

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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SENATE BILL DRS45066-MQ-23 (01/27)

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

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

Referred to:

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.

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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.