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LAW/KR

P.L.2013, CHAPTER 123, *approved August 9, 2013*
Senate, No. 2539 (*First Reprint*)

1 AN ACT concerning ¹**[the release of]**¹ performance guarantees
2 under the "Municipal Land Use Law^{1,1}" ¹amending¹ and
3 supplementing P.L.1975, c.291.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 ¹1. Section 29 of P.L.1975, c.291 (C.40:55D-38) is amended to
9 read as follows:

10 29. Contents of ordinance. An ordinance requiring approval by
11 the planning board of either subdivisions or site plans, or both, shall
12 include the following:

13 a. Provisions, not inconsistent with other provisions of this act,
14 for submission and processing of applications for development,
15 including standards for preliminary and final approval and
16 provisions for processing of final approval by stages or sections of
17 development;

18 b. Provisions ensuring:

19 (1) Consistency of the layout or arrangement of the subdivision
20 or land development with the requirements of the zoning ordinance;

21 (2) Streets in the subdivision or land development of sufficient
22 width and suitable grade and suitably located to accommodate
23 prospective traffic and to provide access for firefighting and
24 emergency equipment to buildings and coordinated so as to
25 compose a convenient system consistent with the official map, if
26 any, and the circulation element of the master plan, if any, and so
27 oriented as to permit, consistent with the reasonable utilization of
28 land, the buildings constructed thereon to maximize solar gain;
29 provided that no street of a width greater than 50 feet within the
30 right-of-way lines shall be required unless said street constitutes an
31 extension of an existing street of the greater width, or already has
32 been shown on the master plan at the greater width, or already has
33 been shown in greater width on the official map;

34 (3) Adequate water supply, drainage, shade trees, sewerage
35 facilities and other utilities necessary for essential services to
36 residents and occupants;

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCU committee amendments adopted May 20, 2013.

- 1 (4) Suitable size, shape and location for any area reserved for
2 public use pursuant to section 32 of this act;
 - 3 (5) Reservation pursuant to section 31 of this act of any open
4 space to be set aside for use and benefit of the residents of planned
5 development, resulting from the application of standards of density
6 or intensity of land use, contained in the zoning ordinance, pursuant
7 to subsection c. of section 52 of this act;
 - 8 (6) Regulation of land designated as subject to flooding,
9 pursuant to subsection e. of section 52 of this act, to avoid danger to
10 life or property;
 - 11 (7) Protection and conservation of soil from erosion by wind or
12 water or from excavation or grading;
 - 13 (8) Conformity with standards promulgated by the
14 Commissioner of Transportation, pursuant to the "Air Safety and
15 Hazardous Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.),
16 for any airport hazard areas delineated under that act;
 - 17 (9) Conformity with a municipal recycling ordinance required
18 pursuant to section 6 of P.L.1987, c.102 (C.13:1E-99.16);
 - 19 (10) Conformity with the State highway access management
20 code adopted by the Commissioner of Transportation under section
21 3 of the "State Highway Access Management Act," P.L.1989, c.32
22 (C.27:7-91), with respect to any State highways within the
23 municipality;
 - 24 (11) Conformity with any access management code adopted by
25 the county under R.S.27:16-1, with respect to any county roads
26 within the municipality;
 - 27 (12) Conformity with any municipal access management code
28 adopted under R.S.40:67-1, with respect to municipal streets;
 - 29 (13) Protection of potable water supply reservoirs from
30 pollution or other degradation of water quality resulting from the
31 development or other uses of surrounding land areas, which
32 provisions shall be in accordance with any siting, performance, or
33 other standards or guidelines adopted therefor by the Department of
34 Environmental Protection;
 - 35 (14) Conformity with the public safety regulations concerning
36 storm water detention facilities adopted pursuant to section 5 of
37 P.L.1991, c.194 (C.40:55D-95.1) and reflected in storm water
38 management plans and storm water management ordinances
39 adopted pursuant to P.L.1981, c.32 (C.40:55D-93 et al.); and
 - 40 (15) Conformity with the model ordinance promulgated by the
41 Department of Environmental Protection and Department of
42 Community Affairs pursuant to section 2 of P.L.1993, c.81
43 (C.13:1E-99.13a) regarding the inclusion of facilities for the
44 collection or storage of source separated recyclable materials in any
45 new multifamily housing development.
- 46 c. Provisions governing the standards for grading, improvement
47 and construction of streets or drives and for any required walkways,
48 curbs, gutters, streetlights, shade trees, fire hydrants and water, and

1 drainage and sewerage facilities and other improvements as shall be
2 found necessary, and provisions ensuring that such facilities shall
3 be completed either prior to or subsequent to final approval of the
4 subdivision or site plan by allowing the posting of performance
5 **【bonds】** guarantees by the developer;

6 d. Provisions ensuring that when a municipal zoning ordinance
7 is in effect, a subdivision or site plan shall conform to the
8 applicable provisions of the zoning ordinance, and where there is no
9 zoning ordinance, appropriate standards shall be specified in an
10 ordinance pursuant to this article; and

11 e. Provisions ensuring performance in substantial accordance
12 with the final development plan; provided that the planning board
13 may permit a deviation from the final plan, if caused by change of
14 conditions beyond the control of the developer since the date of
15 final approval, and the deviation would not substantially alter the
16 character of the development or substantially impair the intent and
17 purpose of the master plan and zoning ordinance.¹

18 (cf: P.L.1993, c.81, s.1)

19

20 ¹2. Section 29.1 of P.L.1975, c.291 (C.40:55D-39) is amended
21 to read as follows:

22 29.1 Discretionary contents of ordinance. An ordinance
23 requiring approval by the planning board of either subdivisions or
24 site plans or both may include the following:

25 a. Provisions for off-tract water, sewer, drainage, and street
26 improvements which are necessitated by a subdivision or land
27 development, subject to the provisions of section 30;

28 b. Provisions for standards encouraging and promoting
29 flexibility, and economy in layout and design through the use of
30 planned unit development, planned unit residential development and
31 residential cluster; provided that such standards shall be appropriate
32 to the type of development permitted; and provided further that the
33 ordinance shall set forth the limits and extent of any special
34 provisions applicable to such planned developments, so that the
35 manner in which such special provisions differ from the standards
36 otherwise applicable to subdivisions or site plans can be
37 determined;

38 c. Provisions for planned development:

39 (1) Authorizing the planning board to grant general
40 development plan approval to provide the increased flexibility
41 desirable to promote mutual agreement between the applicant and
42 the planning board on the basic scheme of a planned development
43 and setting forth any variations from the ordinary standards for
44 preliminary and final approval;

45 (2) Requiring that any common open space resulting from the
46 application of standards for density, or intensity of land use, be set
47 aside for the use and benefit of the owners or residents in such
48 development subject to section 31 of this act;

1 (3) Setting forth how the amount and location of any common
2 open space shall be determined and how its improvement and
3 maintenance for common open space use shall be secured subject to
4 section 31 of this act;

5 (4) Authorizing the planning board to allow for a greater
6 concentration of density, or intensity of land use, within a section or
7 sections of development, whether it be earlier, later or simultaneous
8 in the development, than in others;

9 (5) Setting forth any requirement that the approval by the
10 planning board of a greater concentration of density or intensity of
11 land use for any section to be developed be offset by a smaller
12 concentration in any completed prior stage or by an appropriate
13 reservation of common open space on the remaining land by grant
14 of easement or by covenant in favor of the municipality; provided
15 that such reservation shall, as far as practicable, defer the precise
16 location of common open space until an application for final
17 approval is filed, so that flexibility of development can be
18 maintained;

19 (6) Setting forth any requirements for timing of development
20 among the various types of uses and subgroups thereunder and, in
21 the case of planned unit development and planned unit residential
22 development, whether some nonresidential uses are required to be
23 built before, after or at the same time as the residential uses.

24 d. Provisions ensuring in the case of a development which
25 proposes construction over a period of years, the protection of the
26 interests of the public and of the residents, occupants and owners of
27 the proposed development in the total completion of the
28 development.

