

40:55D-53

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2017 **CHAPTER:** 312
NJSA: 40:55D-53 (Modifies performance and maintenance guarantee requirements under "Municipal Land Use Law.")
BILL NO: S3233 (Substituted for A1425)
SPONSOR(S) Van Drew and others

DATE INTRODUCED: 5/25/2017

COMMITTEE: **ASSEMBLY:** Appropriations
Judiciary
SENATE: Community & Urban Affairs

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** 1/8/2018
SENATE: 1/8/2018

DATE OF APPROVAL: 1/16/2018

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Third Reprint enacted) Yes

S3233

SPONSOR'S STATEMENT: (Begins on page 9 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes Appropriations
Judiciary
SENATE: Yes Community & Urban Affairs

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes 1/5/2018
1/11/2018

A1425

SPONSOR'S STATEMENT: (Begins on page 8 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes Appropriations
Judiciary
State & Local Government
State & Loc. G. (Corrected Copy)
SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

(continued)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

RH/CL

P.L. 2017, CHAPTER 312, *approved January 16, 2018*
Senate, No. 3233 (*Third Reprint*)

1 AN ACT concerning performance and maintenance guarantees under
2 the "Municipal Land Use Law" and amending 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 41 of P.L.1975, c.291 (C.40:55D-53) is amended to
8 read as follows:

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

33 (1) (a) **[The furnishing of]** If required ¹by ordinance¹, the
34 developer shall furnish a performance guarantee in favor of the
35 municipality in an amount not to exceed 120% of the cost of
36 installation of only those improvements required by an approval or
37 developer's agreement, ordinance, or regulation to be dedicated to a
38 public entity, and that have not yet been installed, which cost shall
39 be determined by the municipal engineer, according to the method
40 of calculation set forth in section 15 of P.L.1991, c.256 (C.40:55D-

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 June 19, 2017.

²Assembly AAP committee amendments adopted December 18, 2017.

³Assembly AJU committee amendments adopted January 5, 2018.

1 53.4), for the following improvements **【**which the approving
2 authority may deem necessary or appropriate including**】** as shown
3 on the approved plans or plat: streets, **【grading,】** pavement, gutters,
4 curbs, sidewalks, street lighting, **【shade】** street trees, surveyor's
5 monuments, as shown on the final map and required by "the map
6 filing law," P.L.1960, c.141 (C.46:23-9.9 et seq.; repealed by
7 section 2 of P.L.2011, c.217) or N.J.S.46:26B-1 through
8 N.J.S.46:26B-8, water mains, **【culverts, storm sewers,】** sanitary
9 sewers **【or other means of sewage disposal】**, community septic
10 systems, drainage structures, **【erosion control and sedimentation**
11 **control devices,】** public improvements of open space, and **【**, in the
12 case of site plans only, other on-site improvements and
13 landscaping**】** any grading necessitated by the preceding
14 improvements.

15 The municipal engineer shall prepare an itemized cost estimate
16 of the improvements covered by the performance guarantee, which
17 itemized cost estimate shall be appended to each performance
18 guarantee posted by the obligor.

19 (b) A municipality may also require a performance guarantee to
20 include, within an approved phase or section of a development
21 privately-owned perimeter buffer landscaping, as required by local
22 ordinance or imposed as a condition of approval.

23 At the developer's option, a separate performance guarantee may
24 be posted for the privately-owned perimeter buffer landscaping.

25 (c) In the event that the developer shall seek a temporary
26 certificate of occupancy for a development, unit, ¹lot,¹ building, or
27 phase of development, as a condition of the issuance thereof, the
28 developer shall, if required by an ordinance adopted by the
29 municipality, furnish a separate guarantee, referred to herein as a
30 "temporary certificate of occupancy ¹**【bond】** guarantee¹," in favor
31 of the municipality in an amount equal to 120% of the cost of
32 installation of only those improvements or items which remain to be
33 completed or installed under the terms of the temporary certificate
34 of occupancy and which are required to be installed or completed as
35 a condition precedent to the issuance of the permanent certificate of
36 occupancy for the development, unit, ¹lot,¹ building or phase of
37 development ¹and which are not covered by an existing
38 performance guarantee¹. Upon posting of a "temporary certificate
39 of occupancy ¹**【bond】** guarantee¹," all sums remaining under a
40 performance guarantee, required pursuant to subparagraph (a) of
41 this paragraph, which relate to the development, unit, ¹lot,¹
42 building, or phase of development for which the temporary
43 certificate of occupancy is sought, shall be released. ¹The scope
44 and amount of the "temporary certificate of occupancy guarantee"
45 shall be determined by the zoning officer, municipal engineer, or
46 other municipal official designated by ordinance.¹ At no time may

1 a municipality hold more than one guarantee or bond of any type
2 with respect to the same line item. The ³temporary certificate of
3 occupancy ¹[bond] guarantee ³ shall be released ¹by the zoning
4 officer, municipal engineer, or other municipal official designated
5 by ordinance¹ upon the issuance of a permanent certificate of
6 occupancy with regard to the development, unit, ¹lot, ¹ building, or
7 phase as to which the temporary certificate of occupancy relates.

8 (d) ³[In addition to a performance guarantee required pursuant
9 to subparagraph (a) of this paragraph, a] A³ developer shall, if
10 required by an ordinance adopted by the municipality, furnish to the
11 municipality ³[a separate guarantee, referred to herein as]³ a
12 “safety and stabilization ¹[bond] guarantee¹,” in favor of the
13 municipality ³[. to] . At the developer’s option, a “safety and
14 stabilization guarantee” may be furnished either as a separate
15 guarantee or as a line item of the performance guarantee. A “safety
16 and stabilization guarantee” shall³ be available to the municipality
17 solely for the purpose of returning property that has been disturbed
18 to a safe and stable condition or otherwise implementing measures
19 to protect the public from access to an unsafe or unstable condition,
20 only in the circumstance that:

21 (i) site disturbance has commenced and, thereafter, all work on
22 the development has ceased for a period of at least 60 consecutive
23 days following such commencement for reasons other than force
24 majeure, and

25 (ii) work has not recommenced within 30 days following the
26 provision of written notice by the municipality to the developer of
27 the municipality’s intent to claim payment under the ¹[bond]
28 guarantee¹. A municipality shall not provide notice of its intent to
29 claim payment under a “safety and stabilization ¹[bond]
30 guarantee¹” until a period of at least 60 days has elapsed during
31 which all work on the development has ceased for reasons other
32 than force majeure. A municipality shall provide written notice to a
33 developer by certified mail or other form of delivery providing
34 evidence of receipt.

35 The amount of a “safety and stabilization ¹[bond] guarantee¹”
36 for a development with bonded improvements in an amount not
37 exceeding \$100,000 shall be \$5,000.

38 The amount of a “safety and stabilization ¹[bond] guarantee¹”
39 for a development with bonded improvements exceeding \$100,000
40 shall be calculated as a percentage of the bonded improvement costs
41 of the development or phase of development as follows:

42 \$5,000 for the first \$100,000 of bonded improvement costs, plus
43 two and a half percent of bonded improvement costs in excess of
44 \$100,000 up to \$1,000,000, plus
45 one percent of bonded improvement costs in excess of
46 \$1,000,000.

1 ³A municipality shall release a separate “safety and stabilization
2 guarantee” to a developer upon the developer’s furnishing of a
3 performance guarantee which includes a line item for safety and
4 stabilization in the amount required under this paragraph.

5 A municipality shall release a “safety and stabilization
6 guarantee” upon the municipal engineer’s determination that the
7 development of the project site has reached a point that the
8 improvements installed are adequate to avoid any potential threat to
9 public safety.³

10 (2) **【Provision for】** (a) If required ¹‘by ordinance’, the developer
11 shall post with the municipality, prior to the release of a
12 performance guarantee required pursuant to subparagraph (a),
13 subparagraph (b), or both subparagraph (a) and subparagraph (b) of
14 paragraph (1) of this subsection, a maintenance guarantee **【to be**
15 posted with the governing body for a period not to exceed two years
16 after final acceptance of the improvement**】** in an amount not to
17 exceed 15% of the cost of the **【improvement】** installation of the
18 improvements which are being released.

19 (b) If required, the developer shall post with the municipality,
20 upon the inspection and issuance of final approval of the following
21 private site improvements by the municipal engineer, a maintenance
22 guarantee in an amount not to exceed 15% of the cost of the
23 installation of the following private site improvements: stormwater
24 management basins, in-flow and water quality structures within the
25 basins, and the out-flow pipes and structures of the stormwater
26 management system, if any, which cost shall be determined **【by the**
27 municipal engineer**】** according to the method of calculation set
28 forth in section 15 of P.L.1991, c.256 (C.40:55D-53.4).

29 (c) The term of the maintenance guarantee shall be for a period
30 not to exceed two years and shall automatically expire at the end of
31 the established term.

32 (3) In the event that other governmental agencies or public
33 utilities automatically will own the utilities to be installed or the
34 improvements are covered by a performance or maintenance
35 guarantee to another governmental agency, no performance or
36 maintenance guarantee, as the case may be, shall be required by the
37 municipality for such utilities or improvements.

38 b. The time allowed for installation of the ²bonded²
39 improvements for which the performance guarantee has been
40 provided may be extended by the governing body by resolution. As
41 a condition or as part of any such extension, the amount of any
42 performance guarantee shall be increased or reduced, as the case
43 may be, to an amount not to exceed 120% of the cost of the
44 installation, which cost shall be determined by the municipal
45 engineer according to the method of calculation set forth in section
46 15 of P.L.1991, c.256 (C.40:55D-53.4) as of the time of the passage
47 of the resolution.

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

10 d. (1) Upon substantial completion of all required street
11 improvements (except for the top course) and appurtenant utility
12 improvements, and the connection of same to the public system, the
13 obligor may request of the governing body in writing, by certified
14 mail addressed in care of the municipal clerk, that the municipal
15 engineer prepare, in accordance with the itemized cost estimate
16 prepared by the municipal engineer and appended to the
17 performance guarantee pursuant to subsection a. of this section, a
18 list of all uncompleted or unsatisfactory completed ²bonded²
19 improvements. If such a request is made, the obligor shall send a
20 copy of the request to the municipal engineer. The request shall
21 indicate which ¹bonded¹ improvements have been completed and
22 which ²bonded² improvements remain uncompleted in the judgment
23 of the obligor. Thereupon the municipal engineer shall inspect all
24 bonded improvements covered by obligor's request and shall file a
25 detailed list and report, in writing, with the governing body, and
26 shall simultaneously send a copy thereof to the obligor not later
27 than 45 days after receipt of the obligor's request.

28 (2) The list prepared by the municipal engineer shall state, in
29 detail, with respect to each bonded improvement determined to be
30 incomplete or unsatisfactory, the nature and extent of the
31 incompleteness of each incomplete improvement or the nature and
32 extent of, and remedy for, the unsatisfactory state of each
33 completed ²bonded² improvement determined to be unsatisfactory.
34 The report prepared by the municipal engineer shall identify each
35 ¹bonded¹ improvement determined to be complete and satisfactory
36 together with a recommendation as to the amount of reduction to be
37 made in the performance guarantee relating to the completed and
38 satisfactory ²bonded² improvement, in accordance with the itemized
39 cost estimate prepared by the municipal engineer and appended to
40 the performance guarantee pursuant to subsection a. of this section.

41 e. (1) The governing body, by resolution, shall either approve
42 the bonded improvements determined to be complete and
43 satisfactory by the municipal engineer, or reject any or all of these
44 ²bonded² improvements upon the establishment in the resolution of
45 cause for rejection, and shall approve and authorize the amount of
46 reduction to be made in the performance guarantee ¹and the
47 "safety and stabilization bond"¹ relating to the improvements

1 accepted, in accordance with the itemized cost estimate prepared by
 2 the municipal engineer and appended to the performance guarantee
 3 pursuant to subsection a. of this section. This resolution shall be
 4 adopted not later than 45 days after receipt of the list and report
 5 prepared by the municipal engineer. Upon adoption of the
 6 resolution by the governing body, the obligor shall be released from
 7 all liability pursuant to its performance guarantee ¹and “safety and
 8 stabilization bond,” ¹ with respect to those approved bonded
 9 improvements, except for that portion adequately sufficient to
 10 secure completion or correction of the improvements not yet
 11 approved; provided that 30% of the amount of the total performance
 12 guarantee ¹and “safety and stabilization bond” ¹ ²and “safety and
 13 stabilization ³ [bond] guarantee ³” ² posted may be retained to ensure
 14 completion and acceptability of all improvements. ²The ³ ³ safety
 15 and stabilization guarantee ³ ³ shall be reduced by the same
 16 percentage as the performance guarantee is being reduced at the
 17 time of each performance guarantee reduction. ²

18 For the purpose of releasing the obligor from liability pursuant to
 19 its performance guarantee ¹and “safety and stabilization bond,” ¹
 20 the amount of the performance guarantee ¹and “safety and
 21 stabilization bond” ¹ attributable to each approved bonded
 22 improvement shall be reduced by the total amount for each such
 23 improvement, in accordance with the itemized cost estimate
 24 prepared by the municipal engineer and appended to the
 25 performance guarantee pursuant to subsection a. of this section,
 26 including any contingency factor applied to the cost of installation.
 27 If the sum of the approved bonded improvements would exceed 70
 28 percent of the total amount of the performance guarantee, then the
 29 municipality may retain 30 percent of the amount of the total
 30 performance guarantee ¹and “safety and stabilization bond” ¹ ²and
 31 “safety and stabilization ³ [bond] guarantee ³” ² to ensure
 32 completion and acceptability of ¹[all] bonded ¹ improvements, as
 33 provided above, except that any amount of the performance
 34 guarantee attributable to bonded improvements for which a
 35 “temporary certificate of occupancy ¹ [bond] guarantee ¹” has been
 36 posted shall be released from the performance guarantee even if
 37 such release would reduce the amount held by the municipality
 38 below 30 percent.

