

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009**

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**SENATE BILL 761**

Short Title: Street Construction/Developer Responsibility. (Public)

Sponsors: Senators Brown; Berger of Rockingham, Blake, Brock, East, Hoyle, Hunt, Jacumin, Jenkins, Preston, Swindell, and Tillman.

Referred to: Commerce.

March 24, 2009

A BILL TO BE ENTITLED  
AN ACT TO LIMIT THE RESPONSIBILITY OF DEVELOPERS FOR THE COST OF  
STREET OR HIGHWAY CONSTRUCTION TO THE AMOUNT NECESSARY TO  
SERVE PROJECTED TRAFFIC GENERATED BY THE DEVELOPMENT.

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.

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 The ordinance may provide for the more orderly development of subdivisions by requiring  
5 the construction of community service facilities in accordance with county plans, policies, and  
6 standards. To assure compliance with these and other ordinance requirements, the ordinance  
7 may provide for performance guarantees to assure successful completion of required  
8 improvements. If a performance guarantee is required, the county shall provide a range of  
9 options of types of performance guarantees, including, but not limited to, surety bonds or letters  
10 of credit, from which the developer may choose. For any specific development, the type of  
11 performance guarantee from the range specified by the county shall be at the election of the  
12 developer.

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

29 (d) A subdivision control ordinance that requires a developer to provide for the  
30 construction and public dedication of acceleration and deceleration lanes, traffic storage lanes,  
31 traffic control devices, medians, channelization, and other improvements shall be limited to the  
32 amount necessary to serve projected traffic generated by the proposed development or  
33 redirected due to the proposed development as a percentage of total use of the required  
34 improvement to the street or highway. The percentage of total use is defined as the proportion  
35 of projected traffic generated and traffic redirected by the proposed development on the specific  
36 improvements required. The percentage consideration does not apply to cost of improvements  
37 required to preserve the safe operations of the street or highway.

38 (e) A subdivision control ordinance may allow a county to enter into an agreement with  
39 a developer to reimburse up to, but not exceeding, one hundred percent (100%) of the cost  
40 associated with roadway improvements to maintain and enhance the transportation  
41 infrastructure. The reimbursement may be paid by the county from funds not otherwise limited  
42 as to use by law or from future developments that benefit or utilize the improvements based  
43 upon the percentage of total use as defined in subsection (d) of this section. Counties may enter  
44 into agreements with one another and municipalities for the purposes of reimbursements and  
45 transportation improvements that cross political boundaries."

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

47 **"§ 160A-372. Contents and requirements of ordinance.**

48 (a) A subdivision control ordinance may provide for the orderly growth and  
49 development of the city; for the coordination of transportation networks and utilities within  
50 proposed subdivisions with existing or planned streets and highways and with other public  
51 facilities; for the dedication or reservation of recreation areas serving residents of the

1 immediate neighborhood within the subdivision or, alternatively, for provision of funds to be  
2 used to acquire recreation areas serving residents of the development or subdivision or more  
3 than one subdivision or development within the immediate area, and rights-of-way or  
4 easements for street and utility purposes including the dedication of rights-of-way pursuant to  
5 G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner  
6 that will avoid congestion and overcrowding and will create conditions that substantially  
7 promote public health, safety, and the general welfare.

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

15 (c) The ordinance may provide for the more orderly development of subdivisions by  
16 requiring the construction of community service facilities in accordance with municipal plans,  
17 policies, and standards. To assure compliance with these and other ordinance requirements, the  
18 ordinance may provide for performance guarantees to assure successful completion of required  
19 improvements. If a performance guarantee is required, the city shall provide a range of options  
20 of types of performance guarantees, including, but not limited to, surety bonds or letters of  
21 credit, from which the developer may choose. For any specific development, the type of  
22 performance guarantee from the range specified by the city shall be at the election of the  
23 developer.

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

40 The ordinance may provide that a developer may provide funds to the city whereby the city  
41 may acquire recreational land or areas to serve the development or subdivision, including the  
42 purchase of land that may be used to serve more than one subdivision or development within  
43 the immediate area. All funds received by the city pursuant to this paragraph shall be used only  
44 for the acquisition or development of recreation, park, or open space sites. Any formula enacted  
45 to determine the amount of funds that are to be provided under this paragraph shall be based on  
46 the value of the development or subdivision for property tax purposes. The ordinance may  
47 allow a combination or partial payment of funds and partial dedication of land when the  
48 governing body of the city determines that this combination is in the best interests of the  
49 citizens of the area to be served.

50 The ordinance may provide that in lieu of required street construction, a developer may be  
51 required to provide funds that the city may use for the construction of roads to serve the

1 occupants, residents, or invitees of the subdivision or development and these funds may be used  
2 for roads which serve more than one subdivision or development within the area. All funds  
3 received by the city pursuant to this paragraph shall be used only for development of roads,  
4 including design, land acquisition, and construction. However, a city may undertake these  
5 activities in conjunction with the Department of Transportation under an agreement between  
6 the city and the Department of Transportation. Any formula adopted to determine the amount  
7 of funds the developer is to pay in lieu of required street construction shall be based on the trips  
8 generated from the subdivision or development. The ordinance may require a combination of  
9 partial payment of funds and partial dedication of constructed streets when the governing body  
10 of the city determines that a combination is in the best interests of the citizens of the area to be  
11 served.

12 (d) A subdivision control ordinance that requires a developer to provide for the  
13 construction and public dedication of acceleration and deceleration lanes, traffic storage lanes,  
14 traffic control devices, medians, channelization, and other improvements shall be limited to the  
15 amount necessary to serve projected traffic generated by the proposed development or  
16 redirected due to the proposed development as a percentage of total use of the required  
17 improvement to the street or highway. The percentage of total use is defined as the proportion  
18 of projected traffic generated and traffic redirected by the proposed development on the specific  
19 improvements required. The percentage consideration does not apply to cost of improvements  
20 required to preserve the safe operations of the street or highway.

21 (e) A subdivision control ordinance may allow a county to enter into an agreement with  
22 a developer to reimburse up to, but not exceeding, one hundred percent (100%) of the cost  
23 associated with roadway improvements to maintain and enhance the transportation  
24 infrastructure. The reimbursement may be paid by the county from funds not otherwise limited  
25 as to use by law or from future developments that benefit or utilize the improvements based  
26 upon the percentage of total use as defined in subsection (d) of this section. Counties may enter  
27 into agreements with one another and municipalities for the purposes of reimbursements and  
28 transportation improvements that cross political boundaries."

29 **SECTION 3.** G.S. 136-18(29) reads as rewritten:

30 "(29) The Department of Transportation may establish policies and adopt rules  
31 about the size, location, direction of traffic flow, and the construction of  
32 driveway connections into any street or highway which is a part of the State  
33 Highway System. The Department of Transportation may require the  
34 construction and public dedication of acceleration and deceleration lanes,  
35 and traffic storage ~~lanes and medians~~lanes, traffic control devices, medians,  
36 channelization, and other improvements by others for the driveway  
37 connections into any United States route, or North Carolina route, and on  
38 any secondary road route with an average daily traffic volume of 4,000  
39 vehicles per day, ~~or more including the traffic generated by the proposed~~  
40 development. The minimum traffic volume condition for secondary road  
41 routes does not apply for improvements required to preserve the safe  
42 operations of the street or highway."

43 **SECTION 4.** This act is effective when it becomes law.