29 e. Provisions that require as a condition for local municipal
30 approval the submission of proof that no taxes or assessments for
31 local improvements are due or delinquent on the property for which
32 any subdivision, site plan, or planned development application is
33 made.

34 f. Provisions for the creation of a Site Plan Review Advisory
35 Board for the purpose of reviewing all site plan applications and
36 making recommendations to the planning board in regard thereto.

37 g. Provisions for standards governing outdoor advertising signs
38 required to be permitted pursuant to P.L.1991, c.413 (C.27:5-5 et
39 seq.) including, but not limited to, the location, placement, size and
40 design thereof.

41 h. Provisions requiring a successor developer to furnish a
42 performance guarantee as a replacement for a performance
43 guarantee that was previously accepted in accordance with
44 standards adopted by ordinance and regulations adopted pursuant to
45 section 1 of P.L.1999, c.68 (C.40:55D-53a) and section 41 of
46 P.L.1975, c.291 (C.40:55D-53), or this subsection, for the purpose
47 of assuring the installation and maintenance of on-tract

1 improvements, and releasing the predecessor obligor and surety, if
2 any, from liability pursuant to its performance guarantee.¹

3 (cf: P.L.2004, c.42, s.8)

4

5 ^{13.} Section 41 of P.L.1975, c.291 (C.40:55D-53) is amended to
6 read as follows:

7 41. Guarantees required; surety; release. a. Before recording of
8 final subdivision plats or as a condition of final site plan approval
9 or as a condition to the issuance of a zoning permit pursuant to
10 subsection d. of section 52 of P.L.1975, c.291 (C.40:55D-65), the
11 approving authority may require and shall accept in accordance
12 with the standards adopted by ordinance and regulations adopted
13 pursuant to section 1 of P.L.1999, c.68 (C.40:55D-53a) for the
14 purpose of assuring the installation and maintenance of on-tract
15 improvements **[:]** , the furnishing of a performance guarantee, and
16 provision for a maintenance guarantee in accordance with
17 paragraphs (1) and (2) of this subsection. If a municipality has
18 adopted an ordinance requiring a successor developer to furnish a
19 replacement performance guarantee, as a condition to the approval
20 of a permit update under the State Uniform Construction Code, for
21 the purpose of updating the name and address of the owner of
22 property on a construction permit, the governing body may require
23 and shall accept in accordance with the standards adopted by
24 ordinance and regulations adopted pursuant to section 1 of
25 P.L.1999, c.68 (C.40:55D-53a) for the purpose of assuring the
26 installation and maintenance of on-tract improvements, the
27 furnishing of a performance guarantee, and provision for a
28 maintenance guarantee, in accordance with paragraphs (1) and (2)
29 of this subsection.

30 (1) The furnishing of a performance guarantee in favor of the
31 municipality in an amount not to exceed 120% of the cost of
32 installation, which cost shall be determined by the municipal
33 engineer according to the method of calculation set forth in section
34 15 of P.L.1991, c.256 (C.40:55D-53.4), for improvements which the
35 approving authority may deem necessary or appropriate including:
36 streets, grading, pavement, gutters, curbs, sidewalks, street lighting,
37 shade trees, surveyor's monuments, as shown on the final map and
38 required by "the map filing law," P.L.1960, c.141 (C.46:23-9.9 et
39 seq.), water mains, culverts, storm sewers, sanitary sewers or other
40 means of sewage disposal, drainage structures, erosion control and
41 sedimentation control devices, public improvements of open space
42 and, in the case of site plans only, other on-site improvements and
43 landscaping.

44 The municipal engineer shall prepare an itemized cost estimate
45 of the improvements covered by the performance guarantee, which
46 itemized cost estimate shall be appended to each performance
47 guarantee posted by the obligor.

1 (2) Provision for a maintenance guarantee to be posted with the
2 governing body for a period not to exceed two years after final
3 acceptance of the improvement, in an amount not to exceed 15% of
4 the cost of the improvement, which cost shall be determined by the
5 municipal engineer according to the method of calculation set forth
6 in section 15 of P.L.1991, c.256 (C.40:55D-53.4). In the event that
7 other governmental agencies or public utilities automatically will
8 own the utilities to be installed or the improvements are covered by
9 a performance or maintenance guarantee to another governmental
10 agency, no performance or maintenance guarantee, as the case may
11 be, shall be required by the municipality for such utilities or
12 improvements.

13 b. The time allowed for installation of the improvements for
14 which the performance guarantee has been provided may be
15 extended by the governing body by resolution. As a condition or as
16 part of any such extension, the amount of any performance
17 guarantee shall be increased or reduced, as the case may be, to an
18 amount not to exceed 120% of the cost of the installation, which
19 cost shall be determined by the municipal engineer according to the
20 method of calculation set forth in section 15 of P.L.1991, c.256
21 (C.40:55D-53.4) as of the time of the passage of the resolution.

22 c. If the required improvements are not completed or corrected
23 in accordance with the performance guarantee, the obligor and
24 surety, if any, shall be liable thereon to the municipality for the
25 reasonable cost of the improvements not completed or corrected and
26 the municipality may either prior to or after the receipt of the
27 proceeds thereof complete such improvements. Such completion or
28 correction of improvements shall be subject to the public bidding
29 requirements of the "Local Public Contracts Law," P.L.1971, c.198
30 (C.40A:11-1 et seq.).

31 d. (1) Upon substantial completion of all required street
32 improvements (except for the top course) and appurtenant utility
33 improvements, and the connection of same to the public system, the
34 obligor may request of the governing body in writing, by certified
35 mail addressed in care of the municipal clerk, that the municipal
36 engineer prepare, in accordance with the itemized cost estimate
37 prepared by the municipal engineer and appended to the
38 performance guarantee pursuant to subsection a. of this section, a
39 list of all uncompleted or unsatisfactory completed improvements.
40 If such a request is made, the obligor shall send a copy of the
41 request to the municipal engineer. The request shall indicate which
42 improvements have been completed and which improvements
43 remain uncompleted in the judgment of the obligor. Thereupon the
44 municipal engineer shall inspect all improvements covered by
45 obligor's request and shall file a detailed list and report, in writing,
46 with the governing body, and shall simultaneously send a copy
47 thereof to the obligor not later than 45 days after receipt of the
48 obligor's request.

1 (2) The list prepared by the municipal engineer shall state, in
2 detail, with respect to each improvement determined to be
3 incomplete or unsatisfactory, the nature and extent of the
4 incompleteness of each incomplete improvement or the nature and
5 extent of, and remedy for, the unsatisfactory state of each
6 completed improvement determined to be unsatisfactory. The
7 report prepared by the municipal engineer shall identify each
8 improvement determined to be complete and satisfactory together
9 with a recommendation as to the amount of reduction to be made in
10 the performance guarantee relating to the completed and
11 satisfactory improvement, in accordance with the itemized cost
12 estimate prepared by the municipal engineer and appended to the
13 performance guarantee pursuant to subsection a. of this section.

14 e. (1) The governing body, by resolution, shall either approve
15 the improvements determined to be complete and satisfactory by the
16 municipal engineer, or reject any or all of these improvements upon
17 the establishment in the resolution of cause for rejection, and shall
18 approve and authorize the amount of reduction to be made in the
19 performance guarantee relating to the improvements accepted, in
20 accordance with the itemized cost estimate prepared by the
21 municipal engineer and appended to the performance guarantee
22 pursuant to subsection a. of this section. This resolution shall be
23 adopted not later than 45 days after receipt of the list and report
24 prepared by the municipal engineer. Upon adoption of the
25 resolution by the governing body, the obligor shall be released from
26 all liability pursuant to its performance guarantee, with respect to
27 those approved improvements, except for that portion adequately
28 sufficient to secure completion or correction of the improvements
29 not yet approved; provided that 30% of the amount of the total
30 performance guarantee posted may be retained to ensure completion
31 and acceptability of all improvements.