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

1 If the governing body fails to approve or reject the ¹bonded¹
2 improvements determined by the municipal engineer to be complete
3 and satisfactory or reduce the performance guarantee for the
4 complete and satisfactory improvements within 45 days from the
5 receipt of the municipal engineer's list and report, the obligor may
6 apply to the court in a summary manner for an order compelling,
7 within a stated time, approval of the complete and satisfactory
8 improvements and approval of a reduction in the performance
9 guarantee for the approvable complete and satisfactory
10 improvements in accordance with the itemized cost estimate
11 prepared by the municipal engineer and appended to the
12 performance guarantee pursuant to subsection a. of this section; and
13 the cost of applying to the court, including reasonable attorney's
14 fees, may be awarded to the prevailing party.

15 (3) In the event that the obligor has made a cash deposit with the
16 municipality or approving authority as part of the performance
17 guarantee, then any partial reduction granted in the performance
18 guarantee pursuant to this subsection shall be applied to the cash
19 deposit in the same proportion as the original cash deposit bears to
20 the full amount of the performance guarantee ¹, provided that if
21 ³the safety and stabilization guarantee is included as a line item of
22 the performance guarantee] the developer has furnished a "safety
23 and stabilization guarantee,"³ the municipality may retain cash equal
24 to the amount of the remaining ^{3,3} safety and stabilization
25 guarantee ^{3,3} ¹.

26 f. If any portion of the required ¹bonded¹ improvements is
27 rejected, the approving authority may require the obligor to
28 complete or correct such improvements and, upon completion or
29 correction, the same procedure of notification, as set forth in this
30 section shall be followed.

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

34 h. (1) The obligor shall reimburse the municipality for **[all]**
35 reasonable inspection fees paid to the municipal engineer for the
36 foregoing inspection of improvements; **[provided that the]** which
37 fees shall not exceed the sum of the amounts set forth in
38 subparagraphs (a) and (b) of this paragraph. The municipality may
39 require **[of]** the developer **[a deposit for]** to post the inspection
40 fees in escrow in an amount:

41 (a) not to exceed **[**, except for extraordinary circumstances, the
42 greater of \$500 or] ¹, except for extraordinary circumstances, the
43 greater of \$500 or¹ 5% of the cost of bonded improvements that are
44 subject to a performance guarantee under subparagraph (a),
45 subparagraph (b), or both subparagraph (a) and subparagraph (b) of
46 paragraph (1) of subsection a. of this section; and

1 **(b) not to exceed 5% of the cost of private site improvements**
2 **that are not subject to a performance guarantee under subparagraph**
3 **(a) of paragraph (1) of subsection a. of this section,** which cost shall
4 be determined pursuant to section 15 of P.L.1991, c.256 (C.40:55D-
5 53.4).

6 **(2)** For those developments for which the inspection fees **[are]**
7 **total** less than \$10,000, fees may, at the option of the developer, be
8 paid in two installments. The initial amount deposited **in escrow** by
9 a developer shall be 50% of the inspection fees. When the balance
10 on deposit drops to 10% of the inspection fees because the amount
11 deposited by the developer has been reduced by the amount paid to
12 the municipal engineer for **[inspection]** **inspections,** the developer
13 shall deposit the remaining 50% of the inspection fees.

14 **(3)** For those developments for which the inspection fees **[are]**
15 **total** \$10,000 or greater, fees may, at the option of the developer, be
16 paid in four installments. The initial amount deposited **in escrow** by
17 a developer shall be 25% of the inspection fees. When the balance
18 on deposit drops to 10% of the inspection fees because the amount
19 deposited by the developer has been reduced by the amount paid to
20 the municipal engineer for inspection, the developer shall make
21 additional deposits of 25% of the inspection fees. **[The municipal**
22 **engineer shall not perform any inspection if sufficient funds to pay**
23 **for those inspections are not on deposit.]**

24 **(4) If the municipality determines that the amount in escrow for**
25 **the payment of inspection fees, as calculated pursuant to**
26 **subparagraphs (a) and (b) of paragraph (1) of this subsection, is**
27 **insufficient to cover the cost of additional required inspections, the**
28 **municipality may require the developer to deposit additional funds**
29 **in escrow provided that the municipality delivers to the developer a**
30 **written inspection escrow deposit request, signed by the municipal**
31 **engineer, which: informs the developer of the need for additional**
32 **inspections, details the items or undertakings that require**
33 **inspection, estimates the time required for those inspections, and**
34 **estimates the cost of performing those inspections.**

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

39 j. To the extent that any of the improvements have been
40 dedicated to the municipality on the subdivision plat or site plan,
41 the municipal governing body shall be deemed, upon the release of
42 any performance guarantee required pursuant to subsection a. of
43 this section, to accept dedication for public use of streets or roads
44 and any other improvements made thereon according to site plans
45 and subdivision plats approved by the approving authority, provided
46 that such improvements have been inspected and have received

1 final approval by the municipal engineer.
2 (cf: P.L.2013, c.123, s.3)

3

4 2. This act shall take effect immediately.

5

6

7

8

9 Modifies performance and maintenance guarantee requirements
10 under "Municipal Land Use Law."

SENATE, No. 3233

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED MAY 25, 2017

Sponsored by:

Senator JEFF VAN DREW

District 1 (Atlantic, Cape May and Cumberland)

SYNOPSIS

Modifies performance and maintenance guarantee requirements under "Municipal Land Use Law."

CURRENT VERSION OF TEXT

As introduced.



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

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

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

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

33 (1) (a) **【The furnishing of】** If required, the developer shall
34 furnish a performance guarantee in favor of the municipality in an
35 amount not to exceed 120% of the cost of installation of only those
36 improvements required by an approval or developer's agreement,
37 ordinance, or regulation to be dedicated to a public entity, and that
38 have not yet been installed, which cost shall be determined by the
39 municipal engineer, according to the method of calculation set forth
40 in section 15 of P.L.1991, c.256 (C.40:55D-53.4), for the following
41 improvements **【which the approving authority may deem necessary**
42 **or appropriate including】** as shown on the approved plans or plat:
43 streets, **【grading,】** pavement, gutters, curbs, sidewalks, street
44 lighting, **【shade】** street trees, surveyor's monuments, as shown on

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 the final map and required by "the map filing law," P.L.1960, c.141
2 (C.46:23-9.9 et seq.; repealed by section 2 of P.L.2011, c.217) or
3 N.J.S.46:26B-1 through N.J.S.46:26B-8, water mains, **【**culverts,
4 storm sewers,**】** sanitary sewers **【**or other means of sewage
5 disposal**】**, community septic systems, drainage structures, **【**erosion
6 control and sedimentation control devices,**】** public improvements of
7 open space, and **【**, in the case of site plans only, other on-site
8 improvements and landscaping**】** any grading necessitated by the
9 preceding improvements.

10 The municipal engineer shall prepare an itemized cost estimate
11 of the improvements covered by the performance guarantee, which
12 itemized cost estimate shall be appended to each performance
13 guarantee posted by the obligor.

14 (b) A municipality may also require a performance guarantee to
15 include, within an approved phase or section of a development
16 privately-owned perimeter buffer landscaping, as required by local
17 ordinance or imposed as a condition of approval.

18 At the developer's option, a separate performance guarantee may
19 be posted for the privately-owned perimeter buffer landscaping.

20 (c) In the event that the developer shall seek a temporary
21 certificate of occupancy for a development, unit, building, or phase
22 of development, as a condition of the issuance thereof, the
23 developer shall, if required by an ordinance adopted by the
24 municipality, furnish a separate guarantee, referred to herein as a
25 "temporary certificate of occupancy bond," in favor of the
26 municipality in an amount equal to 120% of the cost of installation
27 of only those improvements or items which remain to be completed
28 or installed under the terms of the temporary certificate of
29 occupancy and which are required to be installed or completed as a
30 condition precedent to the issuance of the permanent certificate of
31 occupancy for the development, unit, building or phase of
32 development. Upon posting of a "temporary certificate of
33 occupancy bond," all sums remaining under a performance
34 guarantee, required pursuant to subparagraph (a) of this paragraph,
35 which relate to the development, unit, building, or phase of
36 development for which the temporary certificate of occupancy is
37 sought, shall be released. At no time may a municipality hold more
38 than one guarantee or bond of any type with respect to the same line
39 item. The temporary certificate of occupancy bond shall be
40 released upon the issuance of a permanent certificate of occupancy
41 with regard to the development, unit, building, or phase as to which
42 the temporary certificate of occupancy relates.

43 (d) In addition to a performance guarantee required pursuant to
44 subparagraph (a) of this paragraph, a developer shall, if required by
45 an ordinance adopted by the municipality, furnish to the
46 municipality a separate guarantee, referred to herein as a "safety
47 and stabilization bond," in favor of the municipality, to be available

1 to the municipality solely for the purpose of returning property that
2 has been disturbed to a safe and stable condition or otherwise
3 implementing measures to protect the public from access to an
4 unsafe or unstable condition, only in the circumstance that:

5 (i) site disturbance has commenced and, thereafter, all work on
6 the development has ceased for a period of at least 60 consecutive
7 days following such commencement for reasons other than force
8 majeure, and

9 (ii) work has not recommenced within 30 days following the
10 provision of written notice by the municipality to the developer of
11 the municipality's intent to claim payment under the bond. A
12 municipality shall not provide notice of its intent to claim payment
13 under a "safety and stabilization bond" until a period of at least 60
14 days has elapsed during which all work on the development has
15 ceased for reasons other than force majeure. A municipality shall
16 provide written notice to a developer by certified mail or other form
17 of delivery providing evidence of receipt.

18 The amount of a "safety and stabilization bond" for a
19 development with bonded improvements in an amount not
20 exceeding \$100,000 shall be \$5,000.

21 The amount of a "safety and stabilization bond" for a
22 development with bonded improvements exceeding \$100,000 shall
23 be calculated as a percentage of the bonded improvement costs of
24 the development or phase of development as follows:

25 \$5,000 for the first \$100,000 of bonded improvement costs, plus
26 two and a half percent of bonded improvement costs in excess of
27 \$100,000 up to \$1,000,000, plus
28 one percent of bonded improvement costs in excess of
29 \$1,000,000.

30 (2) **【Provision for】** (a) If required, the developer shall post with
31 the municipality, prior to the release of a performance guarantee
32 required pursuant to subparagraph (a), subparagraph (b), or both
33 subparagraph (a) and subparagraph (b) of paragraph (1) of this
34 subsection, a maintenance guarantee **【to be posted with the**
35 governing body for a period not to exceed two years after final
36 acceptance of the improvement **】** in an amount not to exceed 15% of
37 the cost of the **【improvement】** installation of the improvements
38 which are being released.

39 (b) If required, the developer shall post with the municipality,
40 upon the inspection and issuance of final approval of the following
41 private site improvements by the municipal engineer, a maintenance
42 guarantee in an amount not to exceed 15% of the cost of the
43 installation of the following private site improvements: stormwater
44 management basins, in-flow and water quality structures within the
45 basins, and the out-flow pipes and structures of the stormwater
46 management system, if any, which cost shall be determined **【by the**

1 municipal engineer] according to the method of calculation set
2 forth in section 15 of P.L.1991, c.256 (C.40:55D-53.4).

3 (c) The term of the maintenance guarantee shall be for a period
4 not to exceed two years and shall automatically expire at the end of
5 the established term.

6 (3) In the event that other governmental agencies or public
7 utilities automatically will own the utilities to be installed or the
8 improvements are covered by a performance or maintenance
9 guarantee to another governmental agency, no performance or
10 maintenance guarantee, as the case may be, shall be required by the
11 municipality for such utilities or improvements.

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

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

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

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

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

1 any amount of the performance guarantee attributable to bonded
2 improvements for which a “temporary certificate of occupancy
3 bond” has been posted shall be released from the performance
4 guarantee even if such release would reduce the amount held by the
5 municipality below 30 percent.

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

13 If the governing body fails to approve or reject the improvements
14 determined by the municipal engineer to be complete and
15 satisfactory or reduce the performance guarantee for the complete
16 and satisfactory improvements within 45 days from the receipt of
17 the municipal engineer's list and report, the obligor may apply to
18 the court in a summary manner for an order compelling, within a
19 stated time, approval of the complete and satisfactory improvements
20 and approval of a reduction in the performance guarantee for the
21 approvable complete and satisfactory improvements in accordance
22 with the itemized cost estimate prepared by the municipal engineer
23 and appended to the performance guarantee pursuant to subsection
24 a. of this section; and the cost of applying to the court, including
25 reasonable attorney's fees, may be awarded to the prevailing party.

