

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019**

**SESSION LAW 2019-79
SENATE BILL 313**

AN ACT TO REDUCE COSTS AND AID HOUSING AFFORDABILITY BY
STREAMLINING THE PERFORMANCE GUARANTEE PROCESS BETWEEN
DEVELOPERS AND LOCAL GOVERNMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. 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 any specific development, the type of performance guarantee shall be at the election of the developer.~~improvements.

...

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

- (1) Type. – The type of performance guarantee shall be at the election of the developer. The term "performance guarantee" shall mean any of the following forms of guarantee:
 - a. Surety bond issued by any company authorized to do business in this State.
 - b. Letter of credit issued by any financial institution licensed to do business in this State.
 - c. Other form of guarantee that provides equivalent security to a surety bond or letter of credit.
- (1a) Duration. – The duration of the performance guarantee shall initially be one year, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one year from the date the bond is issued, unless the developer determines that the scope of work for the required improvements necessitates a longer duration.
- (1b) Extension. – A developer shall demonstrate reasonable, good-faith progress toward completion of the required improvements that are secured by the performance guarantee or any extension. If the improvements are not completed to the specifications of the city or county, and the current performance guarantee is likely to expire prior to completion of the required improvements, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period; provided, however, that the extension shall only be for a duration necessary to complete the



- required improvements. If a new performance guarantee is issued, the amount shall be determined by the procedure provided in subdivision (3) of this subsection and shall include the total cost of all incomplete improvements.
- (2) Release. – The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgement by the city or county that the improvements for which the performance guarantee is being required are complete. ~~If the improvements are not complete and the current performance guarantee is expiring, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period until such required improvements are complete. A developer shall demonstrate reasonable, good faith progress toward completion of the required improvements that are the subject of the performance guarantee or any extension. The form of any extension shall remain at the election of the developer.~~The city or county shall return letters of credit or escrowed funds upon completion of the required improvements to the specifications of the city or county, or upon acceptance of the required improvements, if the required improvements are subject to city or county acceptance. When required improvements that are secured by a bond are completed to the specifications of the city or county, or are accepted by the city or county, if subject to city or county acceptance, upon request by the developer, the city or county shall timely provide written acknowledgement that the required improvements have been completed.
- (3) Amount. – The amount of the performance guarantee shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. ~~Any extension of the performance guarantee necessary to complete required improvements shall not exceed one hundred twenty five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained.~~The city or county may determine the amount of the performance guarantee or use a cost estimate determined by the developer. The reasonably estimated cost of completion shall include one hundred percent (100%) of the costs for labor and materials necessary for completion of the required improvements. Where applicable, the costs shall be based on unit pricing. The additional twenty-five percent (25%) allowed under this subdivision includes inflation and all costs of administration regardless of how such fees or charges are denominated. The amount of any extension of any performance guarantee shall be determined according to the procedures for determining the initial guarantee and shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained.
- (3a) Timing. – A city or county, at its discretion, may require the performance guarantee to be posted either at the time the plat is recorded or at a time subsequent to plat recordation.
- (4) Coverage. – The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion.
- (5) Legal Responsibilities. – No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this subsection or in the proceeds of any such performance guarantee other than the following:

- a. The local government to whom such performance guarantee is provided.
 - b. The developer at whose request or for whose benefit such performance guarantee is given.
 - c. The person or entity issuing or providing such performance guarantee at the request of or for the benefit of the developer.
- (6) Multiple Guarantees. – The developer shall have the option to post one type of a performance guarantee as provided for in subdivision (1) of this subsection, in lieu of multiple bonds, letters of credit, or other equivalent security, for all development matters related to the same project requiring performance guarantees. Performance guarantees associated with erosion control and stormwater control measures are not subject to the provisions of this section."

SECTION 2. 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 any specific development, the type of performance guarantee from the range specified by the county shall be at the election of the developer.~~improvements.

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SECTION 3. This act is effective when it becomes law and applies to performance guarantees issued on or after that date.

In the General Assembly read three times and ratified this the 27th day of June, 2019.

s/ Bill Rabon
 Presiding Officer of the Senate

s/ Tim Moore
 Speaker of the House of Representatives

s/ Roy Cooper
 Governor

Approved 10:06 p.m. this 4th day of July, 2019