32 For the purpose of releasing the obligor from liability pursuant to
33 its performance guarantee, the amount of the performance guarantee
34 attributable to each approved improvement shall be reduced by the
35 total amount for each such improvement, in accordance with the
36 itemized cost estimate prepared by the municipal engineer and
37 appended to the performance guarantee pursuant to subsection a. of
38 this section, including any contingency factor applied to the cost of
39 installation. If the sum of the approved improvements would
40 exceed 70 percent of the total amount of the performance guarantee,
41 then the municipality may retain 30 percent of the amount of the
42 total performance guarantee to ensure completion and acceptability
43 of all improvements, as provided above.

44 (2) If the municipal engineer fails to send or provide the list and
45 report as requested by the obligor pursuant to subsection d. of this
46 section within 45 days from receipt of the request, the obligor may
47 apply to the court in a summary manner for an order compelling the
48 municipal engineer to provide the list and report within a stated

1 time and the cost of applying to the court, including reasonable
2 attorney's fees, may be awarded to the prevailing party.

3 If the governing body fails to approve or reject the improvements
4 determined by the municipal engineer to be complete and
5 satisfactory or reduce the performance guarantee for the complete
6 and satisfactory improvements within 45 days from the receipt of
7 the municipal engineer's list and report, the obligor may apply to
8 the court in a summary manner for an order compelling, within a
9 stated time, approval of the complete and satisfactory improvements
10 and approval of a reduction in the performance guarantee for the
11 approvable complete and satisfactory improvements in accordance
12 with the itemized cost estimate prepared by the municipal engineer
13 and appended to the performance guarantee pursuant to subsection
14 a. of this section; and the cost of applying to the court, including
15 reasonable attorney's fees, may be awarded to the prevailing party.

16 (3) In the event that the obligor has made a cash deposit with the
17 municipality or approving authority as part of the performance
18 guarantee, then any partial reduction granted in the performance
19 guarantee pursuant to this subsection shall be applied to the cash
20 deposit in the same proportion as the original cash deposit bears to
21 the full amount of the performance guarantee.

22 f. If any portion of the required improvements is rejected, the
23 approving authority may require the obligor to complete or correct
24 such improvements and, upon completion or correction, the same
25 procedure of notification, as set forth in this section shall be
26 followed.

27 g. Nothing herein, however, shall be construed to limit the right
28 of the obligor to contest by legal proceedings any determination of
29 the governing body or the municipal engineer.

30 h. The obligor shall reimburse the municipality for all
31 reasonable inspection fees paid to the municipal engineer for the
32 foregoing inspection of improvements; provided that the
33 municipality may require of the developer a deposit for the
34 inspection fees in an amount not to exceed, except for extraordinary
35 circumstances, the greater of \$500 or 5% of the cost of
36 improvements, which cost shall be determined pursuant to section
37 15 of P.L.1991, c.256 (C.40:55D-53.4). For those developments for
38 which the inspection fees are less than \$10,000, fees may, at the
39 option of the developer, be paid in two installments. The initial
40 amount deposited by a developer shall be 50% of the inspection
41 fees. When the balance on deposit drops to 10% of the inspection
42 fees because the amount deposited by the developer has been
43 reduced by the amount paid to the municipal engineer for
44 inspection, the developer shall deposit the remaining 50% of the
45 inspection fees. For those developments for which the inspection
46 fees are \$10,000 or greater, fees may, at the option of the developer,
47 be paid in four installments. The initial amount deposited by a
48 developer shall be 25% of the inspection fees. When the balance on

1 deposit drops to 10% of the inspection fees because the amount
2 deposited by the developer has been reduced by the amount paid to
3 the municipal engineer for inspection, the developer shall make
4 additional deposits of 25% of the inspection fees. The municipal
5 engineer shall not perform any inspection if sufficient funds to pay
6 for those inspections are not on deposit.

7 i. In the event that final approval is by stages or sections of
8 development pursuant to subsection a. of section 29 of P.L.1975,
9 c.291 (C.40:55D-38), the provisions of this section shall be applied
10 by stage or section.

11 j. To the extent that any of the improvements have been
12 dedicated to the municipality on the subdivision plat or site plan,
13 the municipal governing body shall be deemed, upon the release of
14 any performance guarantee required pursuant to subsection a. of
15 this section, to accept dedication for public use of streets or roads
16 and any other improvements made thereon according to site plans
17 and subdivision plats approved by the approving authority, provided
18 that such improvements have been inspected and have received
19 final approval by the municipal engineer.¹

20 (cf: P.L.1999, c.68, s.3)

21

22 ¹**[1.]4. (New section)**¹ a. ¹**[An]** The governing body or an¹
23 approving authority may accept a performance guarantee in favor of
24 the municipality from a successor developer as a replacement for a
25 performance guarantee that was previously furnished, pursuant to
26 section 41 of P.L.1975, c.291 (C.40:55D-53), for the purpose of
27 assuring the installation of improvements. ¹**[The]** Except as
28 otherwise provided by an ordinance requiring a successor developer
29 to furnish a replacement performance guarantee, the governing
30 body or¹ approving authority shall not accept a replacement
31 performance guarantee without securing:

32 (1) written confirmation from the new obligor that the intent of
33 the new obligor is to furnish a replacement performance guarantee,
34 relieving the predecessor obligor and surety, if any, of any
35 obligation to install improvements, and

36 (2) written verification from the municipal engineer that the
37 replacement performance guarantee is of an amount sufficient to
38 cover the cost of the installation of improvements, but not to exceed
39 120% of the cost of the installation, which verification shall be
40 determined consistent with section 41 of P.L.1975, c.291
41 (C.40:55D-53).

42 b. An approving authority shall notify the governing body
43 whenever it accepts a replacement performance guarantee. Notice
44 shall contain a copy of the written confirmation of the new
45 obligor's intent to furnish a replacement performance guarantee and
46 the municipal engineer's written verification of the sufficiency of
47 the amount of that replacement performance guarantee.

1 c. Within 30 days after receiving notice from the approving
2 authority of its acceptance of a replacement performance guarantee,
3 the governing body, by resolution, shall release the predecessor
4 obligor from liability pursuant to its performance guarantee.

5
6 ^{15.} Section 12 of P.L.1975, c.217 (C.52:27D-130) is amended to
7 read as follows:

8 12. Except as otherwise provided by this act or in the code,
9 before construction or alteration of any building or structure, the
10 owner, or his agent, engineer or architect, shall submit an
11 application in writing, including signed and sealed drawings and
12 specifications, to the enforcing agency as defined in this act. The
13 application shall be in accordance with regulations established by
14 the commissioner and on a form prescribed by the commissioner
15 and shall be accompanied by payment of the fee to be established
16 by the municipal governing body by ordinance in accordance with
17 standards established by the commissioner. The application for a
18 construction permit shall be filed with the enforcing agency and
19 shall be a public record; and no application for a construction
20 permit shall be removed from the custody of the enforcing agency
21 after a construction permit has been issued. Nothing contained in
22 this paragraph shall be interpreted as preventing the imposition of
23 requirements in the code, for additional permits for particular kinds
24 of work, including but not limited to plumbing, electrical, elevator,
25 fire prevention equipment or boiler installation or repair work, or in
26 other defined situations.

27 Upon the transfer of ownership of property that is the subject of
28 a construction permit, and prior to beginning or continuing work
29 authorized by the construction permit, the new owner shall file with
30 the enforcing agency an application for a permit update to notify the
31 enforcing agency of the name and address of the new owner and of
32 all other changes to information previously submitted to the
33 enforcing agency. If the municipality has adopted an ordinance
34 requiring a successor developer to furnish a replacement
35 performance guarantee, and a performance guarantee has previously
36 been furnished in favor of the municipality to assure the installation
37 of on-tract improvements on the property that is the subject of an
38 application for a permit update for the purpose of notifying the
39 enforcing agency of the name and address of a new owner, the
40 enforcing agency shall not approve the application for a permit
41 update until it receives notification from the governing body or its
42 designee that the new owner has furnished an adequate replacement
43 performance guarantee.

