



# HOUSE BILL 721: Subdivision Ordinance/Land Development Changes

2015-2016 General Assembly

**Committee:**

**Introduced by:**

**Analysis of:** S.L. 2015-187

**Date:**

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Staff Attorney

**SUMMARY:** *S.L. 2015-187 amends and clarifies the law regarding performance guarantees developers are required to provide to cities and counties to assure completion of required improvements to subdivided land. The act requires the developer to demonstrate reasonable, good faith progress toward completion of any improvements that are the subject of a performance guarantee or any extension thereof and caps the amount of any performance guarantee or extension at 125% of the reasonably estimated cost of completing the improvements.*

*This act became effective October 1, 2015, and applies to performance guarantees or extensions of performance guarantees issued on or after that date.*

**CURRENT LAW:** Cities (Part 2 of Article 19 of Chapter 160A) and counties (Part 2 of Article 18 of Chapter 153A) are authorized to adopt ordinances to regulate the subdivision of land within their territorial jurisdiction. These statutes authorize subdivision ordinances to require the construction of "community service facilities". To ensure compliance with these and other ordinance requirements, cities and counties are authorized to provide for performance guarantees. Performance guarantees are financial assurances that guarantee funds if the developer fails to complete the agreed-to improvements. If a guarantee is required, the developer can choose from a range of different types of assurance.

**BILL ANALYSIS:** **Section 1** of this act provides that a performance guarantee is required at the time the plat is recorded and that the type of performance guarantee is at the election of the developer.

This section creates a new subsection, G.S.160A-372(g), that applies to performance guarantees for both cities and counties. The new subsection does all of the following:

- Defines "performance guarantee" as any of the following: a surety bond issued by any company authorized to do business in the state, a letter of credit issued by any financial institution licensed to do business in the state, or any other form of guarantee that provides equivalent security to a surety bond or letter of credit.
- Requires a performance guarantee to be returned in a timely manner when the city or county acknowledges that the improvements for which the guarantee is being required are complete.
- Requires extension of the performance guarantee or issuance of a new performance guarantee if the improvements are not complete at the time the current performance guarantee expires.
- Requires the developer to demonstrate reasonable, good faith progress toward completion of the improvements that are the subject of the performance guarantee or any extension.
- Caps the amount of a performance guarantee or extension thereof at 125% of the reasonably estimated cost of completion at the time the performance guarantee is issued or extension is obtained.

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- Clarifies that the performance guarantee must only be used for completion of the required improvements and not for repairs or maintenance after completion.

**Section 2** prohibits cities and counties from withholding issuance of a building permit or certificate of occupancy that otherwise would be eligible to be issued in order to compel completion of work for a separate permit or to compel compliance with land use regulations with respect to another property or parcel unless (1) otherwise authorized by law or (2) the city or county reasonably determines the existence of a public safety issue directly related to the issuance of a building permit or certificate of occupancy.

**EFFECTIVE DATE:** This act became effective October 1, 2015, and applies to performance guarantees or extensions of performance guarantees issued on or after that date.