

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 376

Short Title: Subdivision Improvement Guarantee Changes. (Public)

Sponsors: Representatives McGrady and Henson (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Transportation, if favorable, State and Local Government II

March 16, 2017

A BILL TO BE ENTITLED
AN ACT TO MAKE CHANGES TO THE GENERAL STATUTES RELATING TO
SUBDIVISION IMPROVEMENT GUARANTEES.

The General Assembly of North Carolina enacts:

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

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

(a) A subdivision control ordinance may provide for the orderly growth and development of the county; for the coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision and of rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require that a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that the final plat show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformity with good surveying practice.

(c) A subdivision control ordinance may provide that a developer may provide funds to the county whereby the county may acquire recreational land or areas to serve the development or subdivision, including the purchase of land that may be used to serve more than one subdivision or development within the immediate area.

(d) The ordinance may provide that in lieu of required street construction, a developer may provide funds to be used for the development of roads to serve the occupants, residents, or invitees of the subdivision or development. All funds received by the county under this section shall be transferred to the municipality to be used solely for the development of roads, including design, land acquisition, and construction. Any municipality receiving funds from a county under this section is authorized to expend such funds outside its corporate limits for the purposes specified in the agreement between the municipality and the county. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The



1 ordinance may require a combination of partial payment of funds and partial dedication of
2 constructed streets when the governing body of the county determines that a combination is in
3 the best interest of the citizens of the area to be served.

4 (e) The ordinance may provide for the more orderly development of subdivisions by
5 requiring the construction of community service facilities in accordance with county plans,
6 policies, and standards. To assure compliance with these and other ordinance requirements, the
7 ordinance may provide for performance guarantees to assure successful completion of required
8 improvements at the time the plat is recorded as provided in subsection (b) of this section. For
9 any specific development, the type of performance guarantee from the range specified by the
10 county shall be at the election of the developer.

11 (f) The ordinance may provide for the reservation of school sites in accordance with
12 comprehensive land use plans approved by the board of commissioners or the planning board.
13 For the authorization to reserve school sites to be effective, the board of commissioners or
14 planning board, before approving a comprehensive land use plan, shall determine jointly with
15 the board of education with jurisdiction over the area the specific location and size of each
16 school site to be reserved, and this information shall appear in the plan. Whenever a
17 subdivision that includes part or all of a school site to be reserved under the plan is submitted
18 for approval, the board of commissioners or the planning board shall immediately notify the
19 board of education. The board of education shall promptly decide whether it still wishes the site
20 to be reserved and shall notify the board of commissioners or planning board of its decision. If
21 the board of education does not wish the site to be reserved, no site may be reserved. If the
22 board of education does wish the site to be reserved, the subdivision may not be approved
23 without the reservation. The board of education must acquire the site within 18 months after the
24 date the site is reserved, either by purchase or by exercise of the power of eminent domain. If
25 the board of education has not purchased the site or begun proceedings to condemn the site
26 within the 18 months, the subdivider may treat the land as freed of the reservation.

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

28 (h) In the event that the collateral for a performance guarantee obtained by a developer
29 pursuant to this section is paid to the county, the county may administer the funds received in
30 furtherance of the successful completion of the required improvements. Notwithstanding
31 subsection (d) of this section, if the subdivision is not located in whole or in part within a
32 municipality, then the county may contract with another entity to complete the required
33 improvements. If the funds paid to the county from the performance guarantee are insufficient
34 to complete the required improvements, the county may, at its discretion, administer the funds
35 in accordance with standards adopted by the board of commissioners. The provisions of
36 G.S. 160A-393 shall apply to the review of any decision of the board of commissioners
37 pursuant to this subsection."

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

39 **"§ 160A-372. Contents and requirements of ordinance.**

40 (a) A subdivision control ordinance may provide for the orderly growth and
41 development of the city; for the coordination of transportation networks and utilities within
42 proposed subdivisions with existing or planned streets and highways and with other public
43 facilities; for the dedication or reservation of recreation areas serving residents of the
44 immediate neighborhood within the subdivision or, alternatively, for provision of funds to be
45 used to acquire recreation areas serving residents of the development or subdivision or more
46 than one subdivision or development within the immediate area, and rights-of-way or
47 easements for street and utility purposes including the dedication of rights-of-way pursuant to
48 G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner
49 that will avoid congestion and overcrowding and will create conditions that substantially
50 promote public health, safety, and the general welfare.

1 (b) The ordinance may require a plat be prepared, approved, and recorded pursuant to
2 the provisions of the ordinance whenever any subdivision of land takes place. The ordinance
3 may include requirements that plats show sufficient data to determine readily and reproduce
4 accurately on the ground the location, bearing, and length of every street and alley line, lot line,
5 easement boundary line, and other property boundaries, including the radius and other data for
6 curved property lines, to an appropriate accuracy and in conformance with good surveying
7 practice.