44 No permit shall be issued for a public school facility unless the
45 final plans and specifications have been first approved by the
46 Bureau of Facility Planning Services in the Department of
47 Education or a municipal code official who is appropriately licensed
48 by the Commissioner of Community Affairs for the type and level

1 of plans being reviewed. Approval by the Bureau of Facility
2 Planning Services in the Department of Education shall only be
3 required when a review for educational adequacy is necessary.
4 Requirements determining when a review for educational adequacy
5 is necessary shall be established jointly by the Department of
6 Community Affairs and the Department of Education. The
7 standards shall thereafter be adopted as part of the Uniform
8 Construction Code regulations by the Department of Community
9 Affairs. After the final plans and specifications have been approved
10 for educational adequacy by the Bureau of Facility Planning
11 Services in the Department of Education, a local board of education
12 may submit the final plans and specifications for code approval to
13 either the Bureau of Facility Planning Services in the Department of
14 Education or a municipal code official who is appropriately licensed
15 by the Commissioner of Community Affairs for the type and level
16 of plans being reviewed. The Bureau of Facility Planning Services
17 in the Department of Education when approving final plans and
18 specifications shall be responsible for insuring that the final plans
19 and specifications conform to the requirements of the code as well
20 as for insuring that they provide for an educationally adequate
21 facility. In carrying out its responsibility pursuant to the provisions
22 of this section the Department of Education shall employ persons
23 licensed by the Commissioner of Community Affairs for the type
24 and level of plans being reviewed.¹

25 (cf: P.L.1990, c.23, s.3)

26

27 ¹6. (New Section) The governing body of a municipality may
28 adopt an ordinance requiring a successor developer to furnish a
29 performance guarantee as a replacement for a performance
30 guarantee that was previously accepted in accordance with
31 standards adopted by ordinance and regulations adopted pursuant to
32 section 1 of P.L.1999, c.68 (C.40:55D-53a) and section 41 of
33 P.L.1975, c.291 (C.40:55D-53) for the purpose of assuring the
34 installation and maintenance of on-tract improvements, and
35 releasing the predecessor obligor and surety, if any, from liability
36 pursuant to its performance guarantee.¹

37

38 ¹**[2.] 7.**¹ This act shall take effect immediately.

39

40

41

42

43 Authorizes release or reduction of original performance
44 guarantee after deposit of adequate replacement performance
45 guarantee by successor developer.

SENATE, No. 2539

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED FEBRUARY 4, 2013

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Authorizes release or reduction of original performance guarantee after deposit of adequate replacement performance guarantee by successor developer.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the release of performance guarantees under the
2 "Municipal Land Use Law" and supplementing P.L.1975, c.291.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. a. An approving authority may accept a performance
8 guarantee in favor of the municipality from a successor developer
9 as a replacement for a performance guarantee that was previously
10 furnished, pursuant to section 41 of P.L.1975, c.291 (C.40:55D-53),
11 for the purpose of assuring the installation of improvements. The
12 approving authority shall not accept a replacement performance
13 guarantee without securing:

14 (1) written confirmation from the new obligor that the intent of
15 the new obligor is to furnish a replacement performance guarantee,
16 relieving the predecessor obligor and surety, if any, of any
17 obligation to install improvements, and

18 (2) written verification from the municipal engineer that the
19 replacement performance guarantee is of an amount sufficient to
20 cover the cost of the installation of improvements, but not to exceed
21 120% of the cost of the installation, which verification shall be
22 determined consistent with section 41 of P.L.1975, c.291
23 (C.40:55D-53).

24 b. An approving authority shall notify the governing body
25 whenever it accepts a replacement performance guarantee. Notice
26 shall contain a copy of the written confirmation of the new
27 obligor's intent to furnish a replacement performance guarantee and
28 the municipal engineer's written verification of the sufficiency of
29 the amount of that replacement performance guarantee.

30 c. Within 30 days after receiving notice from the approving
31 authority of its acceptance of a replacement performance guarantee,
32 the governing body, by resolution, shall release the predecessor
33 obligor from liability pursuant to its performance guarantee.

34

35 2. This act shall take effect immediately.

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STATEMENT

39

40 This bill would specifically authorize a planning board or zoning
41 board of adjustment to accept a replacement performance guarantee
42 from a successor developer and require a governing body to release
43 a prior obligor from liability under its performance guarantee within
44 30 days of receiving notice that its planning board or zoning board
45 of adjustment has accepted a replacement performance guarantee.

46 The bill provides that before accepting a replacement
47 performance guarantee, a board must secure: written confirmation
48 from the new obligor of its intent to furnish a replacement

S2539 SWEENEY

3

1 performance guarantee, relieving the previous obligor and surety, if
2 any, of any obligation to install improvements, and written
3 verification from the municipal engineer that the replacement
4 performance guarantee is of a sufficient amount to cover the cost of
5 the installation of improvements.

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 2539

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 20, 2013

The Senate Community and Urban Affairs Committee reports favorably and with committee amendments Senate Bill No. 2539.

Currently, under the "Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., a municipality may require a developer to post a guarantee to ensure the installation (performance) and maintenance of "on-tract" public improvements that are required of the developer under the terms of an approval. Sometimes, ownership of and control over a development project may transfer after land use approval but prior to the completion of construction. This may happen voluntarily, such as through a sale, or involuntarily, such as through a foreclosure or bankruptcy proceeding. Current law does not specifically address the transfer of responsibility to maintain a performance guarantee when there is a transfer of ownership and control over a development.

This bill, as amended by the committee, would authorize a municipality to require a successor developer to furnish a replacement performance guarantee, and to release a prior obligor and surety, if any, from liability under its performance guarantee. In order to address various possible scenarios, the bill would amend both the "Municipal Land Use Law" and the "State Uniform Construction Code Act," N.J.S.A. 52:27D-119 et seq.

The bill, as amended, would amend the "Municipal Land Use Law" to allow municipal governing bodies to include provisions requiring replacement performance guarantees in their site plan and subdivision ordinances, which would be triggered if a successor developer submits an application to amend or modify a prior land use approval.

The bill, as amended, would amend the "State Uniform Construction Code Act" to allow municipal governing bodies to adopt ordinances requiring successor developers to post replacement performance guarantees, and to prohibit local construction code enforcing agencies from approving applications for construction permit updates until receiving proof that the new owner has furnished an adequate replacement performance guarantee.

While affording municipalities some discretion over the drafting of their ordinances, the bill, as amended, provides that an approving

authority should not accept a replacement performance guarantee without securing:

written confirmation that the new obligor intends to be furnishing a replacement performance guarantee, relieving the predecessor obligor and surety of their obligations, and

written verification from the municipal engineer that the replacement performance guarantee is of a sufficient amount to cover the cost of the remaining improvements.

The bill, as amended, requires a municipality to release a predecessor obligor from liability pursuant to its performance guarantee within 30 days after receiving a replacement performance guarantee.

COMMITTEE AMENDMENTS

The committee: Amended the “Municipal Land Use Law” to allow municipal governing bodies to include provisions requiring replacement performance guarantees in their site plan and subdivision ordinances; and

Amended the "State Uniform Construction Code Act" to require new owners of property that is the subject of a construction permit to file an application for a “permit update” with the local construction code enforcing agency, to allow municipal governing bodies to adopt ordinances requiring successor developers to post replacement performance guarantees, and to prohibit local construction code enforcing agencies from approving applications for construction permit updates until receiving proof that the new owner has furnished an adequate replacement performance guarantee.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2539

STATE OF NEW JERSEY

DATED: JUNE 20, 2013

The Assembly Budget Committee reports favorably Senate Bill No. 2539(1R).

This bill authorizes a municipality to release an original developer performance guarantee concerning a public improvement after the deposit of an adequate replacement guarantee is provided by a succeeding developer.

Currently, under the "Municipal Land Use Law," N.J.S.A.40:55D-1 et seq., a municipality may require a developer to post a guarantee to ensure the installation (performance) and maintenance of "on-tract" public improvements that are required of the developer under the terms of an approval. Sometimes, ownership of and control over a development project may transfer after land use approval but prior to the completion of construction. This may happen voluntarily, such as through a sale, or involuntarily, such as through a foreclosure or bankruptcy proceeding. Current law does not specifically address the transfer of responsibility to maintain a performance guarantee when there is a transfer of ownership and control over a development.

