

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H.B. 310
Mar 8, 2023
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH10148-MQ-44

Short Title: Selection of Performance Guarantee Method. (Public)

Sponsors: Representative Iler.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW LOCAL GOVERNMENTS TO SELECT THE TYPE OF
3 PERFORMANCE GUARANTEE FOR REQUIRED SUBDIVISION IMPROVEMENTS.

4 The General Assembly of North Carolina enacts:

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

6 "§ 160D-804.1. Performance guarantees.

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

10 For purposes of this section, all of the following apply with respect to performance
11 guarantees:

12 (1) Type. – The type of performance guarantee shall be at the election of the
13 ~~developer~~ local government. The term "performance guarantee" means any
14 of the following forms of guarantee:

- 15 a. Surety bond issued by any company authorized to do business in this
16 State.
17 b. Letter of credit issued by any financial institution licensed to do
18 business in this State.
19 c. Other form of guarantee that provides equivalent security to a surety
20 bond or letter of credit.

21 (1a) Duration. – The duration of the performance guarantee shall initially be one
22 year, unless the developer determines that the scope of work for the required
23 improvements necessitates a longer duration. In the case of a bonded
24 obligation, the completion date shall be set one year from the date the bond is
25 issued, unless the developer determines that the scope of work for the required
26 improvements necessitates a longer duration.

27 (1b) Extension. – A developer shall demonstrate reasonable, good-faith progress
28 toward completion of the required improvements that are secured by the
29 performance guarantee or any extension. If the improvements are not
30 completed to the specifications of the local government, and the current
31 performance guarantee is likely to expire prior to completion of the required
32 improvements, the performance guarantee shall be extended, or a new
33 performance guarantee issued, for an additional period. An extension under
34 this subdivision shall only be for a duration necessary to complete the required
35 improvements. If a new performance guarantee is issued, the amount shall be



- 1 determined by the procedure provided in subdivision (3) of this subsection
2 and shall include the total cost of all incomplete improvements.
- 3 (2) Release. – The performance guarantee shall be returned or released, as
4 appropriate, in a timely manner upon the acknowledgement by the local
5 government that the improvements for which the performance guarantee is
6 being required are complete. The local government shall return letters of credit
7 or escrowed funds upon completion of the required improvements to its
8 specifications or upon acceptance of the required improvements, if the
9 required improvements are subject to local government acceptance. When
10 required improvements that are secured by a bond are completed to the
11 specifications of the local government, or are accepted by the local
12 government, if subject to its acceptance, upon request by the developer, the
13 local government shall timely provide written acknowledgement that the
14 required improvements have been completed.
- 15 (3) Amount. – The amount of the performance guarantee shall not exceed one
16 hundred twenty-five percent (125%) of the reasonably estimated cost of
17 completion at the time the performance guarantee is issued. The local
18 government may determine the amount of the performance guarantee or use a
19 cost estimate determined by the developer. The reasonably estimated cost of
20 completion shall include one hundred percent (100%) of the costs for labor
21 and materials necessary for completion of the required improvements. Where
22 applicable, the costs shall be based on unit pricing. The additional twenty-five
23 percent (25%) allowed under this subdivision includes inflation and all costs
24 of administration regardless of how such fees or charges are denominated. The
25 amount of any extension of any performance guarantee shall be determined
26 according to the procedures for determining the initial guarantee and shall not
27 exceed one hundred twenty-five percent (125%) of the reasonably estimated
28 cost of completion of the remaining incomplete improvements still
29 outstanding at the time the extension is obtained.
- 30 (3a) Timing. – A local government, at its discretion, may require the performance
31 guarantee to be posted either at the time the plat is recorded or at a time
32 subsequent to plat recordation.
- 33 (4) Coverage. – The performance guarantee shall only be used for completion of
34 the required improvements and not for repairs or maintenance after
35 completion.
- 36 (5) Legal responsibilities. – No person shall have or may claim any rights under
37 or to any performance guarantee provided pursuant to this subsection or in the
38 proceeds of any such performance guarantee other than the following:
- 39 a. The local government to whom the performance guarantee is provided.
40 b. The developer at whose request or for whose benefit the performance
41 guarantee is given.
42 c. The person or entity issuing or providing the performance guarantee
43 at the request of or for the benefit of the developer.
- 44 (6) Multiple guarantees. – The developer shall have the option to post one type of
45 a performance guarantee as provided for in subdivision (1) of this section, in
46 lieu of multiple bonds, letters of credit, or other equivalent security, for all
47 development matters related to the same project requiring performance
48 guarantees.
- 49 (7) Exclusion. – Performance guarantees associated with erosion control and
50 stormwater control measures are not subject to the provisions of this section."

1 **SECTION 2.** This act is effective when it becomes law and applies to approvals
2 occurring on or after that date.