26 (3) In the event that the obligor has made a cash deposit with the
27 municipality or approving authority as part of the performance
28 guarantee, then any partial reduction granted in the performance
29 guarantee pursuant to this subsection shall be applied to the cash
30 deposit in the same proportion as the original cash deposit bears to
31 the full amount of the performance guarantee.

32 f. If any portion of the required improvements is rejected, the
33 approving authority may require the obligor to complete or correct
34 such improvements and, upon completion or correction, the same
35 procedure of notification, as set forth in this section shall be
36 followed.

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

40 h. (1) The obligor shall reimburse the municipality for **[all]**
41 reasonable inspection fees paid to the municipal engineer for the
42 foregoing inspection of improvements; **[provided that the]** which
43 fees shall not exceed the sum of the amounts set forth in
44 subparagraphs (a) and (b) of this paragraph. The municipality may
45 require **[of]** the developer **[a deposit for]** to post the inspection
46 fees in escrow in an amount:

1 (a) not to exceed **】, except for extraordinary circumstances, the**
2 greater of \$500 or **】** 5% of the cost of bonded improvements that are
3 subject to a performance guarantee under subparagraph (a),
4 subparagraph (b), or both subparagraph (a) and subparagraph (b) of
5 paragraph (1) of subsection a. of this section; and

6 (b) not to exceed 5% of the cost of private site improvements
7 that are not subject to a performance guarantee under subparagraph
8 (a) of paragraph (1) of subsection a. of this section, which cost shall
9 be determined pursuant to section 15 of P.L.1991, c.256 (C.40:55D-
10 53.4).

11 (2) For those developments for which the inspection fees **【are】**
12 total less than \$10,000, fees may, at the option of the developer, be
13 paid in two installments. The initial amount deposited in escrow by
14 a developer shall be 50% of the inspection fees. When the balance
15 on deposit drops to 10% of the inspection fees because the amount
16 deposited by the developer has been reduced by the amount paid to
17 the municipal engineer for **【inspection】 inspections,** the developer
18 shall deposit the remaining 50% of the inspection fees.

19 (3) For those developments for which the inspection fees **【are】**
20 total \$10,000 or greater, fees may, at the option of the developer, be
21 paid in four installments. The initial amount deposited in escrow by
22 a developer shall be 25% of the inspection fees. When the balance
23 on deposit drops to 10% of the inspection fees because the amount
24 deposited by the developer has been reduced by the amount paid to
25 the municipal engineer for inspection, the developer shall make
26 additional deposits of 25% of the inspection fees. **【The municipal**
27 engineer shall not perform any inspection if sufficient funds to pay
28 for those inspections are not on deposit.】

29 (4) If the municipality determines that the amount in escrow for
30 the payment of inspection fees, as calculated pursuant to
31 subparagraphs (a) and (b) of paragraph (1) of this subsection, is
32 insufficient to cover the cost of additional required inspections, the
33 municipality may require the developer to deposit additional funds
34 in escrow provided that the municipality delivers to the developer a
35 written inspection escrow deposit request, signed by the municipal
36 engineer, which: informs the developer of the need for additional
37 inspections, details the items or undertakings that require
38 inspection, estimates the time required for those inspections, and
39 estimates the cost of performing those inspections.

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

44 j. To the extent that any of the improvements have been
45 dedicated to the municipality on the subdivision plat or site plan,
46 the municipal governing body shall be deemed, upon the release of
47 any performance guarantee required pursuant to subsection a. of

1 this section, to accept dedication for public use of streets or roads
2 and any other improvements made thereon according to site plans
3 and subdivision plats approved by the approving authority, provided
4 that such improvements have been inspected and have received
5 final approval by the municipal engineer.

6 (cf: P.L.2013, c.123, s.3)

7

8 2. This act shall take effect immediately.

9

10

11

STATEMENT

12

13 This bill would modify the requirements for furnishing
14 performance and maintenance guarantees under the “Municipal
15 Land Use Law.” Performance and maintenance guarantees ensure
16 that improvements required to be made by a developer under a
17 development approval are completed and maintained.

18 Under current law, a municipality may require a developer to
19 post performance guarantees to ensure that certain types of
20 improvements are completed. This may include improvements that
21 are not being dedicated to a public entity. Under the bill, a
22 municipality would only be able to require developers to post
23 performance guarantees that cover improvements being dedicated to
24 a public entity.

25 The one exception to this is that a municipality may require a
26 performance guarantee for privately-owned perimeter buffer
27 landscaping. The bill allows a developer to opt to post a separate
28 performance guarantee for this item.

29 In addition, the bill eliminates the following types of
30 improvements from the list of improvements that may be subject to
31 a performance guarantee requirement under current law: culverts,
32 storm sewers, erosion control and sedimentation control devices,
33 other on-site improvements, and landscaping. The bill also
34 modifies the description of some of the types of improvements that
35 may currently be subject to a performance guarantee requirement.

36 The bill authorizes municipalities to require two additional types
37 of guarantees: a “temporary certificate of occupancy bond,” and a
38 “safety and stabilization bond.”

39 Under the bill, if a developer seeks a temporary certificate of
40 occupancy for a development, unit, building, or phase of
41 development, a municipality may require the developer to furnish a
42 “temporary certificate of occupancy bond” in favor of the
43 municipality in an amount equal to 120% of the cost of installation
44 of improvements which remain to be completed and which are
45 required to be completed prior to the issuance of the permanent
46 certificate of occupancy. Upon posting a “temporary certificate of
47 occupancy bond,” all sums remaining under a performance

1 guarantee would be released because the new bond would
2 adequately ensure completion of the improvements.

3 The bill would authorize a municipality to require a developer to
4 furnish a “safety and stabilization bond,” which would provide the
5 municipality a source of funding to return property to a safe and
6 stable condition or to implement measures to protect the public
7 from access to an unsafe or unstable condition. A municipality
8 could claim payment under this bond if a developer ceases all work
9 on the development for at least 60 consecutive days and does not
10 recommence work within 30 days after the municipality notifies the
11 developer of the municipality’s intent to claim payment under the
12 bond. The bill specifies the manner of calculating the amount of a
13 “safety and stabilization bond.”

14 The bill also modifies provisions of law that control the posting
15 of maintenance guarantees. Under current law, a municipality may
16 require a developer to provide a maintenance guarantee for a period
17 of two years after the completion and acceptance of an
18 improvement in an amount not to exceed 15% of the cost of the
19 improvement. Under the bill, a municipality may require a
20 developer to provide a maintenance guarantee for: improvements
21 that were the subject of a performance guarantee, and specific
22 private stormwater management specific improvements.

23 The bill changes the current requirements concerning a
24 developer’s responsibility to pay fees to cover the municipal
25 engineer’s inspection of improvements completed by the developer.
26 Under the bill, a developer will be required to reimburse a
27 municipality for reasonable inspection fees paid to the municipal
28 engineer for the inspection of improvements. A municipality may
29 require a developer to post in escrow for this purpose an amount not
30 to exceed 5% of the cost of: bonded improvements that are subject
31 to a performance guarantee, and private site improvements that are
32 not subject to a performance guarantee.

33 The bill also deletes from current law a provision that prohibits a
34 municipal engineer from performing an inspection if there are
35 insufficient funds to pay for those inspections. The bill authorizes a
36 municipality that determines there are insufficient funds in escrow
37 to cover the cost of additional required inspections to require the
38 developer to deposit additional funds in escrow provided that the
39 municipality delivers to the developer a written inspection escrow
40 deposit request, specifying details about the additional required
41 inspections.

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 3233

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 19, 2017

The Senate Community and Urban Affairs Committee reports favorably and with committee amendments Senate Bill No. 3233.

As amended, this bill would modify the requirements for furnishing performance and maintenance guarantees under the “Municipal Land Use Law.” Performance and maintenance guarantees ensure that improvements required to be made by a developer under a development approval are completed and maintained.

Under current law, a municipality may require a developer to post performance guarantees to ensure that certain types of improvements are completed. This may include improvements that are not being dedicated to a public entity. Under the amended bill, a municipality would only be able to require developers to post performance guarantees that cover improvements being dedicated to a public entity.

The one exception to this is that a municipality may require a performance guarantee for privately-owned perimeter buffer landscaping. The amended bill allows a developer to opt to post a separate performance guarantee for this item.

In addition, the amended bill eliminates the following types of improvements from the list of improvements that may be subject to a performance guarantee requirement under current law: culverts, storm sewers, erosion control and sedimentation control devices, other on-site improvements, and landscaping. The amended bill also modifies the description of some of the types of improvements that may currently be subject to a performance guarantee requirement.

The amended bill authorizes municipalities to require two additional types of guarantees: a “temporary certificate of occupancy guarantee,” and a “safety and stabilization guarantee.”

Under the amended bill, if a developer seeks a temporary certificate of occupancy for a development, unit, lot, building, or phase of development, a municipality may require the developer to furnish a “temporary certificate of occupancy guarantee” in favor of the municipality in an amount equal to 120% of the cost of installation of improvements which remain to be completed and which are required to be completed prior to the issuance of the permanent certificate of occupancy. Upon posting a “temporary certificate of occupancy

guarantee,” all sums remaining under a performance guarantee would be released because the new guarantee would adequately ensure completion of the improvements.

The amended bill would authorize a municipality to require a developer to furnish a “safety and stabilization guarantee,” which would provide the municipality a source of funding to return property to a safe and stable condition or to implement measures to protect the public from access to an unsafe or unstable condition. A municipality could claim payment under this guarantee if a developer ceases all work on the development for at least 60 consecutive days and does not recommence work within 30 days after the municipality notifies the developer of the municipality’s intent to claim payment under the guarantee. The amended bill specifies the manner of calculating the amount of a “safety and stabilization guarantee.”

The amended bill also modifies provisions of law that control the posting of maintenance guarantees. Under current law, a municipality may require a developer to provide a maintenance guarantee for a period of two years after the completion and acceptance of an improvement in an amount not to exceed 15% of the cost of the improvement. Under the amended bill, a municipality may require a developer to provide a maintenance guarantee for: improvements that were the subject of a performance guarantee, and specific private stormwater management improvements.

The amended bill changes the current requirements concerning a developer’s responsibility to pay fees to cover the municipal engineer’s inspection of improvements completed by the developer. Under the amended bill, a developer will be required to reimburse a municipality for reasonable inspection fees paid to the municipal engineer for the inspection of improvements. A municipality may require a developer to post in escrow for this purpose an amount not to exceed 5% of the cost of: bonded improvements that are subject to a performance guarantee, and private site improvements that are not subject to a performance guarantee.

The amended bill also deletes from current law a provision that prohibits a municipal engineer from performing an inspection if there are insufficient funds to pay for those inspections. The amended bill authorizes a municipality that determines there are insufficient funds in escrow to cover the cost of additional required inspections to require the developer to deposit additional funds in escrow provided that the municipality delivers to the developer a written inspection escrow deposit request, specifying details about the additional required inspections.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- Rename temporary certificate of occupancy bonds and safety and stabilization bonds as temporary certificate of occupancy guarantees and safety and stabilization guarantees;
- Add the word “lot” to provisions concerning temporary certificate of occupancy guarantees;
- Provide that only those improvements which are not covered by a performance guarantee would need to be included in the temporary certificate of occupancy guarantee;
- Provide that the scope and amount of a temporary certificate of occupancy guarantee be determined by the zoning officer, municipal engineer, or other municipal official designated by ordinance.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 3233

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 18, 2017

The Assembly Appropriations Committee reports favorably Senate Bill No. 3233 (1R), with committee amendments.

As amended, this bill modifies the requirements for furnishing performance and maintenance guarantees under the “Municipal Land Use Law.” Performance and maintenance guarantees ensure that improvements required to be made by a developer under a development approval are completed and maintained.

Under current law, a municipality may require a developer to post performance guarantees to ensure that certain types of improvements are completed. These may include improvements that are not being dedicated to a public entity. Under the bill, a municipality will only be able to require developers to post performance guarantees that cover improvements being dedicated to a public entity.

The one exception to this is that a municipality may require a performance guarantee for privately-owned perimeter buffer landscaping. The bill allows a developer to opt to post a separate performance guarantee for this item.

In addition, the bill eliminates the following types of improvements from the list of improvements that may be subject to a performance guarantee requirement under current law: culverts, storm sewers, erosion control and sedimentation control devices, other on-site improvements, and landscaping. The bill also modifies the description of some of the types of improvements that may currently be subject to a performance guarantee requirement.

The bill authorizes municipalities to require two additional types of guarantees: a “temporary certificate of occupancy guarantee,” and a “safety and stabilization guarantee.”

Under the bill, if a developer seeks a temporary certificate of occupancy for a development, unit, lot, building, or phase of development, a municipality may require the developer to furnish a “temporary certificate of occupancy guarantee” in favor of the municipality in an amount equal to 120% of the cost of installation of improvements which remain to be completed and which are required to be completed prior to the issuance of the permanent certificate of

occupancy. Upon posting a “temporary certificate of occupancy guarantee,” all sums remaining under a performance guarantee will be released because the new “temporary certificate of occupancy guarantee” adequately ensures completion of the improvements.