This bill authorizes a municipality to require a successor developer to furnish a replacement performance guarantee, and to release a prior obligor and surety, if any, from liability under its performance guarantee. In order to address various possible scenarios, the bill modifies both the "Municipal Land Use Law" and the "State Uniform Construction Code Act," N.J.S.A. 52:27D-119 et seq.

This bill modifies the "Municipal Land Use Law" to allow municipal governing bodies to include provisions requiring replacement performance guarantees in their site plan and subdivision ordinances, which would be triggered if a successor developer submits an application to amend or modify a prior land use approval.

This bill modifies the "State Uniform Construction Code Act" to allow municipal governing bodies to adopt ordinances requiring successor developers to post replacement performance guarantees, and to prohibit local construction code enforcing agencies from approving applications for construction permit updates until receiving proof that the new owner has furnished an adequate replacement performance guarantee.

While affording municipalities some discretion over the drafting of their ordinances, the bill provides that an approving authority should not accept a replacement performance guarantee without securing:

- written confirmation that the new obligor intends to be furnishing a replacement performance guarantee, relieving the predecessor obligor and surety of their obligations, and

- written verification from the municipal engineer that the replacement performance guarantee is of a sufficient amount to cover the cost of the remaining improvements.

This bill requires a municipality to release a predecessor obligor from liability pursuant to its performance guarantee within 30 days after receiving a replacement performance guarantee.

As reported by the committee, Senate Bill No. 2539(1R) is identical to Assembly Bill No. 4228, as also reported by the committee.

FISCAL IMPACT:

This bill is not certified as requiring a fiscal note.

ASSEMBLY, No. 4228

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JUNE 10, 2013

Sponsored by:

Assemblyman JOHN J. BURZICHELLI
District 3 (Cumberland, Gloucester and Salem)
Assemblyman TROY SINGLETON
District 7 (Burlington)

SYNOPSIS

Authorizes release or reduction of original performance guarantee after deposit of adequate replacement performance guarantee by successor developer.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/21/2013)

A4228 BURZICHELLI, SINGLETON

2

1 AN ACT concerning performance guarantees under the "Municipal
2 Land Use Law," amending and supplementing P.L.1975, c.291.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 29 of P.L.1975, c.291 (C.40:55D-38) is amended to
8 read as follows:

9 29. Contents of ordinance. An ordinance requiring approval by
10 the planning board of either subdivisions or site plans, or both, shall
11 include the following:

12 a. Provisions, not inconsistent with other provisions of this act,
13 for submission and processing of applications for development,
14 including standards for preliminary and final approval and
15 provisions for processing of final approval by stages or sections of
16 development;

17 b. Provisions ensuring:

18 (1) Consistency of the layout or arrangement of the subdivision
19 or land development with the requirements of the zoning ordinance;

20 (2) Streets in the subdivision or land development of sufficient
21 width and suitable grade and suitably located to accommodate
22 prospective traffic and to provide access for firefighting and
23 emergency equipment to buildings and coordinated so as to
24 compose a convenient system consistent with the official map, if
25 any, and the circulation element of the master plan, if any, and so
26 oriented as to permit, consistent with the reasonable utilization of
27 land, the buildings constructed thereon to maximize solar gain;
28 provided that no street of a width greater than 50 feet within the
29 right-of-way lines shall be required unless said street constitutes an
30 extension of an existing street of the greater width, or already has
31 been shown on the master plan at the greater width, or already has
32 been shown in greater width on the official map;

33 (3) Adequate water supply, drainage, shade trees, sewerage
34 facilities and other utilities necessary for essential services to
35 residents and occupants;

36 (4) Suitable size, shape and location for any area reserved for
37 public use pursuant to section 32 of this act;

38 (5) Reservation pursuant to section 31 of this act of any open
39 space to be set aside for use and benefit of the residents of planned
40 development, resulting from the application of standards of density
41 or intensity of land use, contained in the zoning ordinance, pursuant
42 to subsection c. of section 52 of this act;

43 (6) Regulation of land designated as subject to flooding,
44 pursuant to subsection e. of section 52 of this act, to avoid danger to
45 life or property;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 (7) Protection and conservation of soil from erosion by wind or
2 water or from excavation or grading;
 - 3 (8) Conformity with standards promulgated by the
4 Commissioner of Transportation, pursuant to the "Air Safety and
5 Hazardous Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.),
6 for any airport hazard areas delineated under that act;
 - 7 (9) Conformity with a municipal recycling ordinance required
8 pursuant to section 6 of P.L.1987, c.102 (C.13:1E-99.16);
 - 9 (10) Conformity with the State highway access management
10 code adopted by the Commissioner of Transportation under section
11 3 of the "State Highway Access Management Act," P.L.1989, c.32
12 (C.27:7-91), with respect to any State highways within the
13 municipality;
 - 14 (11) Conformity with any access management code adopted by
15 the county under R.S.27:16-1, with respect to any county roads
16 within the municipality;
 - 17 (12) Conformity with any municipal access management code
18 adopted under R.S.40:67-1, with respect to municipal streets;
 - 19 (13) Protection of potable water supply reservoirs from pollution
20 or other degradation of water quality resulting from the
21 development or other uses of surrounding land areas, which
22 provisions shall be in accordance with any siting, performance, or
23 other standards or guidelines adopted therefor by the Department of
24 Environmental Protection;
 - 25 (14) Conformity with the public safety regulations concerning
26 storm water detention facilities adopted pursuant to section 5 of
27 P.L.1991, c.194 (C.40:55D-95.1) and reflected in storm water
28 management plans and storm water management ordinances
29 adopted pursuant to P.L.1981, c.32 (C.40:55D-93 et al.); and
 - 30 (15) Conformity with the model ordinance promulgated by the
31 Department of Environmental Protection and Department of
32 Community Affairs pursuant to section 2 of P.L.1993, c.81
33 (C.13:1E-99.13a) regarding the inclusion of facilities for the
34 collection or storage of source separated recyclable materials in any
35 new multifamily housing development.
- 36 c. Provisions governing the standards for grading,
37 improvement and construction of streets or drives and for any
38 required walkways, curbs, gutters, streetlights, shade trees, fire
39 hydrants and water, and drainage and sewerage facilities and other
40 improvements as shall be found necessary, and provisions ensuring
41 that such facilities shall be completed either prior to or subsequent
42 to final approval of the subdivision or site plan by allowing the
43 posting of performance **【bonds】** guarantees by the developer;
- 44 d. Provisions ensuring that when a municipal zoning ordinance
45 is in effect, a subdivision or site plan shall conform to the
46 applicable provisions of the zoning ordinance, and where there is no
47 zoning ordinance, appropriate standards shall be specified in an
48 ordinance pursuant to this article; and

1 e. Provisions ensuring performance in substantial accordance
2 with the final development plan; provided that the planning board
3 may permit a deviation from the final plan, if caused by change of
4 conditions beyond the control of the developer since the date of
5 final approval, and the deviation would not substantially alter the
6 character of the development or substantially impair the intent and
7 purpose of the master plan and zoning ordinance.

