

# LEGISLATIVE HISTORY CHECKLIST

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## *LAWS of 1999*

**CHAPTER:** 68

**NJSA:**40:55D-53a and 40:55D-53b

(Standardized forms for bonds & letters of credit -- municipal land use)

**BILL NO:** S164(Substituted for A1775)

**SPONSOR(S):**Kyrillos and Bryant

**DATE INTRODUCED:**Pre-filed

**COMMITTEE:**

**ASSEMBLY:** -----

**SENATE:**Community and Urban Affairs

**AMENDED DURING PASSAGE:**Yes

**DATES OF PASSAGE:**

**ASSEMBLY:**February 18, 1999

**SENATE:**February 25, 1999

**DATE OF APPROVAL:**April 22, 1999

### THE FOLLOWING ARE ATTACHED IF AVAILABLE:

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**FINAL TEXT OF BILL:** *Yes*1<sup>st</sup> Reprint

(Amendments during passage denoted by superscript numbers)

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## **S164**

**SPONSORS STATEMENT:** *Yes* (Begins on page 6 of original bill)

**COMMITTEE STATEMENT:**

**ASSEMBLY:** *No*

**SENATE:** *Yes*

**FLOOR AMENDMENT STATEMENTS:***Yes*

**LEGISLATIVE FISCAL ESTIMATE:** *No*

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## A1775

**SPONSORS STATEMENT:** *Yes (Begins on page 6 of original bill)*

Bill and Sponsor's Statement identical to S164

**COMMITTEE STATEMENT:**

**ASSEMBLY:** *Yes*

**SENATE:***No*

**FLOOR AMENDMENT STATEMENTS:** *No*

**LEGISLATIVE FISCAL ESTIMATE:** *No*

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### GOVERNOR'S ACTIONS

**VETO MESSAGE:** *No*

**GOVERNOR'S PRESS RELEASE ON SIGNING:** *Yes*

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### THE FOLLOWING WERE PRINTED:

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**REPORTS:** *No*

**HEARINGS:** *No*

**NEWSPAPER ARTICLES:** *No*

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P.L. 1999, CHAPTER 68, *approved April 22, 1999*  
Senate, No. 164 (*First Reprint*)

1 AN ACT concerning guarantees required in regard to the installation  
2 and maintenance of on-tract improvements and amending and  
3 supplementing P.L.1975, c.291.  
4

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

8 1. (New section) The Department of <sup>1</sup>[Banking and Insurance]  
9 Community Affairs<sup>1</sup> shall adopt by regulation a standardized form for  
10 a performance guarantee, maintenance guarantee and letter of credit  
11 required by an approving authority pursuant to section 41 of P.L.1975,  
12 c.291 (C.40:55D-53).  
13

14 2. (New section) Notwithstanding any ordinance to the contrary,  
15 an approving authority shall accept the standardized form for a  
16 performance guarantee, maintenance guarantee or letter of credit  
17 adopted by regulation by the Department of <sup>1</sup>[Banking and Insurance]  
18 Community Affairs<sup>1</sup> pursuant to section 1 of P.L. , c. (C. )  
19 (now before the Legislature as this bill) as complying with the  
20 provisions of section 41 of P.L.1975, c.291 (C.40:55D-53).  
21

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

24 41. Guarantees required; surety; release. a. Before recording of  
25 final subdivision plats or as a condition of final site plan approval or  
26 as a condition to the issuance of a zoning permit pursuant to  
27 subsection d. of section 52 of P.L.1975, c.291 (C.40:55D-65), the  
28 approving authority may require and shall accept in accordance with  
29 the standards adopted by ordinance and regulations adopted pursuant  
30 to section 1 of P.L. , c. (C. ) (now before the Legislature as  
31 this bill) for the purpose of assuring the installation and maintenance  
32 of on-tract improvements:

33 (1) The furnishing of a performance guarantee in favor of the  
34 municipality in an amount not to exceed 120% of the cost of  
35 installation, which cost shall be determined by the municipal engineer  
36 according to the method of calculation set forth in section 15 of  
37 P.L.1991, c.256 (C.40:55D-53.4), for improvements which the  
38 approving authority may deem necessary or appropriate including:

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

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly floor amendments adopted January 28, 1999.

1 streets, grading, pavement, gutters, curbs, sidewalks, street lighting,  
2 shade trees, surveyor's monuments, as shown on the final map and  
3 required by the "Map Filing Law," P.L.1960, c.141 (C.46:23-9.9 et  
4 seq.), water mains, culverts, storm sewers, sanitary sewers or other  
5 means of sewage disposal, drainage structures, erosion control and  
6 sedimentation control devices, public improvements of open space  
7 and, in the case of site plans only, other on-site improvements and  
8 landscaping.