The bill specifies that the scope and the amount of a “temporary certificate of occupancy guarantee” will be determined by the zoning officer, the municipal engineer, or another municipal official so designated by ordinance. The bill also specifies that a “temporary certificate of occupancy guarantee” will be released by the zoning officer, the municipal engineer, or another municipal official so designated by ordinance, upon the issuance of a permanent certificate of occupancy with regard to the applicable improvements.

The bill authorizes a municipality to require a developer to furnish a “safety and stabilization guarantee,” which will provide the municipality a source of funding to return property to a safe and stable condition or to implement measures to protect the public from access to an unsafe or unstable condition. A municipality could claim payment under this guarantee if a developer ceases all work on the development for at least 60 consecutive days and does not recommence work within 30 days after the municipality notifies the developer of the municipality’s intent to claim payment under the guarantee. The bill specifies the manner of calculating the amount of a “safety and stabilization guarantee.”

The bill also modifies provisions of law that control the posting of maintenance guarantees. Under current law, a municipality may require a developer to provide a maintenance guarantee for a period of two years after the completion and acceptance of an improvement in an amount not to exceed 15% of the cost of the improvement. Under the bill, a municipality may require a developer to provide a maintenance guarantee for: improvements that were the subject of a performance guarantee, and specific private stormwater management improvements.

The bill changes the current requirements concerning a developer’s responsibility to pay fees to cover the municipal engineer’s inspection of improvements completed by the developer. Under the bill, a developer will be required to reimburse a municipality for reasonable inspection fees paid to the municipal engineer for the inspection of improvements. A municipality may require a developer to post in escrow for this purpose:

- an amount not to exceed, except for extraordinary circumstances, the greater of \$500 or 5% of the cost of bonded improvements that are subject to a performance guarantee, and
- an amount not to exceed 5% of the cost of private site improvements that are not subject to a performance guarantee.

The bill also deletes from current law a provision that prohibits a municipal engineer from performing an inspection if there are insufficient funds to pay for those inspections. The bill authorizes a

municipality that determines there are insufficient funds in escrow to cover the cost of additional required inspections to require the developer to deposit additional funds in escrow provided that the municipality delivers to the developer a written inspection escrow deposit request, specifying details about the additional required inspections.

As amended and reported by the committee, this bill is identical to Assembly Bill No 1425 (1R), as also amended and reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services estimates the bill will have an indeterminate impact on municipal finances will have an indeterminate impact on municipal finances and may have an indeterminate increase in State costs. Municipalities are permitted, but not required, to adopt ordinances requiring developers to furnish a performance guarantee or a maintenance guarantee. The Department of Community Affairs may incur additional costs of indeterminate amount associated with the preparation and adoption of standardized forms for performance guarantees, maintenance guarantees, and letters of credit. Municipalities may incur additional costs of indeterminate amount associated with the revision and publication of ordinances and resolutions in order to comply with the proposed changes to the “Municipal Land Use Law.” The bill also changes the method of calculating the amount a developer is required to reimburse a municipality for the performance of inspections by the municipal engineer and so may result in a reduction in municipal fee revenues.

Changes to the method of calculating the amount a developer is required to reimburse a municipality for the performance of inspections by the municipal engineer may result in a reduction in municipal fee revenues. A developer is currently required to post in escrow an amount not to exceed the greater of \$500 or 5% of the cost of improvements. Under the bill, the escrow amount would be calculated based on the cost of bonded improvements that are subject to a performance guarantee and private site improvements that are not subject to a performance guarantee.

COMMITTEE AMENDMENTS:

The amendments make various technical, clarifying changes to the bill:

- rename temporary certificate of occupancy bonds and safety and stabilization bonds as “temporary certificate of occupancy guarantees” and “safety and stabilization guarantees”;
- add the word “lot” to provisions concerning “temporary certificate of occupancy guarantees”;

- restrict use of the term “improvements” to “bonded improvements,” so to reflect the bill’s limiting of the scope of the types of improvements that will be subject to a performance guarantee requirement; and
- provide that only those improvements which are not covered by a performance guarantee would need to be included in the “temporary certificate of occupancy guarantee.’

The amendments specify that the scope and the amount of a “temporary certificate of occupancy guarantee” will be determined by the zoning officer, the municipal engineer, or another municipal official so designated by ordinance. They specify that a “temporary certificate of occupancy guarantee” would be released by the zoning officer, the municipal engineer, or another municipal official so designated by ordinance, upon the issuance of a permanent certificate of occupancy with regard to the applicable improvements.

The amendments also clarify the bill’s provisions concerning reductions to “safety and stabilization guarantees.” The amendments provide that at the time a municipality approves bonded improvements as being complete and satisfactory, and authorizes a reduction to the performance guarantee based on the municipality’s estimated cost of the improvement, the municipality must reduce the “safety and stabilization guarantee” by the same percentage as the performance guarantee is being reduced. The amendments clarify that a municipality may retain 30% of the amount of the performance guarantee and 30% of the amount of the “safety and stabilization guarantee” until all bonded improvements are completed and accepted by the municipality.

The amendments provide that if a performance guarantee is partially a cash deposit, and the “safety and stabilization guarantee” is included as a line item of the performance guarantee, then, notwithstanding provisions of law that require any partial reduction granted in the performance guarantee to be applied to the cash deposit in the same proportion as the original cash deposit bears to the full amount of the performance guarantee, the municipality may retain cash equal to the amount of the remaining “safety and stabilization guarantee.”

The amendments reinsert a provision of current law, proposed for deletion under the bill in its current form, which allows a municipality to require a developer to maintain a minimum of \$500 in escrow toward the payment of fees to the municipal engineer for the inspection of improvements. The amendment would, however, limit applicability of this \$500 minimum escrow provision to the payment of fees for inspections of bonded improvements.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

[Second Reprint] **SENATE, No. 3233**

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 5, 2018

The Assembly Judiciary Committee reports favorably and with committee amendments Senate Bill No. 3233 (2R).

This bill modifies the requirements for furnishing performance and maintenance guarantees under the “Municipal Land Use Law.” Performance and maintenance guarantees ensure that improvements required to be made by a developer under a development approval are completed and maintained.

Under current law, a municipality may require a developer to post performance guarantees to ensure that certain types of improvements are completed. These may include improvements that are not being dedicated to a public entity. Under the bill, a municipality will only be able to require developers to post performance guarantees that cover improvements being dedicated to a public entity.

The one exception to this is that a municipality may require a performance guarantee for privately-owned perimeter buffer landscaping. The bill allows a developer to opt to post a separate performance guarantee for this item.

In addition, the bill eliminates the following types of improvements from the list of improvements that may be subject to a performance guarantee requirement under current law: culverts, storm sewers, erosion control and sedimentation control devices, other on-site improvements, and landscaping. The bill also modifies the description of some of the types of improvements that may currently be subject to a performance guarantee requirement.

The bill authorizes municipalities to require two additional types of guarantees: a “temporary certificate of occupancy guarantee,” and a “safety and stabilization guarantee.”

Under the bill, if a developer seeks a temporary certificate of occupancy for a development, unit, lot, building, or phase of development, a municipality may require the developer to furnish a “temporary certificate of occupancy guarantee” in favor of the municipality in an amount equal to 120% of the cost of installation of improvements which remain to be completed and which are required to be completed prior to the issuance of the permanent certificate of

occupancy. Upon posting a “temporary certificate of occupancy guarantee,” all sums remaining under a performance guarantee will be released because the new “temporary certificate of occupancy guarantee” adequately ensures completion of the improvements.

The bill specifies that the scope and the amount of a “temporary certificate of occupancy guarantee” will be determined by the zoning officer, the municipal engineer, or another municipal official so designated by ordinance. The bill also specifies that a “temporary certificate of occupancy guarantee” will be released by the zoning officer, the municipal engineer, or another municipal official so designated by ordinance, upon the issuance of a permanent certificate of occupancy with regard to the applicable improvements.

The bill authorizes a municipality to require a developer to furnish a “safety and stabilization guarantee,” which will provide the municipality a source of funding to return property to a safe and stable condition or to implement measures to protect the public from access to an unsafe or unstable condition. A municipality could claim payment under this guarantee if a developer ceases all work on the development for at least 60 consecutive days and does not recommence work within 30 days after the municipality notifies the developer of the municipality’s intent to claim payment under the guarantee. The bill specifies the manner of calculating the amount of a “safety and stabilization guarantee.”

The bill also modifies provisions of law that control the posting of maintenance guarantees. Under current law, a municipality may require a developer to provide a maintenance guarantee for a period of two years after the completion and acceptance of an improvement in an amount not to exceed 15% of the cost of the improvement. Under the bill, a municipality may require a developer to provide a maintenance guarantee for: improvements that were the subject of a performance guarantee, and specific private stormwater management improvements.

The bill changes the current requirements concerning a developer’s responsibility to pay fees to cover the municipal engineer’s inspection of improvements completed by the developer. Under the bill, a developer will be required to reimburse a municipality for reasonable inspection fees paid to the municipal engineer for the inspection of improvements. A municipality may require a developer to post in escrow for this purpose:

- an amount not to exceed, except for extraordinary circumstances, the greater of \$500 or 5% of the cost of bonded improvements that are subject to a performance guarantee, and
- an amount not to exceed 5% of the cost of private site improvements that are not subject to a performance guarantee.

The bill also deletes from current law a provision that prohibits a municipal engineer from performing an inspection if there are insufficient funds to pay for those inspections. The bill authorizes a

municipality that determines there are insufficient funds in escrow to cover the cost of additional required inspections to require the developer to deposit additional funds in escrow provided that the municipality delivers to the developer a written inspection escrow deposit request, specifying details about the additional required inspections.

The committee amendments clarify that a developer may comply with a “safety and stabilization guarantee” requirement imposed under municipal ordinance either by posting a separate guarantee or as a line item within a performance guarantee. The amendments anticipate that there may be circumstances when a municipality may require a developer to post a “safety and stabilization guarantee” before it is necessary for the developer to furnish a performance guarantee. Under those circumstances, the amendments would allow the developer the option of posting a separate “safety and stabilization guarantee,” and require the municipality to release the separate “safety and stabilization guarantee” to the developer upon the developer’s furnishing of a performance guarantee which includes an adequate line item for safety and stabilization.

The amendments also require a municipality to release the entire amount of a “safety and stabilization guarantee” if the municipal engineer determines that development of the project site has reached a point that the improvements installed are adequate to avoid any potential threat to public safety.

These amendments make this bill identical to Assembly Bill No. A1425 (3R), which is also released by the committee on this date.

COMMITTEE AMENDMENTS:

-- Clarify that a developer may comply with a “safety and stabilization guarantee” requirement imposed under municipal ordinance either by posting a separate guarantee or as a line item within a performance guarantee.

-- Under circumstances when a municipality may require a developer to post a “safety and stabilization guarantee” before it is necessary for the developer to furnish a performance guarantee, allow the developer the option of posting a separate “safety and stabilization guarantee,” and require the municipality to release the separate “safety and stabilization guarantee” to the developer upon the developer’s furnishing of a performance guarantee which includes an adequate line item for safety and stabilization.

-- Require a municipality to release the entire amount of a “safety and stabilization guarantee” if the municipal engineer determines that development of the project site has reached a point that the improvements installed are adequate to avoid any potential threat to public safety.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 3233

STATE OF NEW JERSEY 217th LEGISLATURE

DATED: JANUARY 5, 2018

SUMMARY

- Synopsis:** Modifies performance and maintenance guarantee requirements under “Municipal Land Use Law.”
- Type of Impact:** Indeterminate potential increase in State costs. Indeterminate impact on municipal finances.
- Agencies Affected:** Department of Community Affairs and municipalities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate Potential Increase – See comments below		
Municipal Finances	Indeterminate Impact – See comments below		

- The Office of Legislative Services estimates that the enactment of this bill will have an indeterminate impact on municipal finances and may result in an indeterminate increase in State costs. Municipalities are permitted, but not required, to adopt ordinances requiring developers to furnish a performance guarantee or a maintenance guarantee.
- The Department of Community Affairs may incur additional costs of indeterminate amount associated with the preparation and adoption of standardized forms for performance guarantees, maintenance guarantees, and letters of credit.
- Municipalities may incur additional costs of indeterminate amount associated with the revision and publication of ordinances and resolutions in order to comply with the proposed changes to the “Municipal Land Use Law.”
- The bill changes the method of calculating the amount a developer is required to reimburse a municipality for the performance of inspections by the municipal engineer and so may result in a reduction in municipal fee revenues.

- Current law requires a developer to post in escrow an amount not to exceed the greater of \$500 or 5 percent of the cost of improvements. Under the bill, the escrow amount will be calculated based on the cost of bonded improvements that are subject to a performance guarantee and private site improvements that are not subject to a performance guarantee.

BILL DESCRIPTION

This bill modifies the requirements for furnishing performance and maintenance guarantees under the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.). Performance and maintenance guarantees ensure that improvements required to be made by a developer under a development approval are completed and maintained.

