

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

H.B. 720  
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH30339-MQ-71

Short Title: Planning & Zoning-DOT/Performance Guarantees. (Public)

Sponsors: Representative Majeed.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE ACCEPTANCE OF A TRANSPORTATION IMPROVEMENT BY  
3 THE DEPARTMENT OF TRANSPORTATION BEFORE A PERFORMANCE  
4 GUARANTEE REQUIRED BY A LOCAL GOVERNMENT IS RELEASED.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 160D-804.1 reads as rewritten:

7 "§ 160D-804.1. Performance guarantees.

8 To assure compliance with G.S. 160D-804 and other development regulation requirements,  
9 a subdivision regulation may provide for performance guarantees to assure successful completion  
10 of required improvements.

11 For purposes of this section, all of the following apply with respect to performance  
12 guarantees:

13 (1) Type. – The type of performance guarantee shall be at the election of the  
14 developer. The term "performance guarantee" means any of the following  
15 forms of guarantee:

- 16 a. Surety bond issued by any company authorized to do business in this  
17 State.  
18 b. Letter of credit issued by any financial institution licensed to do  
19 business in this State.  
20 c. Other form of guarantee that provides equivalent security to a surety  
21 bond or letter of credit.

22 (1a) Duration. – The duration of the performance guarantee shall initially be one  
23 year, unless the developer determines that the scope of work for the required  
24 improvements necessitates a longer duration. In the case of a bonded  
25 obligation, the completion date shall be set no later than one year from the  
26 date the bond is issued, unless the developer determines that the scope of work  
27 for the required improvements necessitates a longer duration.

28 (1b) Extension. – A developer shall demonstrate reasonable, good-faith progress  
29 toward completion of the required improvements that are secured by the  
30 performance guarantee or any extension. If the improvements are not  
31 completed to the specifications of the local government, and the current  
32 performance guarantee is likely to expire prior to completion of the required  
33 improvements, the performance guarantee shall be extended, or a new  
34 performance guarantee issued, for an additional period. An extension under  
35 this subdivision shall only be for a duration necessary to complete the required  
36 improvements. If a new performance guarantee is issued, the amount shall be



- 1 determined by the procedure provided in subdivision (3) of this subsection  
2 and shall include the total cost of all incomplete improvements.
- 3 (2) Release. – The performance guarantee shall be returned or released, as  
4 appropriate, in a timely manner upon the acknowledgement by the local  
5 government that the improvements for which the performance guarantee is  
6 being required are complete. The local government shall return letters of credit  
7 or escrowed funds upon completion of the required improvements to its  
8 specifications or satisfaction and upon acceptance of the required  
9 improvements, improvements by the local government and the Department of  
10 Transportation, if the required improvements are subject to local government  
11 acceptance.—and the Department of Transportation's acceptance for  
12 maintenance. When required improvements that are secured by a bond are  
13 completed to the specifications of the local government, ~~or~~ and are accepted  
14 by the local ~~government,~~ government and the Department of Transportation,  
15 if subject to ~~its acceptance,~~ the Department's acceptance, upon request by the  
16 developer, the local government shall timely provide written  
17 acknowledgement that the required improvements have been completed.
- 18 (3) Amount. – The amount of the performance guarantee shall not exceed one  
19 hundred twenty-five percent (125%) of the reasonably estimated cost of  
20 completion at the time the performance guarantee is issued. The local  
21 government may determine the amount of the performance guarantee or use a  
22 cost estimate determined by the developer. The reasonably estimated cost of  
23 completion shall include one hundred percent (100%) of the costs for labor  
24 and materials necessary for completion of the required improvements. Where  
25 applicable, the costs shall be based on unit pricing. The additional twenty-five  
26 percent (25%) allowed under this subdivision includes inflation and all costs  
27 of administration regardless of how such fees or charges are denominated. The  
28 amount of any extension of any performance guarantee shall be determined  
29 according to the procedures for determining the initial guarantee and shall not  
30 exceed one hundred twenty-five percent (125%) of the reasonably estimated  
31 cost of completion of the remaining incomplete improvements still  
32 outstanding at the time the extension is obtained.
- 33 (3a) Timing. – A local government, at its discretion, may require the performance  
34 guarantee to be posted either at the time the plat is recorded or at a time  
35 subsequent to plat recordation.
- 36 (4) Coverage. – The performance guarantee shall only be used for completion of  
37 the required improvements and not for repairs or maintenance after  
38 completion.
- 39 (5) Legal responsibilities. – No person shall have ~~or may a claim any of rights~~  
40 under this subsection or to any proceeds from a performance guarantee  
41 provided pursuant to this subsection or in the proceeds of any such  
42 performance guarantee other than with the exception of the following:  
43 a. The local government to whom the performance guarantee is provided.  
44 b. The developer at whose request or for whose benefit the performance  
45 guarantee is given.  
46 c. The person or entity issuing or providing the performance guarantee  
47 at the request of or for the benefit of the developer.
- 48 (6) Multiple guarantees. – The developer shall have the option to post one type of  
49 a performance guarantee as provided for in subdivision (1) of this section, in  
50 lieu of multiple bonds, letters of credit, or other equivalent security, for all

1                            development matters related to the same project requiring performance  
2                            guarantees.  
3                    (7)    Exclusion. – Performance guarantees associated with erosion control and  
4                            stormwater control measures are not subject to the provisions of this section."  
5                    **SECTION 2.** This act is effective when it becomes law and applies to performance  
6                    guarantees submitted on or after that date.