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

13 (2) Provision for a maintenance guarantee to be posted with the  
14 governing body for a period not to exceed two years after final  
15 acceptance of the improvement, in an amount not to exceed 15% of  
16 the cost of the improvement, which cost shall be determined by the  
17 municipal engineer according to the method of calculation set forth in  
18 section 15 of P.L.1991, c.256 (C.40:55D-53.4). In the event that  
19 other governmental agencies or public utilities automatically will own  
20 the utilities to be installed or the improvements are covered by a  
21 performance or maintenance guarantee to another governmental  
22 agency, no performance or maintenance guarantee, as the case may be,  
23 shall be required by the municipality for such utilities or improvements.

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

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

42 d. (1) Upon substantial completion of all required street  
43 improvements (except for the top course) and appurtenant utility  
44 improvements, and the connection of same to the public system, the  
45 obligor may request of the governing body in writing, by certified mail  
46 addressed in care of the municipal clerk, that the municipal engineer

1 prepare, in accordance with the itemized cost estimate prepared by the  
2 municipal engineer and appended to the performance guarantee  
3 pursuant to subsection a. of this section, a list of all uncompleted or  
4 unsatisfactory completed improvements. If such a request is made, the  
5 obligor shall send a copy of the request to the municipal engineer. The  
6 request shall indicate which improvements have been completed and  
7 which improvements remain uncompleted in the judgment of the  
8 obligor. Thereupon the municipal engineer shall inspect all  
9 improvements covered by obligor's request and shall file a detailed list  
10 and report, in writing, with the governing body, and shall  
11 simultaneously send a copy thereof to the obligor not later than 45  
12 days after receipt of the obligor's request.

13 (2) The list prepared by the municipal engineer shall state, in detail,  
14 with respect to each improvement determined to be incomplete or  
15 unsatisfactory, the nature and extent of the incompleteness of each  
16 incomplete improvement or the nature and extent of, and remedy for,  
17 the unsatisfactory state of each completed improvement determined to  
18 be unsatisfactory. The report prepared by the municipal engineer shall  
19 identify each improvement determined to be complete and satisfactory  
20 together with a recommendation as to the amount of reduction to be  
21 made in the performance guarantee relating to the completed and  
22 satisfactory improvement, in accordance with the itemized cost  
23 estimate prepared by the municipal engineer and appended to the  
24 performance guarantee pursuant to subsection a. of this section.

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

42 For the purpose of releasing the obligor from liability pursuant to  
43 its performance guarantee, the amount of the performance guarantee  
44 attributable to each approved improvement shall be reduced by the  
45 total amount for each such improvement, in accordance with the  
46 itemized cost estimate prepared by the municipal engineer and

1 appended to the performance guarantee pursuant to subsection a. of  
2 this section, including any contingency factor applied to the cost of  
3 installation. If the sum of the approved improvements would exceed  
4 70 percent of the total amount of the performance guarantee, then the  
5 municipality may retain 30 percent of the amount of the total  
6 performance guarantee to ensure completion and acceptability of all  
7 improvements, as provided above.

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

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

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

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

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

41 h. The obligor shall reimburse the municipality for all reasonable  
42 inspection fees paid to the municipal engineer for the foregoing  
43 inspection of improvements; provided that the municipality may  
44 require of the developer a deposit for the inspection fees in an amount  
45 not to exceed, except for extraordinary circumstances, the greater of  
46 \$500 or 5% of the cost of improvements, which cost shall be

1 determined pursuant to section 15 of P.L.1991, c.256  
2 (C.40:55D-53.4). For those developments for which the inspection  
3 fees are less than \$10,000, fees may, at the option of the developer, be  
4 paid in two installments. The initial amount deposited by a developer  
5 shall be 50% of the inspection fees. When the balance on deposit  
6 drops to 10% of the inspection fees because the amount deposited by  
7 the developer has been reduced by the amount paid to the municipal  
8 engineer for inspection, the developer shall deposit the remaining 50%  
9 of the inspection fees. For those developments for which the  
10 inspection fees are \$10,000 or greater, fees may, at the option of the  
11 developer, be paid in four installments. The initial amount deposited  
12 by a developer shall be 25% of the inspection fees. When the balance  
13 on deposit drops to 10% of the inspection fees because the amount  
14 deposited by the developer has been reduced by the amount paid to the  
15 municipal engineer for inspection, the developer shall make additional  
16 deposits of 25% of the inspection fees. The municipal engineer shall  
17 not perform any inspection if sufficient funds to pay for those  
18 inspections are not on deposit.