8 (c) The ordinance may provide for the more orderly development of subdivisions by
9 requiring the construction of community service facilities in accordance with municipal plans,
10 policies, and standards. To assure compliance with these and other ordinance requirements, the
11 ordinance may provide for performance guarantees to assure successful completion of required
12 improvements at the time the plat is recorded as provided in subsection (b) of this section. For
13 any specific development, the type of performance guarantee shall be at the election of the
14 developer.

15 (d) The ordinance may provide for the reservation of school sites in accordance with
16 comprehensive land use plans approved by the council or the planning board. In order for this
17 authorization to become effective, before approving such plans the council or planning board
18 and the board of education with jurisdiction over the area shall jointly determine the specific
19 location and size of any school sites to be reserved, which information shall appear in the
20 comprehensive land use plan. Whenever a subdivision is submitted for approval which includes
21 part or all of a school site to be reserved under the plan, the council or planning board shall
22 immediately notify the board of education and the board of education shall promptly decide
23 whether it still wishes the site to be reserved. If the board of education does not wish to reserve
24 the site, it shall so notify the council or planning board and no site shall be reserved. If the
25 board of education does wish to reserve the site, the subdivision shall not be approved without
26 such reservation. The board of education shall then have 18 months beginning on the date of
27 final approval of the subdivision within which to acquire the site by purchase or by initiating
28 condemnation proceedings. If the board of education has not purchased or begun proceedings
29 to condemn the site within 18 months, the subdivider may treat the land as freed of the
30 reservation.

31 (e) The ordinance may provide that a developer may provide funds to the city whereby
32 the city may acquire recreational land or areas to serve the development or subdivision,
33 including the purchase of land that may be used to serve more than one subdivision or
34 development within the immediate area. All funds received by the city pursuant to this
35 paragraph [subsection] shall be used only for the acquisition or development of recreation,
36 park, or open space sites. Any formula enacted to determine the amount of funds that are to be
37 provided under this paragraph [subsection] shall be based on the value of the development or
38 subdivision for property tax purposes. The ordinance may allow a combination or partial
39 payment of funds and partial dedication of land when the governing body of the city determines
40 that this combination is in the best interests of the citizens of the area to be served.

41 (f) The ordinance may provide that in lieu of required street construction, a developer
42 may be required to provide funds that the city may use for the construction of roads to serve the
43 occupants, residents, or invitees of the subdivision or development and these funds may be used
44 for roads which serve more than one subdivision or development within the area. All funds
45 received by the city pursuant to this paragraph [subsection] shall be used only for development
46 of roads, including design, land acquisition, and construction. However, a city may undertake
47 these activities in conjunction with the Department of Transportation under an agreement
48 between the city and the Department of Transportation. Any formula adopted to determine the
49 amount of funds the developer is to pay in lieu of required street construction shall be based on
50 the trips generated from the subdivision or development. The ordinance may require a
51 combination of partial payment of funds and partial dedication of constructed streets when the

1 governing body of the city determines that a combination is in the best interests of the citizens
2 of the area to be served.

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

5 (1) The term "performance guarantee" shall mean any of the following forms of
6 guarantee:

7 a. Surety bond issued by any company authorized to do business in this
8 State.

9 b. Letter of credit issued by any financial institution licensed to do
10 business in this State.

11 c. Other form of guarantee that provides equivalent security to a surety
12 bond or letter of credit.

13 (2) The performance guarantee shall be returned or released, as appropriate, in a
14 timely manner upon the acknowledgement by the city or county that the
15 improvements for which the performance guarantee is being required are
16 complete. If the improvements are not complete and the current performance
17 guarantee is expiring, the performance guarantee shall be extended, or a new
18 performance guarantee issued, for an additional period until such required
19 improvements are complete. A developer shall demonstrate reasonable, good
20 faith progress toward completion of the required improvements that are the
21 subject of the performance guarantee or any extension. The form of any
22 extension shall remain at the election of the developer.

23 (3) The amount of the performance guarantee shall not exceed one hundred
24 twenty-five percent (125%) of the reasonably estimated cost of completion
25 at the time the performance guarantee is issued. Any extension of the
26 performance guarantee necessary to complete required improvements shall
27 not exceed one hundred twenty-five percent (125%) of the reasonably
28 estimated cost of completion of the remaining incomplete improvements still
29 outstanding at the time the extension is obtained.

30 (4) The performance guarantee shall only be used for completion of the required
31 improvements and not for repairs or maintenance after completion.

32 (h) In the event that a performance guarantee obtained by a developer pursuant to this
33 section is called and paid to the city, the city may administer the funds in furtherance of the
34 successful completion of the required improvements. If the funds paid to the city from the
35 performance guarantee are insufficient to complete the required improvements, the city may, at
36 its discretion, administer the funds in accordance with standards adopted by the council. The
37 provisions of G.S. 160A-393 shall apply to the review of any decision of the council pursuant
38 to this subsection."

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