

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

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SENATE BILL DRS35130-MQ-73

Short Title: Perf. Guar. to Streamline Afford. Housing. (Public)

Sponsors: Senators Wells, Krawiec, and Woodard (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO REDUCE COSTS AND AID HOUSING AFFORDABILITY BY  
3 STREAMLINING THE PERFORMANCE GUARANTEE PROCESS BETWEEN  
4 DEVELOPERS AND LOCAL GOVERNMENTS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 160A-372 reads as rewritten:

7 "§ 160A-372. Contents and requirements of ordinance.

8 ...

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

16 ...

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

19 (1) Type. – The type of performance guarantee shall be at the election of the  
20 developer. The term "performance guarantee" shall mean any of the following  
21 forms of guarantee:

- 22 a. Surety bond issued by any company authorized to do business in this  
23 State.  
24 b. Letter of credit issued by any financial institution licensed to do  
25 business in this State.  
26 c. Other form of guarantee that provides equivalent security to a surety  
27 bond or letter of credit.

28 (1a) Duration. – The duration of the performance guarantee shall initially be one  
29 year, unless the developer determines that the scope of work for the required  
30 improvements necessitates a longer duration. In the case of a bonded  
31 obligation, the completion date shall be set one year from the date the bond is  
32 issued, unless the developer determines that the scope of work for the required  
33 improvements necessitates a longer duration.

34 (1b) Extension. – A developer shall demonstrate reasonable, good-faith progress  
35 toward completion of the required improvements that are secured by the  
36 performance guarantee or any extension. If the improvements are not



1 completed to the specifications of the city or county, and the current  
2 performance guarantee is likely to expire prior to completion of the required  
3 improvements, the performance guarantee shall be extended, or a new  
4 performance guarantee issued, for an additional period; provided, however,  
5 that the extension shall only be for a duration necessary to complete the  
6 required improvements. If a new performance guarantee is issued, the amount  
7 shall be determined by the procedure provided in subdivision (3) of this  
8 subsection and shall include the total cost of all incomplete improvements.

9 (2) Release. – The performance guarantee shall be returned or released, as  
10 appropriate, in a timely manner upon the acknowledgement by the city or  
11 county that the improvements for which the performance guarantee is being  
12 required are complete. If the improvements are not complete and the current  
13 performance guarantee is expiring, the performance guarantee shall be  
14 extended, or a new performance guarantee issued, for an additional period  
15 until such required improvements are complete. A developer shall  
16 demonstrate reasonable, good faith progress toward completion of the  
17 required improvements that are the subject of the performance guarantee or  
18 any extension. The form of any extension shall remain at the election of the  
19 developer. The city or county shall return letters of credit or escrowed funds  
20 upon completion of the required improvements to the specifications of the city  
21 or county, or upon acceptance of the required improvements, if the required  
22 improvements are subject to city or county acceptance. When required  
23 improvements that are secured by a bond are completed to the specifications  
24 of the city or county, or are accepted by the city or county, if subject to city or  
25 county acceptance, upon request by the developer, the city or county shall  
26 timely provide written acknowledgement that the required improvements have  
27 been completed.

28 (3) Amount. – The amount of the performance guarantee shall not exceed one  
29 hundred twenty-five percent (125%) of the reasonably estimated cost of  
30 completion at the time the performance guarantee is issued. ~~Any extension of~~  
31 ~~the performance guarantee necessary to complete required improvements~~  
32 ~~shall not exceed one hundred twenty five percent (125%) of the reasonably~~  
33 ~~estimated cost of completion of the remaining incomplete improvements still~~  
34 ~~outstanding at the time the extension is obtained. The city or county may~~  
35 ~~determine the amount of the performance guarantee or use a cost estimate~~  
36 ~~determined by the developer. The reasonably estimated cost of completion~~  
37 ~~shall include one hundred percent (100%) of the costs for labor and materials~~  
38 ~~necessary for completion of the required improvements. Where applicable, the~~  
39 ~~costs shall be based on unit pricing. The additional twenty-five percent (25%)~~  
40 ~~allowed under this subdivision includes inflation and all costs of~~  
41 ~~administration regardless of how such fees or charges are denominated. The~~  
42 ~~amount of any extension of any performance guarantee shall be determined~~  
43 ~~according to the procedures for determining the initial guarantee and shall not~~  
44 ~~exceed one hundred twenty-five percent (125%) of the reasonably estimated~~  
45 ~~cost of completion of the remaining incomplete improvements still~~  
46 ~~outstanding at the time the extension is obtained.~~

47 (3a) Timing. – A city or county, at its discretion, may require the performance  
48 guarantee to be posted either at the time the plat is recorded or at a time  
49 subsequent to plat recordation.

- 1 (4) Coverage. – The performance guarantee shall only be used for completion of
- 2 the required improvements and not for repairs or maintenance after
- 3 completion.
- 4 (5) Legal Responsibilities. – No person shall have or may claim any rights under
- 5 or to any performance guarantee provided pursuant to this subsection or in the
- 6 proceeds of any such performance guarantee other than the following:
- 7 a. The local government to whom such performance guarantee is
- 8 provided.
- 9 b. The developer at whose request or for whose benefit such performance
- 10 guarantee is given.
- 11 c. The person or entity issuing or providing such performance guarantee
- 12 at the request of or for the benefit of the developer.
- 13 (6) Multiple Guarantees. – The developer shall have the option to post one type
- 14 of a performance guarantee as provided for in subdivision (1) of this
- 15 subsection, in lieu of multiple bonds, letters of credit, or other equivalent
- 16 security, for all development matters related to the same project requiring
- 17 performance guarantees. Performance guarantees associated with erosion
- 18 control and stormwater control measures are not subject to the provisions of
- 19 this section."

20 **SECTION 2.** G.S. 153A-331 reads as rewritten:

21 "**§ 153A-331. Contents and requirements of ordinance.**

22 ...

23 (e) The ordinance may provide for the more orderly development of subdivisions by

24 requiring the construction of community service facilities in accordance with county plans,

25 policies, and standards. To assure compliance with these and other ordinance requirements, the

26 ordinance may provide for performance guarantees to assure successful completion of required

27 ~~improvements at the time the plat is recorded as provided in subsection (b) of this section. For~~

28 ~~any specific development, the type of performance guarantee from the range specified by the~~

29 ~~county shall be at the election of the developer.~~improvements.

30 ...."

31 **SECTION 3.** This act is effective when it becomes law and applies to performance

32 guarantees issued on or after that date.