8 (cf: P.L.1993, c.81, s.1)

9
10 2. Section 29.1 of P.L.1975, c.291 (C.40:55D-39) is amended
11 to read as follows:

12 29.1 Discretionary contents of ordinance. An ordinance
13 requiring approval by the planning board of either subdivisions or
14 site plans or both may include the following:

15 a. Provisions for off-tract water, sewer, drainage, and street
16 improvements which are necessitated by a subdivision or land
17 development, subject to the provisions of section 30;

18 b. Provisions for standards encouraging and promoting
19 flexibility, and economy in layout and design through the use of
20 planned unit development, planned unit residential development and
21 residential cluster; provided that such standards shall be appropriate
22 to the type of development permitted; and provided further that the
23 ordinance shall set forth the limits and extent of any special
24 provisions applicable to such planned developments, so that the
25 manner in which such special provisions differ from the standards
26 otherwise applicable to subdivisions or site plans can be
27 determined;

28 c. Provisions for planned development:

29 (1) Authorizing the planning board to grant general
30 development plan approval to provide the increased flexibility
31 desirable to promote mutual agreement between the applicant and
32 the planning board on the basic scheme of a planned development
33 and setting forth any variations from the ordinary standards for
34 preliminary and final approval;

35 (2) Requiring that any common open space resulting from the
36 application of standards for density, or intensity of land use, be set
37 aside for the use and benefit of the owners or residents in such
38 development subject to section 31 of this act;

39 (3) Setting forth how the amount and location of any common
40 open space shall be determined and how its improvement and
41 maintenance for common open space use shall be secured subject to
42 section 31 of this act;

43 (4) Authorizing the planning board to allow for a greater
44 concentration of density, or intensity of land use, within a section or
45 sections of development, whether it be earlier, later or simultaneous
46 in the development, than in others;

47 (5) Setting forth any requirement that the approval by the
48 planning board of a greater concentration of density or intensity of

1 land use for any section to be developed be offset by a smaller
2 concentration in any completed prior stage or by an appropriate
3 reservation of common open space on the remaining land by grant
4 of easement or by covenant in favor of the municipality; provided
5 that such reservation shall, as far as practicable, defer the precise
6 location of common open space until an application for final
7 approval is filed, so that flexibility of development can be
8 maintained;

9 (6) Setting forth any requirements for timing of development
10 among the various types of uses and subgroups thereunder and, in
11 the case of planned unit development and planned unit residential
12 development, whether some nonresidential uses are required to be
13 built before, after or at the same time as the residential uses.

14 d. Provisions ensuring in the case of a development which
15 proposes construction over a period of years, the protection of the
16 interests of the public and of the residents, occupants and owners of
17 the proposed development in the total completion of the
18 development.

19 e. Provisions that require as a condition for local municipal
20 approval the submission of proof that no taxes or assessments for
21 local improvements are due or delinquent on the property for which
22 any subdivision, site plan, or planned development application is
23 made.

24 f. Provisions for the creation of a Site Plan Review Advisory
25 Board for the purpose of reviewing all site plan applications and
26 making recommendations to the planning board in regard thereto.

27 g. Provisions for standards governing outdoor advertising signs
28 required to be permitted pursuant to P.L.1991, c.413 (C.27:5-5 et
29 seq.) including, but not limited to, the location, placement, size and
30 design thereof.

31 h. Provisions requiring a successor developer to furnish a
32 performance guarantee as a replacement for a performance
33 guarantee that was previously accepted in accordance with
34 standards adopted by ordinance and regulations adopted pursuant to
35 section 1 of P.L.1999, c.68 (C.40:55D-53a) and section 41 of
36 P.L.1975, c.291 (C.40:55D-53), or this subsection, for the purpose
37 of assuring the installation and maintenance of on-tract
38 improvements, and releasing the predecessor obligor and surety, if
39 any, from liability pursuant to its performance guarantee.

40 (cf: P.L.2004, c.42, s.8)

41

42 3. Section 41 of P.L.1975, c.291 (C.40:55D-53) is amended to
43 read as follows:

44 41. Guarantees required; surety; release. a. Before recording of
45 final subdivision plats or as a condition of final site plan approval
46 or as a condition to the issuance of a zoning permit pursuant to
47 subsection d. of section 52 of P.L.1975, c.291 (C.40:55D-65), the
48 approving authority may require and shall accept in accordance

1 with the standards adopted by ordinance and regulations adopted
2 pursuant to section 1 of P.L.1999, c.68 (C.40:55D-53a) for the
3 purpose of assuring the installation and maintenance of on-tract
4 improvements **[:]** , the furnishing of a performance guarantee, and
5 provision for a maintenance guarantee in accordance with
6 paragraphs (1) and (2) of this subsection. If a municipality has
7 adopted an ordinance requiring a successor developer to furnish a
8 replacement performance guarantee, as a condition to the approval
9 of a permit update under the State Uniform Construction Code, for
10 the purpose of updating the name and address of the owner of
11 property on a construction permit, the governing body may require
12 and shall accept in accordance with the standards adopted by
13 ordinance and regulations adopted pursuant to section 1 of
14 P.L.1999, c.68 (C.40:55D-53a) for the purpose of assuring the
15 installation and maintenance of on-tract improvements, the
16 furnishing of a performance guarantee, and provision for a
17 maintenance guarantee, in accordance with paragraphs (1) and (2)
18 of this subsection.

19 (1) The furnishing of a performance guarantee in favor of the
20 municipality in an amount not to exceed 120% of the cost of
21 installation, which cost shall be determined by the municipal
22 engineer according to the method of calculation set forth in section
23 15 of P.L.1991, c.256 (C.40:55D-53.4), for improvements which the
24 approving authority may deem necessary or appropriate including:
25 streets, grading, pavement, gutters, curbs, sidewalks, street lighting,
26 shade trees, surveyor's monuments, as shown on the final map and
27 required by "the map filing law," P.L.1960, c.141 (C.46:23-9.9 et
28 seq.), water mains, culverts, storm sewers, sanitary sewers or other
29 means of sewage disposal, drainage structures, erosion control and
30 sedimentation control devices, public improvements of open space
31 and, in the case of site plans only, other on-site improvements and
32 landscaping.

33 The municipal engineer shall prepare an itemized cost estimate
34 of the improvements covered by the performance guarantee, which
35 itemized cost estimate shall be appended to each performance
36 guarantee posted by the obligor.

37 (2) Provision for a maintenance guarantee to be posted with the
38 governing body for a period not to exceed two years after final
39 acceptance of the improvement, in an amount not to exceed 15% of
40 the cost of the improvement, which cost shall be determined by the
41 municipal engineer according to the method of calculation set forth
42 in section 15 of P.L.1991, c.256 (C.40:55D-53.4). In the event that
43 other governmental agencies or public utilities automatically will
44 own the utilities to be installed or the improvements are covered by
45 a performance or maintenance guarantee to another governmental
46 agency, no performance or maintenance guarantee, as the case may
47 be, shall be required by the municipality for such utilities or
48 improvements.

1 b. The time allowed for installation of the improvements for
2 which the performance guarantee has been provided may be
3 extended by the governing body by resolution. As a condition or as
4 part of any such extension, the amount of any performance
5 guarantee shall be increased or reduced, as the case may be, to an
6 amount not to exceed 120% of the cost of the installation, which
7 cost shall be determined by the municipal engineer according to the
8 method of calculation set forth in section 15 of P.L.1991, c.256
9 (C.40:55D-53.4) as of the time of the passage of the resolution.

10 c. If the required improvements are not completed or corrected
11 in accordance with the performance guarantee, the obligor and
12 surety, if any, shall be liable thereon to the municipality for the
13 reasonable cost of the improvements not completed or corrected and
14 the municipality may either prior to or after the receipt of the
15 proceeds thereof complete such improvements. Such completion or
16 correction of improvements shall be subject to the public bidding
17 requirements of the "Local Public Contracts Law," P.L.1971, c.198
18 (C.40A:11-1 et seq.).

19 d. (1) Upon substantial completion of all required street
20 improvements (except for the top course) and appurtenant utility
21 improvements, and the connection of same to the public system, the
22 obligor may request of the governing body in writing, by certified
23 mail addressed in care of the municipal clerk, that the municipal
24 engineer prepare, in accordance with the itemized cost estimate
25 prepared by the municipal engineer and appended to the
26 performance guarantee pursuant to subsection a. of this section, a
27 list of all uncompleted or unsatisfactory completed improvements.
28 If such a request is made, the obligor shall send a copy of the
29 request to the municipal engineer. The request shall indicate which
30 improvements have been completed and which improvements
31 remain uncompleted in the judgment of the obligor. Thereupon the
32 municipal engineer shall inspect all improvements covered by
33 obligor's request and shall file a detailed list and report, in writing,
34 with the governing body, and shall simultaneously send a copy
35 thereof to the obligor not later than 45 days after receipt of the
36 obligor's request.

