

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE BILL 141

Short Title: Maintenance Bond for Subdivision Roads. (Public)

Sponsors: Representatives Farmer-Butterfield, Murphy, and S. Martin (Primary Sponsors).  
*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

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

February 22, 2017

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A MAINTENANCE BOND PROCESS FOR SUBDIVISION  
ROADS DEDICATED FOR PUBLIC USE TO PREVENT DEGRADATION OF  
TRANSPORTATION IMPROVEMENTS PRIOR TO ADDITION TO THE STATE  
HIGHWAY SYSTEM.

The General Assembly of North Carolina enacts:

**SECTION 1.** 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 transportation improvements intended to be designated as public under G.S. 136-102.6, the ordinance may also provide for maintenance guarantees to prevent degradation of transportation improvements until the improvements are added to the State highways system for maintenance pursuant to G.S. 136-102.6(d). For any specific development, the type of performance or maintenance guarantee ~~from the range specified by the county~~ shall be at the election of the developer.

...

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

**SECTION 2.** 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 transportation improvements to be designated as public under G.S. 136-102.6, the ordinance may also provide for maintenance guarantees to prevent degradation of transportation improvements until the improvements are added to the State highways system for maintenance pursuant to G.S. 136-102.6(d). For any specific development, the type of performance or maintenance guarantee shall be at the election of the developer.



1 ...  
2 (g) For purposes of this section, all of the following shall apply with respect to  
3 performance guarantees:

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

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

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

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

12 (2) The performance guarantee shall be returned or released, as appropriate, in a  
13 timely manner upon the acknowledgement by the city or county that the  
14 improvements for which the performance guarantee is being required are  
15 complete. The engineer of record for the design of transportation improvements  
16 intended to be designated as public under G.S. 136-102.6 shall provide a sealed  
17 certification to the city or county and the Division of Highways confirming that  
18 the transportation improvements have been completed according to the plans  
19 that received the certificate of approval pursuant to G.S. 136-102.6(d). If the  
20 improvements are not complete and the current performance guarantee is  
21 expiring, the performance guarantee shall be extended, or a new performance  
22 guarantee issued, for an additional period until such required improvements are  
23 complete. A developer shall demonstrate reasonable, good faith progress  
24 toward completion of the required improvements that are the subject of the  
25 performance guarantee or any extension. The form of any extension shall  
26 remain at the election of the developer.

27 (2a) Within 20 business days following the filing of the certificate of completion by  
28 the engineer of record, the developer shall provide a maintenance guarantee for  
29 the transportation improvements intended to be designated as public under  
30 G.S. 136-102.6. The maintenance guarantee shall be returned or released, as  
31 appropriate, when any of the following occurs:

32 a. The transportation improvements are added to the State highway system  
33 for maintenance pursuant to G.S. 136-102.6(d).

34 b. The rerecording of a subdivision plat designating the transportation  
35 improvements as private.

36 (3) The amount of the performance guarantee shall not exceed one hundred  
37 twenty-five percent (125%) of the reasonably estimated cost of completion at  
38 the time the performance guarantee is issued. Any extension of the performance  
39 guarantee necessary to complete required improvements shall not exceed one  
40 hundred twenty-five percent (125%) of the reasonably estimated cost of  
41 completion of the remaining incomplete improvements still outstanding at the  
42 time the extension is obtained.

43 (3a) The amount of the maintenance guarantee shall not exceed fifteen percent  
44 (15%) of the reasonably estimated total cost of construction of the  
45 transportation improvements at the time the guarantee is issued.

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

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