Current law permits a municipality to require a developer to post performance guarantees to ensure that certain types of improvements are completed. This may include improvements which are not being dedicated to a public entity. The bill limits the ability of a municipality to determine which improvements are covered by a performance guarantee. The bill specifies that a municipality would only be able to require developers to post performance guarantees for improvements being dedicated to a public entity and for privately-owned perimeter buffer landscaping. Additionally, the bill specifically eliminates the following types of improvements from the list of improvements that may be subject to a performance guarantee requirement under current law: culverts, storm sewers, erosion control and sedimentation control devices, other on-site improvements, and landscaping.

The bill authorizes municipalities to require two additional types of guarantees: a “temporary certificate of occupancy guarantee” and a “safety and stabilization guarantee.” If a developer seeks a temporary certificate of occupancy for a development, unit, lot, building, or phase of development, a municipality may require the developer to furnish a “temporary certificate of occupancy guarantee” in favor of the municipality in an amount equal to 120 percent of the cost of installation of improvements which remain to be completed and which are required to be completed prior to the issuance of the permanent certificate of occupancy. Upon posting a “temporary certificate of occupancy guarantee,” all sums remaining under a performance guarantee would be released because the “temporary certificate of occupancy guarantee” would adequately ensure the completion of the improvements. The scope and amount of a “temporary certificate of occupancy guarantee” will be determined by the municipal zoning officer, municipal engineer, or another municipal official designated by ordinance. A “temporary certificate of occupancy guarantee” will be released upon the issuance of a permanent certificate of occupancy with regard to the applicable improvements.

The bill authorizes a municipality to require a developer to furnish a “safety and stabilization guarantee,” which will provide the municipality a source of funding to return property to a safe and stable condition or to implement measures to protect the public from access to an unsafe or unstable condition. A municipality could claim payment under this guarantee if a developer ceases all work on the development for at least 60 consecutive days and does not recommence work within 30 days after the municipality notifies the developer of the municipality’s intent to claim. The bill specifies the manner of calculating the amount of a “safety and stabilization guarantee.”

The bill also modifies provisions of law that control the posting of maintenance guarantees. Current law allows a municipality to require a developer to provide a maintenance guarantee for a period of two years after the completion and acceptance of an improvement in an amount not to exceed 15 percent of the cost of the improvement. The bill allows a municipality to require a

maintenance guarantee for improvements that were the subject of a performance guarantee and specific private stormwater management improvements.

The bill also changes the current requirements concerning a developer's responsibility to pay fees to cover the municipal engineer's inspection of improvements completed by the developer. The bill requires a developer to reimburse a municipality for reasonable inspection fees paid to the municipal engineer for the inspection of improvements. The bill allows a municipality to require a developer to post in escrow for this purpose an amount not to exceed, except under extraordinary circumstances, the greater of \$500 or 5 PERCENT of the cost of bonded improvements that are subject to a performance guarantee and an amount not to exceed 5 PERCENT of the cost of private site improvements that are not subject to a performance guarantee.

The bill deletes from current law a provision that prohibits a municipal engineer from performing an inspection if there are insufficient funds to pay for those inspections. The bill authorizes a municipality which determines that there are insufficient funds in escrow to cover the cost of additional required inspections to require the developer to deposit additional funds in escrow by delivering to the developer a written inspection escrow deposit request, specifying details about the additional requires inspections.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the enactment of this bill will have an indeterminate impact on municipal finances and may result in an indeterminate increase in State costs. Municipalities are permitted, but not required, to adopt ordinances requiring developers to furnish a performance guarantee or a maintenance guarantee. The bill provides that the amount of a performance guarantee cannot exceed 120 percent of the cost of improvements dedicated to a public entity. The cost of installation of the improvements is determined by the municipal engineer based on documented construction costs for public improvements prevailing in the general area of the municipality.

Changes to the method of calculating the amount a developer is required to reimburse a municipality for the performance of inspections by the municipal engineer may result in a reduction in municipal fee revenues. A developer is currently required to post in escrow an amount not to exceed the greater of \$500 or 5 percent of the cost of improvements. Under the bill, the escrow amount would be calculated based on the cost of bonded improvements that are subject to a performance guarantee and private site improvements that are not subject to a performance guarantee. Removal of the minimum \$500 fee and revision of the fee base may reduce fee revenue, depending on the scope and nature of the project.

Municipalities may incur additional costs, likely one-time in nature, associated with the revision and publication of ordinances and resolutions in order to comply with the proposed changes to the "Municipal Land Use Law." The OLS lacks sufficient information with which to estimate these costs.

Section 1 of P.L.1999, c.68 (C.40:55D-53a) requires the Department of Community Affairs (DCA) to adopt, by regulation, standardized forms for performance guarantees, maintenance

guarantees, and letters of credit. The enactment of this bill will require the DCA to review changes to the “Municipal Land Use Law” and possibly modify the standardized forms to comply with the new requirements for performance guarantees and maintenance guarantees. The DCA may incur additional costs associated with the preparation of new forms.

Section: Local Government

*Analyst: Scott A. Brodsky
Senior Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[Third Reprint]

SENATE, No. 3233 STATE OF NEW JERSEY 217th LEGISLATURE

DATED: JANUARY 11, 2018

SUMMARY

- Synopsis:** Modifies performance and maintenance guarantee requirements under “Municipal Land Use Law.”
- Type of Impact:** Indeterminate potential increase in State costs. Indeterminate impact on municipal finances.
- Agencies Affected:** Department of Community Affairs and municipalities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate Potential Increase – See comments below		
Municipal Finances	Indeterminate Impact – See comments below		

- The Office of Legislative Services estimates that the enactment of this bill will have an indeterminate impact on municipal finances and may result in an indeterminate increase in State costs. Municipalities are permitted, but not required, to adopt ordinances requiring developers to furnish a performance guarantee or a maintenance guarantee.
- The Department of Community Affairs may incur additional costs of indeterminate amount associated with the preparation and adoption of standardized forms for performance guarantees, maintenance guarantees, and letters of credit.
- Municipalities may incur additional costs of indeterminate amount associated with the revision and publication of ordinances and resolutions in order to comply with the proposed changes to the “Municipal Land Use Law.”
- The bill changes the method of calculating the amount a developer is required to reimburse a municipality for the performance of inspections by the municipal engineer and so may result in a reduction in municipal fee revenues.

- Current law requires a developer to post in escrow an amount not to exceed the greater of \$500 or 5 percent of the cost of improvements. Under the bill, the escrow amount will be calculated based on the cost of bonded improvements that are subject to a performance guarantee and private site improvements that are not subject to a performance guarantee.

BILL DESCRIPTION

This bill modifies the requirements for furnishing performance and maintenance guarantees under the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.). Performance and maintenance guarantees ensure that improvements required to be made by a developer under a development approval are completed and maintained.

Current law permits a municipality to require a developer to post performance guarantees to ensure that certain types of improvements are completed. This may include improvements which are not being dedicated to a public entity. The bill limits the ability of a municipality to determine which improvements are covered by a performance guarantee. The bill specifies that a municipality would only be able to require developers to post performance guarantees for improvements being dedicated to a public entity and for privately-owned perimeter buffer landscaping. Additionally, the bill specifically eliminates the following types of improvements from the list of improvements that may be subject to a performance guarantee requirement under current law: culverts, storm sewers, erosion control and sedimentation control devices, other on-site improvements, and landscaping.

The bill authorizes municipalities to require two additional types of guarantees: a “temporary certificate of occupancy guarantee” and a “safety and stabilization guarantee.” If a developer seeks a temporary certificate of occupancy for a development, unit, lot, building, or phase of development, a municipality may require the developer to furnish a “temporary certificate of occupancy guarantee” in favor of the municipality in an amount equal to 120 percent of the cost of installation of improvements which remain to be completed and which are required to be completed prior to the issuance of the permanent certificate of occupancy. Upon posting a “temporary certificate of occupancy guarantee,” all sums remaining under a performance guarantee would be released because the “temporary certificate of occupancy guarantee” would adequately ensure the completion of the improvements. The scope and amount of a “temporary certificate of occupancy guarantee” will be determined by the municipal zoning officer, municipal engineer, or another municipal official designated by ordinance. A “temporary certificate of occupancy guarantee” will be released upon the issuance of a permanent certificate of occupancy with regard to the applicable improvements.

The bill authorizes a municipality to require a developer to furnish a “safety and stabilization guarantee,” which will provide the municipality a source of funding to return property to a safe and stable condition or to implement measures to protect the public from access to an unsafe or unstable condition. A municipality could claim payment under this guarantee if a developer ceases all work on the development for at least 60 consecutive days and does not recommence work within 30 days after the municipality notifies the developer of the municipality’s intent to claim. The bill specifies the manner of calculating the amount of a “safety and stabilization guarantee.”

The bill also modifies provisions of law that control the posting of maintenance guarantees. Current law allows a municipality to require a developer to provide a maintenance guarantee for a period of two years after the completion and acceptance of an improvement in an amount not to exceed 15 percent of the cost of the improvement. The bill allows a municipality to require a

maintenance guarantee for improvements that were the subject of a performance guarantee and specific private stormwater management improvements.

The bill also changes the current requirements concerning a developer's responsibility to pay fees to cover the municipal engineer's inspection of improvements completed by the developer. The bill requires a developer to reimburse a municipality for reasonable inspection fees paid to the municipal engineer for the inspection of improvements. The bill allows a municipality to require a developer to post in escrow for this purpose an amount not to exceed, except under extraordinary circumstances, the greater of \$500 or 5 percent of the cost of bonded improvements that are subject to a performance guarantee and an amount not to exceed 5 percent of the cost of private site improvements that are not subject to a performance guarantee.

The bill deletes from current law a provision that prohibits a municipal engineer from performing an inspection if there are insufficient funds to pay for those inspections. The bill authorizes a municipality which determines that there are insufficient funds in escrow to cover the cost of additional required inspections to require the developer to deposit additional funds in escrow by delivering to the developer a written inspection escrow deposit request, specifying details about the additional requires inspections.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the enactment of this bill will have an indeterminate impact on municipal finances and may result in an indeterminate increase in State costs. Municipalities are permitted, but not required, to adopt ordinances requiring developers to furnish a performance guarantee or a maintenance guarantee. The bill provides that the amount of a performance guarantee cannot exceed 120 percent of the cost of improvements dedicated to a public entity. The cost of installation of the improvements is determined by the municipal engineer based on documented construction costs for public improvements prevailing in the general area of the municipality.

Changes to the method of calculating the amount a developer is required to reimburse a municipality for the performance of inspections by the municipal engineer may result in a reduction in municipal fee revenues. A developer is currently required to post in escrow an amount not to exceed the greater of \$500 or 5 percent of the cost of improvements. Under the bill, the escrow amount would be calculated based on the cost of bonded improvements that are subject to a performance guarantee and private site improvements that are not subject to a performance guarantee. Removal of the minimum \$500 fee and revision of the fee base may reduce fee revenue, depending on the scope and nature of the project.

Municipalities may incur additional costs, likely one-time in nature, associated with the revision and publication of ordinances and resolutions in order to comply with the proposed changes to the "Municipal Land Use Law." The OLS lacks sufficient information with which to estimate these costs.

Section 1 of P.L.1999, c.68 (C.40:55D-53a) requires the Department of Community Affairs (DCA) to adopt, by regulation, standardized forms for performance guarantees, maintenance

guarantees, and letters of credit. The enactment of this bill will require the DCA to review changes to the “Municipal Land Use Law” and possibly modify the standardized forms to comply with the new requirements for performance guarantees and maintenance guarantees. The DCA may incur additional costs associated with the preparation of new forms.

Section: Local Government

*Analyst: Scott A. Brodsky
Senior Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 1425

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

SYNOPSIS

Modifies performance and maintenance guarantee requirements under "Municipal Land Use Law."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning performance and maintenance guarantees under
2 the "Municipal Land Use Law" and amending 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 41 of P.L.1975, c.291 (C.40:55D-53) is amended to
8 read as follows:

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

33 (1) (a) **【The furnishing of】** If required, the developer shall
34 furnish a performance guarantee in favor of the municipality in an
35 amount not to exceed 120% of the cost of installation of only those
36 improvements required by the approval or developer's agreement,
37 ordinance, or regulation to be dedicated to the public entity, and
38 that have not yet been installed, which cost shall be determined by
39 the municipal engineer, according to the method of calculation set
40 forth in section 15 of P.L.1991, c.256 (C.40:55D-53.4), for the
41 following improvements **【which the approving authority may deem**
42 **necessary or appropriate including】** as shown on the approved plans
43 or plat: streets, **【grading,】** pavement, gutters, curbs, sidewalks,
44 street lighting, **【shade】** street trees, surveyor's monuments, as

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 shown on the final map and required by "the map filing law,"
2 P.L.1960, c.141 (C.46:23-9.9 et seq.; repealed by section 2 of
3 P.L.2011, c.217) or N.J.S.46:26B-1 through N.J.S.46:26B-8, water
4 mains, [culverts, storm sewers,] sanitary sewers [or other means of
5 sewage disposal], community septic systems, drainage structures,
6 [erosion control and sedimentation control devices,] public
7 improvements of open space, and [, in the case of site plans only,
8 other on-site improvements and landscaping] any grading
9 necessitated by the preceding improvements.