37 (2) The list prepared by the municipal engineer shall state, in
38 detail, with respect to each improvement determined to be
39 incomplete or unsatisfactory, the nature and extent of the
40 incompleteness of each incomplete improvement or the nature and
41 extent of, and remedy for, the unsatisfactory state of each
42 completed improvement determined to be unsatisfactory. The
43 report prepared by the municipal engineer shall identify each
44 improvement determined to be complete and satisfactory together
45 with a recommendation as to the amount of reduction to be made in
46 the performance guarantee relating to the completed and
47 satisfactory improvement, in accordance with the itemized cost

1 estimate prepared by the municipal engineer and appended to the
2 performance guarantee pursuant to subsection a. of this section.

3 e. (1) The governing body, by resolution, shall either approve
4 the improvements determined to be complete and satisfactory by the
5 municipal engineer, or reject any or all of these improvements upon
6 the establishment in the resolution of cause for rejection, and shall
7 approve and authorize the amount of reduction to be made in the
8 performance guarantee relating to the improvements accepted, in
9 accordance with the itemized cost estimate prepared by the
10 municipal engineer and appended to the performance guarantee
11 pursuant to subsection a. of this section. This resolution shall be
12 adopted not later than 45 days after receipt of the list and report
13 prepared by the municipal engineer. Upon adoption of the
14 resolution by the governing body, the obligor shall be released from
15 all liability pursuant to its performance guarantee, with respect to
16 those approved improvements, except for that portion adequately
17 sufficient to secure completion or correction of the improvements
18 not yet approved; provided that 30% of the amount of the total
19 performance guarantee posted may be retained to ensure completion
20 and acceptability of all improvements.

21 For the purpose of releasing the obligor from liability pursuant to
22 its performance guarantee, the amount of the performance guarantee
23 attributable to each approved improvement shall be reduced by the
24 total amount for each such improvement, in accordance with the
25 itemized cost estimate prepared by the municipal engineer and
26 appended to the performance guarantee pursuant to subsection a. of
27 this section, including any contingency factor applied to the cost of
28 installation. If the sum of the approved improvements would
29 exceed 70 percent of the total amount of the performance guarantee,
30 then the municipality may retain 30 percent of the amount of the
31 total performance guarantee to ensure completion and acceptability
32 of all improvements, as provided above.

33 (2) If the municipal engineer fails to send or provide the list and
34 report as requested by the obligor pursuant to subsection d. of this
35 section within 45 days from receipt of the request, the obligor may
36 apply to the court in a summary manner for an order compelling the
37 municipal engineer to provide the list and report within a stated
38 time and the cost of applying to the court, including reasonable
39 attorney's fees, may be awarded to the prevailing party.

40 If the governing body fails to approve or reject the improvements
41 determined by the municipal engineer to be complete and
42 satisfactory or reduce the performance guarantee for the complete
43 and satisfactory improvements within 45 days from the receipt of
44 the municipal engineer's list and report, the obligor may apply to
45 the court in a summary manner for an order compelling, within a
46 stated time, approval of the complete and satisfactory improvements
47 and approval of a reduction in the performance guarantee for the
48 approvable complete and satisfactory improvements in accordance

1 with the itemized cost estimate prepared by the municipal engineer
2 and appended to the performance guarantee pursuant to subsection
3 a. of this section; and the cost of applying to the court, including
4 reasonable attorney's fees, may be awarded to the prevailing party.

5 (3) In the event that the obligor has made a cash deposit with the
6 municipality or approving authority as part of the performance
7 guarantee, then any partial reduction granted in the performance
8 guarantee pursuant to this subsection shall be applied to the cash
9 deposit in the same proportion as the original cash deposit bears to
10 the full amount of the performance guarantee.

11 f. If any portion of the required improvements is rejected, the
12 approving authority may require the obligor to complete or correct
13 such improvements and, upon completion or correction, the same
14 procedure of notification, as set forth in this section shall be
15 followed.

16 g. Nothing herein, however, shall be construed to limit the right
17 of the obligor to contest by legal proceedings any determination of
18 the governing body or the municipal engineer.

19 h. The obligor shall reimburse the municipality for all
20 reasonable inspection fees paid to the municipal engineer for the
21 foregoing inspection of improvements; provided that the
22 municipality may require of the developer a deposit for the
23 inspection fees in an amount not to exceed, except for extraordinary
24 circumstances, the greater of \$500 or 5% of the cost of
25 improvements, which cost shall be determined pursuant to section
26 15 of P.L.1991, c.256 (C.40:55D-53.4). For those developments for
27 which the inspection fees are less than \$10,000, fees may, at the
28 option of the developer, be paid in two installments. The initial
29 amount deposited by a developer shall be 50% of the inspection
30 fees. When the balance on deposit drops to 10% of the inspection
31 fees because the amount deposited by the developer has been
32 reduced by the amount paid to the municipal engineer for
33 inspection, the developer shall deposit the remaining 50% of the
34 inspection fees. For those developments for which the inspection
35 fees are \$10,000 or greater, fees may, at the option of the developer,
36 be paid in four installments. The initial amount deposited by a
37 developer shall be 25% of the inspection fees. When the balance on
38 deposit drops to 10% of the inspection fees because the amount
39 deposited by the developer has been reduced by the amount paid to
40 the municipal engineer for inspection, the developer shall make
41 additional deposits of 25% of the inspection fees. The municipal
42 engineer shall not perform any inspection if sufficient funds to pay
43 for those inspections are not on deposit.

44 i. In the event that final approval is by stages or sections of
45 development pursuant to subsection a. of section 29 of P.L.1975,
46 c.291 (C.40:55D-38), the provisions of this section shall be applied
47 by stage or section.

1 j. To the extent that any of the improvements have been
2 dedicated to the municipality on the subdivision plat or site plan,
3 the municipal governing body shall be deemed, upon the release of
4 any performance guarantee required pursuant to subsection a. of
5 this section, to accept dedication for public use of streets or roads
6 and any other improvements made thereon according to site plans
7 and subdivision plats approved by the approving authority, provided
8 that such improvements have been inspected and have received
9 final approval by the municipal engineer.

10 (cf: P.L.1999, c.68, s.3)

11
12 4. (New section) a. The governing body or an approving
13 authority may accept a performance guarantee in favor of the
14 municipality from a successor developer as a replacement for a
15 performance guarantee that was previously furnished, pursuant to
16 section 41 of P.L.1975, c.291 (C.40:55D-53), for the purpose of
17 assuring the installation of improvements. Except as otherwise
18 provided by an ordinance requiring a successor developer to furnish
19 a replacement performance guarantee, the governing body or
20 approving authority shall not accept a replacement performance
21 guarantee without securing:

22 (1) written confirmation from the new obligor that the intent of
23 the new obligor is to furnish a replacement performance guarantee,
24 relieving the predecessor obligor and surety, if any, of any
25 obligation to install improvements, and

26 (2) written verification from the municipal engineer that the
27 replacement performance guarantee is of an amount sufficient to
28 cover the cost of the installation of improvements, but not to exceed
29 120% of the cost of the installation, which verification shall be
30 determined consistent with section 41 of P.L.1975, c.291
31 (C.40:55D-53).

32 b. An approving authority shall notify the governing body
33 whenever it accepts a replacement performance guarantee. Notice
34 shall contain a copy of the written confirmation of the new
35 obligor's intent to furnish a replacement performance guarantee and
36 the municipal engineer's written verification of the sufficiency of
37 the amount of that replacement performance guarantee.

38 c. Within 30 days after receiving notice from the approving
39 authority of its acceptance of a replacement performance guarantee,
40 the governing body, by resolution, shall release the predecessor
41 obligor from liability pursuant to its performance guarantee.

42
43 5. Section 12 of P.L.1975, c.217 (C.52:27D-130) is amended to
44 read as follows:

45 12. Except as otherwise provided by this act or in the code,
46 before construction or alteration of any building or structure, the
47 owner, or his agent, engineer or architect, shall submit an
48 application in writing, including signed and sealed drawings and

1 specifications, to the enforcing agency as defined in this act. The
2 application shall be in accordance with regulations established by
3 the commissioner and on a form prescribed by the commissioner
4 and shall be accompanied by payment of the fee to be established
5 by the municipal governing body by ordinance in accordance with
6 standards established by the commissioner. The application for a
7 construction permit shall be filed with the enforcing agency and
8 shall be a public record; and no application for a construction
9 permit shall be removed from the custody of the enforcing agency
10 after a construction permit has been issued. Nothing contained in
11 this paragraph shall be interpreted as preventing the imposition of
12 requirements in the code, for additional permits for particular kinds
13 of work, including but not limited to plumbing, electrical, elevator,
14 fire prevention equipment or boiler installation or repair work, or in
15 other defined situations.

