the ordinance may also provide for maintenance guarantees to prevent degradation of transportation improvements until the improvements are added to the State highways system for maintenance pursuant to G.S. 136-102.6(d). For any specific development, the type of performance or maintenance guarantee ~~from the range specified by the county~~ shall be at the election of the developer.

...

(g) Any performance or maintenance guarantee shall comply with G.S. 160A-372(g)."

SECTION 2. G.S. 160A-372 reads as rewritten:

"§ 160A-372. **Contents and requirements of ordinance.**

...

(c) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements at the time the plat is recorded as provided in subsection (b) of this section. For transportation improvements to be designated as public under G.S. 136-102.6, the ordinance may also provide for maintenance guarantees to prevent degradation of transportation improvements until the improvements are added to the State highways system for maintenance pursuant to G.S. 136-102.6(d). For any specific development, the type of performance or maintenance guarantee shall be at the election of the developer.

...



1 (g) For purposes of this section, all of the following shall apply with respect to
2 performance guarantees:

- 3 (1) The term "performance guarantee" or "maintenance guarantee" shall mean any
4 of the following forms of guarantee:
5 a. Surety bond issued by any company authorized to do business in this
6 State.
7 b. Letter of credit issued by any financial institution licensed to do
8 business in this State.
9 c. Other form of guarantee that provides equivalent security to a surety
10 bond or letter of credit.
- 11 (2) The performance guarantee shall be returned or released, as appropriate, in a
12 timely manner upon the acknowledgement by the city or county that the
13 improvements for which the performance guarantee is being required are
14 complete. The engineer of record for the design of transportation improvements
15 intended to be designated as public under G.S. 136-102.6 shall provide a sealed
16 certification to the city or county and the Division of Highways confirming that
17 the transportation improvements have been completed according to the plans
18 that received the certificate of approval pursuant to G.S. 136-102.6(d). If the
19 improvements are not complete and the current performance guarantee is
20 expiring, the performance guarantee shall be extended, or a new performance
21 guarantee issued, for an additional period until such required improvements are
22 complete. A developer shall demonstrate reasonable, good faith progress
23 toward completion of the required improvements that are the subject of the
24 performance guarantee or any extension. The form of any extension shall
25 remain at the election of the developer.
- 26 (2a) Within 20 business days following the filing of the certificate of completion by
27 the engineer of record, the developer shall provide a maintenance guarantee for
28 the transportation improvements intended to be designated as public under
29 G.S. 136-102.6. The maintenance guarantee shall be returned or released, as
30 appropriate, when any of the following occur:
31 a. The transportation improvements are added to the State highways
32 system for maintenance pursuant to G.S. 136-102.6(d).
33 b. The rerecording of a subdivision plat designating the transportation
34 improvements as private.
- 35 (3) The amount of the performance guarantee shall not exceed one hundred
36 twenty-five percent (125%) of the reasonably estimated cost of completion at
37 the time the performance guarantee is issued. Any extension of the performance
38 guarantee necessary to complete required improvements shall not exceed one
39 hundred twenty-five percent (125%) of the reasonably estimated cost of
40 completion of the remaining incomplete improvements still outstanding at the
41 time the extension is obtained.
- 42 (3a) The amount of the maintenance guarantee shall not exceed fifteen percent
43 (15%) of the reasonably estimated total cost of construction of the
44 transportation improvements at the time the guarantee is issued.
- 45 (4) The performance guarantee shall only be used for completion of the required
46 improvements and not for repairs or maintenance after completion."

47 **SECTION 3.** This act is effective when it becomes law.