10 The municipal engineer shall prepare an itemized cost estimate
11 of the improvements covered by the performance guarantee, which
12 itemized cost estimate shall be appended to each performance
13 guarantee posted by the obligor.

14 (b) A municipality may also require a performance guarantee to
15 include, within an approved phase or section of a development:

16 (i) privately-owned perimeter buffer landscaping;

17 (ii) privately-owned stormwater management facilities to be
18 connected to a public drainage system; and

19 (iii) top course paving on privately-owned streets as necessary
20 to provide access to the nearest public street as shown on an
21 approved plat or plan, at the time the developer requests the first
22 certificate of occupancy in the phase or section wherein the private
23 street is located.

24 At the developer's option, a separate performance guarantee may
25 be posted for the privately-owned perimeter buffer landscaping,
26 privately-owned stormwater management facilities to be connected
27 to a public drainage system, and, at the time the first certificate of
28 occupancy is requested, the top course paving on privately-owned
29 streets.

30 (c) In the event that the developer shall seek a temporary
31 certificate of occupancy for a development, unit, building, or phase
32 of development, as a condition of the issuance thereof, the
33 developer shall, if required by an ordinance adopted by the
34 municipality, furnish a separate performance guarantee, referred to
35 herein as a "temporary certificate of occupancy bond," in favor of
36 the municipality in an amount equal to 100% of the cost of
37 installation of only those improvements or items which remain to be
38 completed or installed under the terms of the temporary certificate
39 of occupancy and which are required to be installed or completed as
40 a condition precedent to the issuance of the permanent certificate of
41 occupancy for the development, unit, building or phase of
42 development. Upon posting of a "temporary certificate of
43 occupancy bond," all sums remaining under a performance
44 guaranty, required pursuant to subparagraph (a) of this paragraph,
45 which relate to the development, unit, building, or phase of
46 development for which the temporary certificate of occupancy is
47 sought, shall be released. At no time may a municipality hold more

1 than one performance guarantee of any type with respect to the
2 same improvement or item.

3 (d) In addition to a performance guarantee required pursuant to
4 subparagraph (a) of this paragraph, a developer shall, if required by
5 an ordinance adopted by the municipality, furnish to the
6 municipality a separate guarantee, referred to herein as a “safety
7 and stabilization bond,” in favor of the municipality, to be available
8 to the municipality solely for the purpose of returning property that
9 has been disturbed to a safe and stable condition or otherwise
10 implementing measures to protect the public from access to an
11 unsafe or unstable condition, only in the circumstance that:

12 (i) an approved development has been commenced (as
13 evidenced by the issuance of construction permits and site
14 disturbance) and all work on the development has ceased for a
15 period of at least 90 days for reasons other than force majeure, and

16 (ii) work has not recommenced within 30 days following the
17 provision of written notice by the municipality to the developer of
18 the municipality’s intent to claim payment under the bond. A
19 municipality shall not provide notice of its intent to claim payment
20 under a “safety and stabilization bond” until a period of at least 90
21 days has elapsed during which all work on the development has
22 ceased for reasons other than force majeure. A municipality shall
23 provide written notice to a developer by certified mail or other form
24 of delivery providing evidence of receipt.

25 The amount of a “safety and stabilization bond” shall be
26 calculated as a percentage of the bonded improvement costs of the
27 development or phase of development as follows:

28 five percent of the first \$100,000 of bonded improvement costs;

29 two and a half percent of bonded improvement costs in excess of
30 \$100,000 up to \$1,000,000; and

31 one percent of bonded improvement costs in excess of
32 \$1,000,000.

33 (2) [Provision for] If required, the developer shall post with
34 the municipality, upon the release of the performance guarantee, a
35 maintenance guarantee [to be posted with the governing body] for
36 [a period not to exceed two years after final acceptance of] the
37 [improvement] improvements, in an amount not to exceed 15% of
38 the cost of the [improvement] installation of improvements, which
39 cost shall be determined [by the municipal engineer] according to
40 the method of calculation set forth in section 15 of P.L.1991, c.256
41 (C.40:55D-53.4). The term of the maintenance guarantee shall be
42 for a period not to exceed two years and shall automatically expire
43 at the end of the established term.

44 (3) In the event that other governmental agencies or public
45 utilities automatically will own the utilities to be installed or the
46 improvements are covered by a performance or maintenance
47 guarantee to another governmental agency, no performance or

1 maintenance guarantee, as the case may be, shall be required by the
2 municipality for such utilities or improvements.

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

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

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

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

1 satisfactory improvement, in accordance with the itemized cost
2 estimate prepared by the municipal engineer and appended to the
3 performance guarantee pursuant to subsection a. of this section.

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

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

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

45 If the governing body fails to approve or reject the improvements
46 determined by the municipal engineer to be complete and
47 satisfactory or reduce the performance guarantee for the complete
48 and satisfactory improvements within 45 days from the receipt of

1 the municipal engineer's list and report, the obligor may apply to
2 the court in a summary manner for an order compelling, within a
3 stated time, approval of the complete and satisfactory improvements
4 and approval of a reduction in the performance guarantee for the
5 approvable complete and satisfactory improvements in accordance
6 with the itemized cost estimate prepared by the municipal engineer
7 and appended to the performance guarantee pursuant to subsection
8 a. of this section; and the cost of applying to the court, including
9 reasonable attorney's fees, may be awarded to the prevailing party.

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

16 f. If any portion of the required improvements is rejected, the
17 approving authority may require the obligor to complete or correct
18 such improvements and, upon completion or correction, the same
19 procedure of notification, as set forth in this section shall be
20 followed.

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

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

- 1 i. In the event that final approval is by stages or sections of
2 development pursuant to subsection a. of section 29 of P.L.1975,
3 c.291 (C.40:55D-38), the provisions of this section shall be applied
4 by stage or section.
- 5 j. To the extent that any of the improvements have been
6 dedicated to the municipality on the subdivision plat or site plan,
7 the municipal governing body shall be deemed, upon the release of
8 any performance guarantee required pursuant to subsection a. of
9 this section, to accept dedication for public use of streets or roads
10 and any other improvements made thereon according to site plans
11 and subdivision plats approved by the approving authority, provided
12 that such improvements have been inspected and have received
13 final approval by the municipal engineer.
14 (cf: P.L.2013, c.123, s.3)

15
16 2. This act shall take effect immediately.

17
18

19 STATEMENT

20

21 This bill would modify the requirements for furnishing
22 performance and maintenance guarantees under the "Municipal
23 Land Use Law." Performance and maintenance guarantees ensure
24 that improvements required to be made by a developer under a
25 development approval are completed and maintained.

26 Under current law, performance guarantees may be required to
27 ensure the completion of certain types of improvements and may
28 include improvements that are not being dedicated to a public
29 entity. The bill provides that guarantees would only cover
30 improvements that are being dedicated to a public entity.

31 Current law lists types of improvements that may be subject to a
32 performance guarantee requirement. The bill eliminates the
33 following types of improvements from the list: culverts, storm
34 sewers, erosion control and sedimentation control devices, other on-
35 site improvements, and landscaping. The bill allows a municipality
36 to require a performance guarantee for privately-owned perimeter
37 buffer landscaping and stormwater management facilities if the
38 facilities are being connected to a public drainage system. The bill
39 allows a developer to opt to post a separate performance guarantee
40 for these items.

41 The bill modifies some of the types of improvements that may
42 currently be subject to a performance guarantee requirement. The
43 bill eliminates reference to "means of sewage disposal" (other than
44 sanitary sewers) from the current list of improvements, but adds
45 "community septic systems" to the list. The bill provides that
46 grading costs can be part of a performance bond only if grading is a
47 necessary part of an improvement that is subject to a performance
48 guarantee requirement.

1 The bill authorizes municipalities to require two additional types
2 of guarantees: a “temporary certificate of occupancy bond,” and a
3 “safety and stabilization bond.”

4 Under the bill, if a developer seeks a temporary certificate of
5 occupancy for a development, unit, building, or phase of
6 development, a municipality may require the developer to furnish a
7 “temporary certificate of occupancy bond” in favor of the
8 municipality in an amount equal to 100% of the cost of installation
9 of improvements which remain to be completed and which are
10 required to be completed prior to the issuance of the permanent
11 certificate of occupancy. Upon posting a “temporary certificate of
12 occupancy bond,” all sums remaining under a performance guaranty
13 would be released because the new bond would adequately ensure
14 completion of the improvements.

15 In addition, the bill authorizes a municipality to require a
16 developer to furnish a “safety and stabilization bond,” which would
17 provide the municipality a source of funding to return property to a
18 safe and stable condition or to implement measures to protect the
19 public from access to an unsafe or unstable condition in case the
20 developer commences construction but then ceases all work on the
21 development for more than 90 consecutive days.

ASSEMBLY STATE AND LOCAL GOVERNMENT
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1425

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 6, 2017

This bill would modify the requirements for furnishing performance and maintenance guarantees under the “Municipal Land Use Law.” Performance and maintenance guarantees ensure that improvements required to be made by a developer under a development approval are completed and maintained.

Under current law, a municipality may require a developer to post performance guarantees to ensure that certain types of improvements are completed. This may include improvements that are not being dedicated to a public entity. Under the bill, with the proposed committee amendments, a municipality would only be able to require developers to post performance guarantees that cover improvements being dedicated to a public entity.

The one exception to this, under the bill as amended, is that a municipality may require a performance guarantee for privately-owned perimeter buffer landscaping. The bill allows a developer to opt to post a separate performance guarantee for this item.

In addition, the bill eliminates the following types of improvements from the list of improvements that may be subject to a performance guarantee requirement under current law: culverts, storm sewers, erosion control and sedimentation control devices, other on-site improvements, and landscaping. The bill also modifies the description of some of the types of improvements that may currently be subject to a performance guarantee requirement.

The bill authorizes municipalities to require two additional types of guarantees: a “temporary certificate of occupancy bond,” and a “safety and stabilization bond.”

Under the bill, as amended by the committee if a developer seeks a temporary certificate of occupancy for a development, unit, building, or phase of development, a municipality may require the developer to furnish a “temporary certificate of occupancy bond” in favor of the municipality in an amount equal to 120% of the cost of installation of improvements which remain to be completed and which are required to be completed prior to the issuance of the permanent certificate of occupancy. Upon posting a “temporary

certificate of occupancy bond,” all sums remaining under a performance guarantee would be released because the new bond would adequately ensure completion of the improvements.

The bill, as amended would authorize a municipality to require a developer to furnish a “safety and stabilization bond,” which would provide the municipality a source of funding to return property to a safe and stable condition or to implement measures to protect the public from access to an unsafe or unstable condition. A municipality could claim payment under this bond if a developer ceases all work on the development for at least 60 consecutive days and does not recommence work within 30 days after the municipality notifies the developer of the municipality’s intent to claim payment under the bond. The bill, as amended, specifies the manner of calculating the amount of a “safety and stabilization bond.”

The bill, as amended, also modifies provisions of law that control the posting of maintenance guarantees. Under current law, a municipality may require a developer to provide a maintenance guarantee for a period of two years after the completion and acceptance of an improvement in an amount not to exceed 15% of the cost of the improvement. Under the bill, as amended, a municipality may require a developer to provide a maintenance guarantee for: improvements that were the subject of a performance guarantee, and specific private stormwater management specific improvements.

The bill, as amended, changes the current requirements concerning a developer’s responsibility to pay fees to cover the municipal engineer’s inspection of improvements completed by the developer. Under the bill, as amended, a developer will be required to reimburse a municipality for reasonable inspection fees paid to the municipal engineer for the inspection of improvements. A municipality may require a developer to post in escrow for this purpose an amount not to exceed 5% of the cost of: bonded improvements that are subject to a performance guarantee, and private site improvements that are not subject to a performance guarantee.

The bill, as amended, deletes from current law a provision that prohibits a municipal engineer from performing an inspection if there are insufficient funds to pay for those inspections. The bill, as amended, authorizes a if a municipality which determines that insufficient funds in escrow to cover the cost of additional required inspections, to require the developer to deposit additional funds. in escrow provided that the In this regard the bill requires a municipality to deliver to the developer a written inspection escrow deposit request, specifying details about the additional required inspections.

This bill was prefiled for introduction in the 2016-2107 session pending technical review. As reported the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS:

Performance guarantee

As introduced, the bill, while limiting the ambit of authority of municipalities to require developers to post performance guarantees to improvements being dedicated to a public entity, would have preserved the authority of municipalities to require developers to post performance guarantees for:

- privately-owned stormwater management facilities being connected to a public drainage system, and
- top course paving on privately-owned streets.

Committee amendments delete from the bill the authority of municipalities to require developers to post performance guarantees for those purposes.

Temporary certificate of occupancy bond

The committee amended the bill to increase the amount of a “temporary certificate of occupancy bond” a municipality may require a developer to furnish from 100% to 120% of an amount equal to the cost of improvements not yet completed which must be completed for a permanent certificate of occupancy to issue. The committee amendments also clarify that a temporary certificate of occupancy bond will be released once the applicable permanent certificate of occupancy is issued.

Safety and stabilization bond

Committee amendments shorten the period of time for which a developer’s work on a development must have ceased in order to trigger applicability of a “safety and stabilization bond” from 90 to 60 consecutive days. Committee amendments also clarify the manner of calculation of the amount of a “safety and stabilization bond.”

