

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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**SENATE BILL 761
Commerce Committee Substitute Adopted 4/28/09**

Short Title: Street Construction/Developer Responsibility.

(Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

1 AN ACT TO LIMIT THE RESPONSIBILITY OF DEVELOPERS FOR THE COST OF
2 STREET OR HIGHWAY CONSTRUCTION TO THE AMOUNT NECESSARY TO
3 SERVE PROJECTED TRAFFIC GENERATED BY THE DEVELOPMENT.
4

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 153A-331 reads as rewritten:

7 **"§ 153A-331. Contents and requirements of ordinance.**

8 (a) A subdivision control ordinance may provide for the orderly growth and
9 development of the county; for the coordination of transportation networks and utilities within
10 proposed subdivisions with existing or planned streets and highways and with other public
11 facilities; for the dedication or reservation of recreation areas serving residents of the
12 immediate neighborhood within the subdivision and of rights-of-way or easements for street
13 and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or
14 G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid
15 congestion and overcrowding and will create conditions that substantially promote public
16 health, safety, and the general welfare.

17 (b) The ordinance may require that a plat be prepared, approved, and recorded pursuant
18 to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance
19 may include requirements that the final plat show sufficient data to determine readily and
20 reproduce accurately on the ground the location, bearing, and length of every street and alley
21 line, lot line, easement boundary line, and other property boundaries, including the radius and
22 other data for curved property lines, to an appropriate accuracy and in conformity with good
23 surveying practice.

24 (c) A subdivision control ordinance may provide that a developer may provide funds to
25 the county whereby the county may acquire recreational land or areas to serve the development
26 or subdivision, including the purchase of land that may be used to serve more than one
27 subdivision or development within the immediate area.

28 The ordinance may provide that in lieu of required street construction, a developer may
29 provide funds to be used for the development of roads to serve the occupants, residents, or
30 invitees of the subdivision or development. All funds received by the county under this section
31 shall be transferred to the municipality to be used solely for the development of roads,
32 including design, land acquisition, and construction. Any municipality receiving funds from a
33 county under this section is authorized to expend such funds outside its corporate limits for the
34 purposes specified in the agreement between the municipality and the county. Any formula
35 adopted to determine the amount of funds the developer is to pay in lieu of required street
36 construction shall be based on the trips generated from the subdivision or development. The
37 ordinance may require a combination of partial payment of funds and partial dedication of



1 constructed streets when the governing body of the county determines that a combination is in
2 the best interest of the citizens of the area to be served.

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

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

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

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

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

46 **"§ 160A-372. Contents and requirements of ordinance.**

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

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

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

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

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

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

49 The ordinance may provide that in lieu of required street construction, a developer may be
50 required to provide funds that the city may use for the construction of roads to serve the
51 occupants, residents, or invitees of the subdivision or development and these funds may be used

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

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

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

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

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

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