16 Upon the transfer of ownership of property that is the subject of
17 a construction permit, and prior to beginning or continuing work
18 authorized by the construction permit, the new owner shall file with
19 the enforcing agency an application for a permit update to notify the
20 enforcing agency of the name and address of the new owner and of
21 all other changes to information previously submitted to the
22 enforcing agency. If the municipality has adopted an ordinance
23 requiring a successor developer to furnish a replacement
24 performance guarantee, and a performance guarantee has previously
25 been furnished in favor of the municipality to assure the installation
26 of on-tract improvements on the property that is the subject of an
27 application for a permit update for the purpose of notifying the
28 enforcing agency of the name and address of a new owner, the
29 enforcing agency shall not approve the application for a permit
30 update until it receives notification from the governing body or its
31 designee that the new owner has furnished an adequate replacement
32 performance guarantee.

33 No permit shall be issued for a public school facility unless the
34 final plans and specifications have been first approved by the
35 Bureau of Facility Planning Services in the Department of
36 Education or a municipal code official who is appropriately licensed
37 by the Commissioner of Community Affairs for the type and level
38 of plans being reviewed. Approval by the Bureau of Facility
39 Planning Services in the Department of Education shall only be
40 required when a review for educational adequacy is necessary.
41 Requirements determining when a review for educational adequacy
42 is necessary shall be established jointly by the Department of
43 Community Affairs and the Department of Education. The
44 standards shall thereafter be adopted as part of the Uniform
45 Construction Code regulations by the Department of Community
46 Affairs. After the final plans and specifications have been approved
47 for educational adequacy by the Bureau of Facility Planning
48 Services in the Department of Education, a local board of education

1 may submit the final plans and specifications for code approval to
2 either the Bureau of Facility Planning Services in the Department of
3 Education or a municipal code official who is appropriately licensed
4 by the Commissioner of Community Affairs for the type and level
5 of plans being reviewed. The Bureau of Facility Planning Services
6 in the Department of Education when approving final plans and
7 specifications shall be responsible for insuring that the final plans
8 and specifications conform to the requirements of the code as well
9 as for insuring that they provide for an educationally adequate
10 facility. In carrying out its responsibility pursuant to the provisions
11 of this section the Department of Education shall employ persons
12 licensed by the Commissioner of Community Affairs for the type
13 and level of plans being reviewed.

14 (cf: P.L.1990, c.23, s.3)

15

16 6. (New Section) The governing body of a municipality may
17 adopt an ordinance requiring a successor developer to furnish a
18 performance guarantee as a replacement for a performance
19 guarantee that was previously accepted in accordance with
20 standards adopted by ordinance and regulations adopted pursuant to
21 section 1 of P.L.1999, c.68 (C.40:55D-53a) and section 41 of
22 P.L.1975, c.291 (C.40:55D-53) for the purpose of assuring the
23 installation and maintenance of on-tract improvements, and
24 releasing the predecessor obligor and surety, if any, from liability
25 pursuant to its performance guarantee.

26

27 7. This act shall take effect immediately.

28

29

30 STATEMENT

31

32 Currently, under the "Municipal Land Use Law, N.J.S.A.
33 40:55D-1 et seq., a municipality may require a developer to post a
34 guarantee to ensure the installation (performance) and maintenance
35 of "on-tract" public improvements that are required of the developer
36 under the terms of an approval. Sometimes, ownership of and
37 control over a development project may transfer after land use
38 approval but prior to the completion of construction. This may
39 happen voluntarily, such as through a sale, or involuntarily, such as
40 through a foreclosure or bankruptcy proceeding. Current law does
41 not specifically address the transfer of responsibility to maintain a
42 performance guarantee when there is a transfer of ownership and
43 control over a development.

44 This bill would authorize a municipality to require a successor
45 developer to furnish a replacement performance guarantee, and to
46 release a prior obligor and surety, if any, from liability under its
47 performance guarantee. In order to address various possible
48 scenarios, the bill would amend both the "Municipal Land Use

1 Law” and the "State Uniform Construction Code Act," N.J.S.A.
2 52:27D-119 et seq.

3 The bill would amend the “Municipal Land Use Law” to allow
4 municipal governing bodies to include provisions requiring
5 replacement performance guarantees in their site plan and
6 subdivision ordinances, which would be triggered if a successor
7 developer submits an application to amend or modify a prior land
8 use approval.

9 The bill would amend the "State Uniform Construction Code
10 Act" to allow municipal governing bodies to adopt ordinances
11 requiring successor developers to post replacement performance
12 guarantees, and to prohibit local construction code enforcing
13 agencies from approving applications for construction permit
14 updates until receiving proof that the new owner has furnished an
15 adequate replacement performance guarantee.

16 While affording municipalities some discretion over the drafting
17 of their ordinances, the bill provides that an approving authority
18 should not accept a replacement performance guarantee without
19 securing:

20 written confirmation that the new obligor intends to be
21 furnishing a replacement performance guarantee, relieving the
22 predecessor obligor and surety of their obligations, and

23 written verification from the municipal engineer that the
24 replacement performance guarantee is of a sufficient amount to
25 cover the cost of the remaining improvements.

26 The bill requires a municipality to release a predecessor obligor
27 from liability pursuant to its performance guarantee within 30 days
28 after receiving a replacement performance guarantee.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4228

STATE OF NEW JERSEY

DATED: JUNE 20, 2013

The Assembly Budget Committee reports favorably Assembly Bill No. 4228.

The bill authorizes a municipality to release an original developer performance guarantee concerning a public improvement after the deposit of an adequate replacement guarantee is provided by a succeeding developer.

Currently, under the “Municipal Land Use Law,” N.J.S.A.40:55D-1 et seq., a municipality may require a developer to post a guarantee to ensure the installation (performance) and maintenance of “on-tract” public improvements that are required of the developer under the terms of an approval. Sometimes, ownership of and control over a development project may transfer after land use approval but prior to the completion of construction. This may happen voluntarily, such as through a sale, or involuntarily, such as through a foreclosure or bankruptcy proceeding. Current law does not specifically address the transfer of responsibility to maintain a performance guarantee when there is a transfer of ownership and control over a development.

This bill authorizes a municipality to require a successor developer to furnish a replacement performance guarantee, and to release a prior obligor and surety, if any, from liability under its performance guarantee. In order to address various possible scenarios, the bill modifies both the “Municipal Land Use Law” and the “State Uniform Construction Code Act,” N.J.S.A. 52:27D-119 et seq.

The bill modifies the “Municipal Land Use Law” to allow municipal governing bodies to include provisions requiring replacement performance guarantees in their site plan and subdivision ordinances, which would be triggered if a successor developer submits an application to amend or modify a prior land use approval.

The bill modifies the “State Uniform Construction Code Act” to allow municipal governing bodies to adopt ordinances requiring successor developers to post replacement performance guarantees, and to prohibit local construction code enforcing agencies from approving applications for construction permit updates until receiving proof that the new owner has furnished an adequate replacement performance guarantee.

While affording municipalities some discretion over the drafting of their ordinances, the bill provides that an approving authority should not accept a replacement performance guarantee without securing:

- written confirmation that the new obligor intends to be furnishing a replacement performance guarantee, relieving the predecessor obligor and surety of their obligations, and

- written verification from the municipal engineer that the replacement performance guarantee is of a sufficient amount to cover the cost of the remaining improvements.

The bill requires a municipality to release a predecessor obligor from liability pursuant to its performance guarantee within 30 days after receiving a replacement performance guarantee.

As reported by the committee, Assembly Bill No. 4228 is identical to Senate Bill No. 2539(1R), as also reported by the committee.

FISCAL IMPACT:

The bill is not certified as requiring a fiscal note.