Maintenance guarantee

Committee amendments provide that a municipality may require a developer to provide a maintenance guarantee for: improvements that were the subject of a performance guarantee, and for certain private site improvements related to stormwater management.

Inspection fees:

Under current law, a developer must reimburse a municipality for all reasonable inspection fees incurred for the inspection of improvements. A municipality may require a developer to deposit, generally, the greater of \$500 or 5% of the cost of improvements towards this obligation.

Committee amendments alter this requirement by allowing a municipality to require a developer to post, in escrow, towards inspection fees, an amount:

- not to exceed 5% of the cost of improvements, to be dedicated to a public entity, that are subject to a performance guarantee, and
- not to exceed 5% of the cost of private site improvements that are not subject to a performance guarantee.

Committee amendments also delete from current law a provision that prohibits a municipal engineer from performing an inspection if sufficient funds to pay for those inspections are not on deposit. Committee amendments provide that if a municipality determines the amount in escrow for inspection fees to be insufficient, the municipality may require the developer to deposit additional funds in escrow by delivering to the developer a written inspection escrow deposit request, specifying details about the additional required inspections.

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ASSEMBLY STATE AND LOCAL GOVERNMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1425

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 6, 2017

This bill would modify the requirements for furnishing performance and maintenance guarantees under the “Municipal Land Use Law.” Performance and maintenance guarantees ensure that improvements required to be made by a developer under a development approval are completed and maintained.

Under current law, a municipality may require a developer to post performance guarantees to ensure that certain types of improvements are completed. This may include improvements that are not being dedicated to a public entity. Under the bill, with the proposed committee amendments, a municipality would only be able to require developers to post performance guarantees that cover improvements being dedicated to a public entity.

The one exception to this, under the bill as amended, is that a municipality may require a performance guarantee for privately-owned perimeter buffer landscaping. The bill allows a developer to opt to post a separate performance guarantee for this item.

In addition, the bill eliminates the following types of improvements from the list of improvements that may be subject to a performance guarantee requirement under current law: culverts, storm sewers, erosion control and sedimentation control devices, other on-site improvements, and landscaping. The bill also modifies the description of some of the types of improvements that may currently be subject to a performance guarantee requirement.

The bill authorizes municipalities to require two additional types of guarantees: a “temporary certificate of occupancy bond,” and a “safety and stabilization bond.”

Under the bill, as amended by the committee if a developer seeks a temporary certificate of occupancy for a development, unit, building, or phase of development, a municipality may require the developer to furnish a “temporary certificate of occupancy bond” in favor of the municipality in an amount equal to 120% of the cost of installation of improvements which remain to be completed and

which are required to be completed prior to the issuance of the permanent certificate of occupancy. Upon posting a “temporary certificate of occupancy bond,” all sums remaining under a performance guarantee would be released because the new bond would adequately ensure completion of the improvements.

The bill, as amended would authorize a municipality to require a developer to furnish a “safety and stabilization bond,” which would provide the municipality a source of funding to return property to a safe and stable condition or to implement measures to protect the public from access to an unsafe or unstable condition. A municipality could claim payment under this bond if a developer ceases all work on the development for at least 60 consecutive days and does not recommence work within 30 days after the municipality notifies the developer of the municipality’s intent to claim payment under the bond. The bill, as amended, specifies the manner of calculating the amount of a “safety and stabilization bond.”

The bill, as amended, also modifies provisions of law that control the posting of maintenance guarantees. Under current law, a municipality may require a developer to provide a maintenance guarantee for a period of two years after the completion and acceptance of an improvement in an amount not to exceed 15% of the cost of the improvement. Under the bill, as amended, a municipality may require a developer to provide a maintenance guarantee for: improvements that were the subject of a performance guarantee, and specific private stormwater management specific improvements.

The bill, as amended, changes the current requirements concerning a developer’s responsibility to pay fees to cover the municipal engineer’s inspection of improvements completed by the developer. Under the bill, as amended, a developer will be required to reimburse a municipality for reasonable inspection fees paid to the municipal engineer for the inspection of improvements. A municipality may require a developer to post in escrow for this purpose an amount not to exceed 5% of the cost of: bonded improvements that are subject to a performance guarantee, and private site improvements that are not subject to a performance guarantee.

The bill, as amended, deletes from current law a provision that prohibits a municipal engineer from performing an inspection if there are insufficient funds to pay for those inspections. The bill, as amended, authorizes a municipality that determines there are insufficient funds in escrow to cover the cost of additional required inspections, to require the developer to deposit additional funds in escrow provided that the municipality delivers to the developer a written inspection escrow deposit request, specifying details about the additional required inspections.

This bill was prefiled for introduction in the 2016-2107 session pending technical review. As reported the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS:

Performance guarantee

As introduced, the bill, while limiting the ambit of authority of municipalities to require developers to post performance guarantees to improvements being dedicated to a public entity, would have preserved the authority of municipalities to require developers to post performance guarantees for:

- privately-owned stormwater management facilities being connected to a public drainage system, and
- top course paving on privately-owned streets.

Committee amendments delete from the bill the authority of municipalities to require developers to post performance guarantees for those purposes.

Temporary certificate of occupancy bond

The committee amended the bill to increase the amount of a “temporary certificate of occupancy bond” a municipality may require a developer to furnish from 100% to 120% of an amount equal to the cost of improvements not yet completed which must be completed for a permanent certificate of occupancy to issue. The committee amendments also clarify that a temporary certificate of occupancy bond will be released once the applicable permanent certificate of occupancy is issued.

Safety and stabilization bond

Committee amendments shorten the period of time for which a developer’s work on a development must have ceased in order to trigger applicability of a “safety and stabilization bond” from 90 to 60 consecutive days. Committee amendments also clarify the manner of calculation of the amount of a “safety and stabilization bond.”

Maintenance guarantee

Committee amendments provide that a municipality may require a developer to provide a maintenance guarantee for: improvements that were the subject of a performance guarantee, and for certain private site improvements related to stormwater management.

Inspection fees:

Under current law, a developer must reimburse a municipality for all reasonable inspection fees incurred for the inspection of improvements. A municipality may require a developer to deposit, generally, the greater of \$500 or 5% of the cost of improvements towards this obligation.

Committee amendments alter this requirement by allowing a municipality to require a developer to post, in escrow, towards inspection fees, an amount:

- not to exceed 5% of the cost of improvements, to be dedicated to a public entity, that are subject to a performance guarantee, and
- not to exceed 5% of the cost of private site improvements that are not subject to a performance guarantee.

Committee amendments also delete from current law a provision that prohibits a municipal engineer from performing an inspection if sufficient funds to pay for those inspections are not on deposit. Committee amendments provide that if a municipality determines the amount in escrow for inspection fees to be insufficient, the municipality may require the developer to deposit additional funds in escrow by delivering to the developer a written inspection escrow deposit request, specifying details about the additional required inspections.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1425

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 18, 2017

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1425 (1R), with committee amendments.

As amended, this bill modifies the requirements for furnishing performance and maintenance guarantees under the “Municipal Land Use Law.” Performance and maintenance guarantees ensure that improvements required to be made by a developer under a development approval are completed and maintained.

Under current law, a municipality may require a developer to post performance guarantees to ensure that certain types of improvements are completed. These may include improvements that are not being dedicated to a public entity. Under the bill, a municipality will only be able to require developers to post performance guarantees that cover improvements being dedicated to a public entity.

The one exception to this is that a municipality may require a performance guarantee for privately-owned perimeter buffer landscaping. The bill allows a developer to opt to post a separate performance guarantee for this item.

In addition, the bill eliminates the following types of improvements from the list of improvements that may be subject to a performance guarantee requirement under current law: culverts, storm sewers, erosion control and sedimentation control devices, other on-site improvements, and landscaping. The bill also modifies the description of some of the types of improvements that may currently be subject to a performance guarantee requirement.

The bill authorizes municipalities to require two additional types of guarantees: a “temporary certificate of occupancy guarantee,” and a “safety and stabilization guarantee.”

Under the bill, if a developer seeks a temporary certificate of occupancy for a development, unit, lot, building, or phase of development, a municipality may require the developer to furnish a “temporary certificate of occupancy guarantee” in favor of the municipality in an amount equal to 120% of the cost of installation of improvements which remain to be completed and which are required to be completed prior to the issuance of the permanent certificate of

occupancy. Upon posting a “temporary certificate of occupancy guarantee,” all sums remaining under a performance guarantee will be released because the new “temporary certificate of occupancy guarantee” adequately ensures completion of the improvements.

The bill specifies that the scope and the amount of a “temporary certificate of occupancy guarantee” will be determined by the zoning officer, the municipal engineer, or another municipal official so designated by ordinance. The bill also specifies that a “temporary certificate of occupancy guarantee” will be released by the zoning officer, the municipal engineer, or another municipal official so designated by ordinance, upon the issuance of a permanent certificate of occupancy with regard to the applicable improvements.

The bill authorizes a municipality to require a developer to furnish a “safety and stabilization guarantee,” which will provide the municipality a source of funding to return property to a safe and stable condition or to implement measures to protect the public from access to an unsafe or unstable condition. A municipality could claim payment under this guarantee if a developer ceases all work on the development for at least 60 consecutive days and does not recommence work within 30 days after the municipality notifies the developer of the municipality’s intent to claim payment under the guarantee. The bill specifies the manner of calculating the amount of a “safety and stabilization guarantee.”

The bill also modifies provisions of law that control the posting of maintenance guarantees. Under current law, a municipality may require a developer to provide a maintenance guarantee for a period of two years after the completion and acceptance of an improvement in an amount not to exceed 15% of the cost of the improvement. Under the bill, a municipality may require a developer to provide a maintenance guarantee for: improvements that were the subject of a performance guarantee, and specific private stormwater management improvements.

The bill changes the current requirements concerning a developer’s responsibility to pay fees to cover the municipal engineer’s inspection of improvements completed by the developer. Under the bill, a developer will be required to reimburse a municipality for reasonable inspection fees paid to the municipal engineer for the inspection of improvements. A municipality may require a developer to post in escrow for this purpose:

- an amount not to exceed, except for extraordinary circumstances, the greater of \$500 or 5% of the cost of bonded improvements that are subject to a performance guarantee, and
- an amount not to exceed 5% of the cost of private site improvements that are not subject to a performance guarantee.

The bill also deletes from current law a provision that prohibits a municipal engineer from performing an inspection if there are insufficient funds to pay for those inspections. The bill authorizes a

municipality that determines there are insufficient funds in escrow to cover the cost of additional required inspections to require the developer to deposit additional funds in escrow provided that the municipality delivers to the developer a written inspection escrow deposit request, specifying details about the additional required inspections.

As amended and reported by the committee, this bill is identical to Senate Bill No 3233 (1R), as also amended and reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services estimates the bill will have an indeterminate impact on municipal finances will have an indeterminate impact on municipal finances and may have an indeterminate increase in State costs. Municipalities are permitted, but not required, to adopt ordinances requiring developers to furnish a performance guarantee or a maintenance guarantee. The Department of Community Affairs may incur additional costs of indeterminate amount associated with the preparation and adoption of standardized forms for performance guarantees, maintenance guarantees, and letters of credit. Municipalities may incur additional costs of indeterminate amount associated with the revision and publication of ordinances and resolutions in order to comply with the proposed changes to the “Municipal Land Use Law.” The bill also changes the method of calculating the amount a developer is required to reimburse a municipality for the performance of inspections by the municipal engineer and so may result in a reduction in municipal fee revenues.

Changes to the method of calculating the amount a developer is required to reimburse a municipality for the performance of inspections by the municipal engineer may result in a reduction in municipal fee revenues. A developer is currently required to post in escrow an amount not to exceed the greater of \$500 or 5% of the cost of improvements. Under the bill, the escrow amount would be calculated based on the cost of bonded improvements that are subject to a performance guarantee and private site improvements that are not subject to a performance guarantee.

COMMITTEE AMENDMENTS:

The amendments make various technical, clarifying changes to the bill:

- rename temporary certificate of occupancy bonds and safety and stabilization bonds as “temporary certificate of occupancy guarantees” and “safety and stabilization guarantees”;
- add the word “lot” to provisions concerning “temporary certificate of occupancy guarantees”;

- restrict use of the term “improvements” to “bonded improvements,” so to reflect the bill’s limiting of the scope of the types of improvements that will be subject to a performance guarantee requirement; and
- provide that only those improvements which are not covered by a performance guarantee would need to be included in the “temporary certificate of occupancy guarantee.’

The amendments specify that the scope and the amount of a “temporary certificate of occupancy guarantee” will be determined by the zoning officer, the municipal engineer, or another municipal official so designated by ordinance. They specify that a “temporary certificate of occupancy guarantee” would be released by the zoning officer, the municipal engineer, or another municipal official so designated by ordinance, upon the issuance of a permanent certificate of occupancy with regard to the applicable improvements.

