

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

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HOUSE BILL 720

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

Sponsors: Representatives Majeed, K. Smith, Hawkins, and Belk (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Local Government - Land Use, Planning and Development, if favorable,
Transportation, if favorable, State Government, if favorable, Rules, Calendar, and
Operations of the House

April 29, 2021

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ACCEPTANCE OF A TRANSPORTATION IMPROVEMENT BY
THE DEPARTMENT OF TRANSPORTATION BEFORE A PERFORMANCE
GUARANTEE REQUIRED BY A LOCAL GOVERNMENT IS RELEASED.

The General Assembly of North Carolina enacts:

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

"§ 160D-804.1. Performance guarantees.

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

For purposes of this section, all of the following 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" means 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 no later than 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 local government, 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



1 performance guarantee issued, for an additional period. An extension under
2 this subdivision shall only be for a duration necessary to complete the required
3 improvements. If a new performance guarantee is issued, the amount shall be
4 determined by the procedure provided in subdivision (3) of this subsection
5 and shall include the total cost of all incomplete improvements.

6 (2) Release. – The performance guarantee shall be returned or released, as
7 appropriate, in a timely manner upon the acknowledgement by the local
8 government that the improvements for which the performance guarantee is
9 being required are complete. The local government shall return letters of credit
10 or escrowed funds upon completion of the required improvements to its
11 specifications or satisfaction and upon acceptance of the required
12 ~~improvements, improvements by the local government and the Department of~~
13 ~~Transportation, if the required improvements are subject to local government~~
14 ~~acceptance, and the Department of Transportation's acceptance for~~
15 ~~maintenance.~~ When required improvements that are secured by a bond are
16 completed to the specifications of the local government, ~~or and~~ are accepted
17 by the local ~~government, government and the Department of Transportation,~~
18 if subject to ~~its acceptance, the Department's acceptance,~~ upon request by the
19 developer, the local government shall timely provide written
20 acknowledgement that the required improvements have been completed.

21 (3) Amount. – The amount of the performance guarantee shall not exceed one
22 hundred twenty-five percent (125%) of the reasonably estimated cost of
23 completion at the time the performance guarantee is issued. The local
24 government may determine the amount of the performance guarantee or use a
25 cost estimate determined by the developer. The reasonably estimated cost of
26 completion shall include one hundred percent (100%) of the costs for labor
27 and materials necessary for completion of the required improvements. Where
28 applicable, the costs shall be based on unit pricing. The additional twenty-five
29 percent (25%) allowed under this subdivision includes inflation and all costs
30 of administration regardless of how such fees or charges are denominated. The
31 amount of any extension of any performance guarantee shall be determined
32 according to the procedures for determining the initial guarantee and shall not
33 exceed one hundred twenty-five percent (125%) of the reasonably estimated
34 cost of completion of the remaining incomplete improvements still
35 outstanding at the time the extension is obtained.

36 (3a) Timing. – A local government, at its discretion, may require the performance
37 guarantee to be posted either at the time the plat is recorded or at a time
38 subsequent to plat recordation.

39 (4) Coverage. – The performance guarantee shall only be used for completion of
40 the required improvements and not for repairs or maintenance after
41 completion.

42 (5) Legal responsibilities. – No person shall have ~~or may a claim any of rights~~
43 ~~under this subsection or to any proceeds from a performance guarantee~~
44 ~~provided pursuant to this subsection or in the proceeds of any such~~
45 ~~performance guarantee other than with the exception of the following:~~

- 46 a. The local government to whom the performance guarantee is provided.
- 47 b. The developer at whose request or for whose benefit the performance
48 guarantee is given.
- 49 c. The person or entity issuing or providing the performance guarantee
50 at the request of or for the benefit of the developer.

1 (6) Multiple guarantees. – The developer shall have the option to post one type of
2 a performance guarantee as provided for in subdivision (1) of this section, in
3 lieu of multiple bonds, letters of credit, or other equivalent security, for all
4 development matters related to the same project requiring performance
5 guarantees.

6 (7) Exclusion. – Performance guarantees associated with erosion control and
7 stormwater control measures are not subject to the provisions of this section."

8 **SECTION 2.** This act is effective when it becomes law and applies to performance
9 guarantees submitted on or after that date.