

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 827

Short Title: Require Surety Options for Developers. (Public)

Sponsors: Representative Collins (Primary Sponsor).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development.

April 7, 2011

A BILL TO BE ENTITLED

AN ACT RELATING TO THE FINANCIAL ASSURANCES SPECIFIED BY LOCAL
GOVERNMENTS AS PERFORMANCE GUARANTEES UNDER SUBDIVISION
CONTROL ORDINANCES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 153A-331(c) reads as rewritten:

"(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 ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the county determines that a combination is in the best interest of the citizens of the area to be served.

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. If a performance guarantee is required, the county shall provide a range of options of types of performance guarantees, including, but not limited to, financial assurances such as surety bonds or and letters of credit, from which the developer may choose. For any specific development, the type of performance guarantee from the range specified by the county shall be at the election of the developer. Whenever a letter of credit is an allowable mechanism included in the range specified by a county, the developer may elect to obtain a surety bond guaranteeing performance in lieu of the letter of credit. The county may establish reasonable requirements regarding the surety, however, any company doing business in this



1 State that is among those listed annually as acceptable sureties on federal bonds in Circular 570
2 of the U.S. Department of Treasury are deemed acceptable for the purposes of this subsection.

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

19 **SECTION 1.(b)** G.S. 160A-372(c) reads as rewritten:

20 "(c) The ordinance may provide for the more orderly development of subdivisions by
21 requiring the construction of community service facilities in accordance with municipal plans,
22 policies, and standards. To assure compliance with these and other ordinance requirements, the
23 ordinance may provide for performance guarantees to assure successful completion of required
24 improvements. If a performance guarantee is required, the city shall provide a range of options
25 of types of performance guarantees, including, but not limited to, financial assurances such as
26 surety bonds ~~or~~ and letters of credit, from which the developer may choose. For any specific
27 development, the type of performance guarantee from the range specified by the city shall be at
28 the election of the developer. Whenever a letter of credit is an allowable mechanism included in
29 the range specified by a city, the developer may elect to obtain a surety bond guaranteeing
30 performance in lieu of the letter of credit. The city may establish reasonable requirements
31 regarding the surety, however, any company doing business in this State that is among those
32 listed annually as acceptable sureties on federal bonds in Circular 570 of the U.S. Department
33 of Treasury are deemed acceptable for the purposes of this subsection.

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

50 The ordinance may provide that a developer may provide funds to the city whereby the city
51 may acquire recreational land or areas to serve the development or subdivision, including the

1 purchase of land that may be used to serve more than one subdivision or development within
2 the immediate area. All funds received by the city pursuant to this paragraph shall be used only
3 for the acquisition or development of recreation, park, or open space sites. Any formula enacted
4 to determine the amount of funds that are to be provided under this paragraph shall be based on
5 the value of the development or subdivision for property tax purposes. The ordinance may
6 allow a combination or partial payment of funds and partial dedication of land when the
7 governing body of the city determines that this combination is in the best interests of the
8 citizens of the area to be served.

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

22 **SECTION 2.** This act is effective when it becomes law and applies to any range
23 specified by a county or city on or after that date.