The amendments also clarify the bill’s provisions concerning reductions to “safety and stabilization guarantees.” The amendments provide that at the time a municipality approves bonded improvements as being complete and satisfactory, and authorizes a reduction to the performance guarantee based on the municipality’s estimated cost of the improvement, the municipality must reduce the “safety and stabilization guarantee” by the same percentage as the performance guarantee is being reduced. The amendments clarify that a municipality may retain 30% of the amount of the performance guarantee and 30% of the amount of the “safety and stabilization guarantee” until all bonded improvements are completed and accepted by the municipality.

The amendments provide that if a performance guarantee is partially a cash deposit, and the “safety and stabilization guarantee” is included as a line item of the performance guarantee, then, notwithstanding provisions of law that require any partial reduction granted in the performance guarantee to be applied to the cash deposit in the same proportion as the original cash deposit bears to the full amount of the performance guarantee, the municipality may retain cash equal to the amount of the remaining “safety and stabilization guarantee.”

The amendments reinsert a provision of current law, proposed for deletion under the bill in its current form, which allows a municipality to require a developer to maintain a minimum of \$500 in escrow toward the payment of fees to the municipal engineer for the inspection of improvements. The amendment would, however, limit applicability of this \$500 minimum escrow provision to the payment of fees for inspections of bonded improvements.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

[Second Reprint]

ASSEMBLY, No. 1425

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 5, 2018

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 1425 (2R).

This bill modifies the requirements for furnishing performance and maintenance guarantees under the “Municipal Land Use Law.” Performance and maintenance guarantees ensure that improvements required to be made by a developer under a development approval are completed and maintained.

Under current law, a municipality may require a developer to post performance guarantees to ensure that certain types of improvements are completed. These may include improvements that are not being dedicated to a public entity. Under the bill, a municipality will only be able to require developers to post performance guarantees that cover improvements being dedicated to a public entity.

The one exception to this is that a municipality may require a performance guarantee for privately-owned perimeter buffer landscaping. The bill allows a developer to opt to post a separate performance guarantee for this item.

In addition, the bill eliminates the following types of improvements from the list of improvements that may be subject to a performance guarantee requirement under current law: culverts, storm sewers, erosion control and sedimentation control devices, other on-site improvements, and landscaping. The bill also modifies the description of some of the types of improvements that may currently be subject to a performance guarantee requirement.

The bill authorizes municipalities to require two additional types of guarantees: a “temporary certificate of occupancy guarantee,” and a “safety and stabilization guarantee.”

Under the bill, if a developer seeks a temporary certificate of occupancy for a development, unit, lot, building, or phase of development, a municipality may require the developer to furnish a “temporary certificate of occupancy guarantee” in favor of the municipality in an amount equal to 120% of the cost of installation of improvements which remain to be completed and which are required to be completed prior to the issuance of the permanent certificate of occupancy. Upon posting a “temporary certificate of occupancy

guarantee,” all sums remaining under a performance guarantee will be released because the new “temporary certificate of occupancy guarantee” adequately ensures completion of the improvements.

The bill specifies that the scope and the amount of a “temporary certificate of occupancy guarantee” will be determined by the zoning officer, the municipal engineer, or another municipal official so designated by ordinance. The bill also specifies that a “temporary certificate of occupancy guarantee” will be released by the zoning officer, the municipal engineer, or another municipal official so designated by ordinance, upon the issuance of a permanent certificate of occupancy with regard to the applicable improvements.

The bill authorizes a municipality to require a developer to furnish a “safety and stabilization guarantee,” which will provide the municipality a source of funding to return property to a safe and stable condition or to implement measures to protect the public from access to an unsafe or unstable condition. A municipality could claim payment under this guarantee if a developer ceases all work on the development for at least 60 consecutive days and does not recommence work within 30 days after the municipality notifies the developer of the municipality’s intent to claim payment under the guarantee. The bill specifies the manner of calculating the amount of a “safety and stabilization guarantee.”

The bill also modifies provisions of law that control the posting of maintenance guarantees. Under current law, a municipality may require a developer to provide a maintenance guarantee for a period of two years after the completion and acceptance of an improvement in an amount not to exceed 15% of the cost of the improvement. Under the bill, a municipality may require a developer to provide a maintenance guarantee for: improvements that were the subject of a performance guarantee, and specific private stormwater management improvements.

The bill changes the current requirements concerning a developer’s responsibility to pay fees to cover the municipal engineer’s inspection of improvements completed by the developer. Under the bill, a developer will be required to reimburse a municipality for reasonable inspection fees paid to the municipal engineer for the inspection of improvements. A municipality may require a developer to post in escrow for this purpose:

- an amount not to exceed, except for extraordinary circumstances, the greater of \$500 or 5% of the cost of bonded improvements that are subject to a performance guarantee, and
- an amount not to exceed 5% of the cost of private site improvements that are not subject to a performance guarantee.

The bill also deletes from current law a provision that prohibits a municipal engineer from performing an inspection if there are insufficient funds to pay for those inspections. The bill authorizes a municipality that determines there are insufficient funds in escrow to

cover the cost of additional required inspections to require the developer to deposit additional funds in escrow provided that the municipality delivers to the developer a written inspection escrow deposit request, specifying details about the additional required inspections.

The committee amendments clarify that a developer may comply with a “safety and stabilization guarantee” requirement imposed under municipal ordinance either by posting a separate guarantee or as a line item within a performance guarantee. The amendments anticipate that there may be circumstances when a municipality may require a developer to post a “safety and stabilization guarantee” before it is necessary for the developer to furnish a performance guarantee. Under those circumstances, the amendments would allow the developer the option of posting a separate “safety and stabilization guarantee,” and require the municipality to release the separate “safety and stabilization guarantee” to the developer upon the developer’s furnishing of a performance guarantee which includes an adequate line item for safety and stabilization.

The amendments also require a municipality to release the entire amount of a “safety and stabilization guarantee” if the municipal engineer determines that development of the project site has reached a point that the improvements installed are adequate to avoid any potential threat to public safety.

These amendments make this bill identical to Senate Bill No. 3233 (3R), which is also released by the committee on this date.

COMMITTEE AMENDMENTS:

-- Clarify that a developer may comply with a “safety and stabilization guarantee” requirement imposed under municipal ordinance either by posting a separate guarantee or as a line item within a performance guarantee.

-- Under circumstances when a municipality may require a developer to post a “safety and stabilization guarantee” before it is necessary for the developer to furnish a performance guarantee, allow the developer the option of posting a separate “safety and stabilization guarantee,” and require the municipality to release the separate “safety and stabilization guarantee” to the developer upon the developer’s furnishing of a performance guarantee which includes an adequate line item for safety and stabilization.

-- Require a municipality to release the entire amount of a “safety and stabilization guarantee” if the municipal engineer determines that development of the project site has reached a point that the improvements installed are adequate to avoid any potential threat to public safety.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 1425

STATE OF NEW JERSEY 217th LEGISLATURE

DATED: JANUARY 5, 2018

SUMMARY

- Synopsis:** Modifies performance and maintenance guarantee requirements under “Municipal Land Use Law.”
- Type of Impact:** Indeterminate potential increase in State costs. Indeterminate impact on municipal finances.
- Agencies Affected:** Department of Community Affairs and municipalities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate Potential Increase – See comments below		
Municipal Finances	Indeterminate Impact – See comments below		

- The Office of Legislative Services estimates that the enactment of this bill will have an indeterminate impact on municipal finances and may result in an indeterminate increase in State costs. Municipalities are permitted, but not required, to adopt ordinances requiring developers to furnish a performance guarantee or a maintenance guarantee.
- The Department of Community Affairs may incur additional costs of indeterminate amount associated with the preparation and adoption of standardized forms for performance guarantees, maintenance guarantees, and letters of credit.
- Municipalities may incur additional costs of indeterminate amount associated with the revision and publication of ordinances and resolutions in order to comply with the proposed changes to the “Municipal Land Use Law.”
- The bill changes the method of calculating the amount a developer is required to reimburse a municipality for the performance of inspections by the municipal engineer and so may result in a reduction in municipal fee revenues.

- Current law requires a developer to post in escrow an amount not to exceed the greater of \$500 or 5 percent of the cost of improvements. Under the bill, the escrow amount will be calculated based on the cost of bonded improvements that are subject to a performance guarantee and private site improvements that are not subject to a performance guarantee.

BILL DESCRIPTION

This bill modifies the requirements for furnishing performance and maintenance guarantees under the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.). Performance and maintenance guarantees ensure that improvements required to be made by a developer under a development approval are completed and maintained.

Current law permits a municipality to require a developer to post performance guarantees to ensure that certain types of improvements are completed. This may include improvements which are not being dedicated to a public entity. The bill limits the ability of a municipality to determine which improvements are covered by a performance guarantee. The bill specifies that a municipality would only be able to require developers to post performance guarantees for improvements being dedicated to a public entity and for privately-owned perimeter buffer landscaping. Additionally, the bill specifically eliminates the following types of improvements from the list of improvements that may be subject to a performance guarantee requirement under current law: culverts, storm sewers, erosion control and sedimentation control devices, other on-site improvements, and landscaping.

The bill authorizes municipalities to require two additional types of guarantees: a “temporary certificate of occupancy guarantee” and a “safety and stabilization guarantee.” If a developer seeks a temporary certificate of occupancy for a development, unit, lot, building, or phase of development, a municipality may require the developer to furnish a “temporary certificate of occupancy guarantee” in favor of the municipality in an amount equal to 120 percent of the cost of installation of improvements which remain to be completed and which are required to be completed prior to the issuance of the permanent certificate of occupancy. Upon posting a “temporary certificate of occupancy guarantee,” all sums remaining under a performance guarantee would be released because the “temporary certificate of occupancy guarantee” would adequately ensure the completion of the improvements. The scope and amount of a “temporary certificate of occupancy guarantee” will be determined by the municipal zoning officer, municipal engineer, or another municipal official designated by ordinance. A “temporary certificate of occupancy guarantee” will be released upon the issuance of a permanent certificate of occupancy with regard to the applicable improvements.

The bill authorizes a municipality to require a developer to furnish a “safety and stabilization guarantee,” which will provide the municipality a source of funding to return property to a safe and stable condition or to implement measures to protect the public from access to an unsafe or unstable condition. A municipality could claim payment under this guarantee if a developer ceases all work on the development for at least 60 consecutive days and does not recommence work within 30 days after the municipality notifies the developer of the municipality’s intent to claim payment. The bill specifies the manner of calculating the amount of a “safety and stabilization guarantee.”

The bill also modifies provisions of law that control the posting of maintenance guarantees. Current law allows a municipality to require a developer to provide a maintenance guarantee for a period of two years after the completion and acceptance of an improvement in an amount not to exceed 15 percent of the cost of the improvement. The bill allows a municipality to require a

maintenance guarantee for improvements that were the subject of a performance guarantee and specific private stormwater management improvements.

The bill also changes the current requirements concerning a developer's responsibility to pay fees to cover the municipal engineer's inspection of improvements completed by the developer. The bill requires a developer to reimburse a municipality for reasonable inspection fees paid to the municipal engineer for the inspection of improvements. The bill allows a municipality to require a developer to post in escrow for this purpose an amount not to exceed, except under extraordinary circumstances, the greater of \$500 or 5 percent of the cost of bonded improvements that are subject to a performance guarantee and an amount not to exceed 5 percent of the cost of private site improvements that are not subject to a performance guarantee.

The bill deletes from current law a provision that prohibits a municipal engineer from performing an inspection if there are insufficient funds to pay for those inspections. The bill authorizes a municipality which determines that there are insufficient funds in escrow to cover the cost of additional required inspections to require the developer to deposit additional funds in escrow by delivering to the developer a written inspection escrow deposit request, specifying details about the additional requires inspections.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the enactment of this bill will have an indeterminate impact on municipal finances and may result in an indeterminate increase in State costs. Municipalities are permitted, but not required, to adopt ordinances requiring developers to furnish a performance guarantee or a maintenance guarantee. The bill provides that the amount of a performance guarantee cannot exceed 120 percent of the cost of improvements dedicated to a public entity. The cost of installation of the improvements is determined by the municipal engineer based on documented construction costs for public improvements prevailing in the general area of the municipality.

Changes to the method of calculating the amount a developer is required to reimburse a municipality for the performance of inspections by the municipal engineer may result in a reduction in municipal fee revenues. A developer is currently required to post in escrow an amount not to exceed the greater of \$500 or 5 percent of the cost of improvements. Under the bill, the escrow amount would be calculated based on the cost of bonded improvements that are subject to a performance guarantee and private site improvements that are not subject to a performance guarantee. Removal of the minimum \$500 fee and revision of the fee base may reduce fee revenue, depending on the scope and nature of the project.

Municipalities may incur additional costs, likely one-time in nature, associated with the revision and publication of ordinances and resolutions in order to comply with the proposed changes to the "Municipal Land Use Law." The OLS lacks sufficient information with which to estimate these costs.

Section 1 of P.L.1999, c.68 (C.40:55D-53a) requires the Department of Community Affairs (DCA) to adopt, by regulation, standardized forms for performance guarantees, maintenance

guarantees, and letters of credit. The enactment of this bill will require the DCA to review changes to the “Municipal Land Use Law” and possibly modify the standardized forms to comply with the new requirements for performance guarantees and maintenance guarantees. The DCA may incur additional costs associated with the preparation of new forms.

Section: Local Government

*Analyst: Scott A. Brodsky
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*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).