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

23 j. To the extent that any of the improvements have been dedicated  
24 to the municipality on the subdivision plat or site plan, the municipal  
25 governing body shall be deemed, upon the release of any performance  
26 guarantee required pursuant to subsection a. of this section, to accept  
27 dedication for public use of streets or roads and any other  
28 improvements made thereon according to site plans and subdivision  
29 plats approved by the approving authority, provided that such  
30 improvements have been inspected and have received final approval by  
31 the municipal engineer.

32 (cf: P.L.1997, c.126, s.1)

33

34 4. This act shall take effect immediately.

35

36

37

38

39 Requires standardized form for bonds and letters of credit for  
40 improvements in developments.

**SENATE, No. 164**

**STATE OF NEW JERSEY**  
**208th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

**Sponsored by:**

**Senator JOSEPH M. KYRILLOS, JR.**

**District 13 (Middlesex and Monmouth)**

**Senator WAYNE R. BRYANT**

**District 5 (Camden and Gloucester)**

**SYNOPSIS**

Requires standardized form for bonds and letters of credit for improvements in developments.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 10/23/1998)**



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5 **BE IT ENACTED** by the Senate and General Assembly of the State  
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9 adopt by regulation a standardized form for a performance guarantee,  
10 maintenance guarantee and letter of credit required by an approving  
11 authority pursuant to section 41 of P.L.1975, c.291 (C.40:55D-53).

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13 2. (New section) Notwithstanding any ordinance to the contrary,  
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15 performance guarantee, maintenance guarantee or letter of credit  
16 adopted by regulation by the Department of Banking and Insurance  
17 pursuant to section 1 of P.L. , c. (C. ) (now before the  
18 Legislature as this bill) as complying with the provisions of section 41  
19 of P.L.1975, c.291 (C.40:55D-53).

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

23 41. Guarantees required; surety; release. a. Before recording of  
24 final subdivision plats or as a condition of final site plan approval or  
25 as a condition to the issuance of a zoning permit pursuant to  
26 subsection d. of section 52 of P.L.1975, c.291 (C.40:55D-65), the  
27 approving authority may require and shall accept in accordance with  
28 the standards adopted by ordinance and regulations adopted pursuant  
29 to section 1 of P.L. , c. (C. ) (now before the Legislature as  
30 this bill) for the purpose of assuring the installation and maintenance  
31 of on-tract improvements:

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

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

**Matter underlined thus is new matter.**

1 and, in the case of site plans only, other on-site improvements and  
2 landscaping.

3 The municipal engineer shall prepare an itemized cost estimate of  
4 the improvements covered by the performance guarantee, which  
5 itemized cost estimate shall be appended to each performance  
6 guarantee posted by the obligor.

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

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

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

36 d. (1) Upon substantial completion of all required street  
37 improvements (except for the top course) and appurtenant utility  
38 improvements, and the connection of same to the public system, the  
39 obligor may request of the governing body in writing, by certified mail  
40 addressed in care of the municipal clerk, that the municipal engineer  
41 prepare, in accordance with the itemized cost estimate prepared by the  
42 municipal engineer and appended to the performance guarantee  
43 pursuant to subsection a. of this section, a list of all uncompleted or  
44 unsatisfactory completed improvements. If such a request is made, the  
45 obligor shall send a copy of the request to the municipal engineer. The  
46 request shall indicate which improvements have been completed and

1 which improvements remain uncompleted in the judgment of the  
2 obligor. Thereupon the municipal engineer shall inspect all  
3 improvements covered by obligor's request and shall file a detailed list  
4 and report, in writing, with the governing body, and shall  
5 simultaneously send a copy thereof to the obligor not later than 45  
6 days after receipt of the obligor's request.

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

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

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

1 improvements, as provided above.

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

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

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

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

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

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

1 the developer has been reduced by the amount paid to the municipal  
2 engineer for inspection, the developer shall deposit the remaining 50%  
3 of the inspection fees. For those developments for which the  
4 inspection fees are \$10,000 or greater, fees may, at the option of the  
5 developer, be paid in four installments. The initial amount deposited  
6 by a developer shall be 25% of the inspection fees. When the balance  
7 on deposit drops to 10% of the inspection fees because the amount  
8 deposited by the developer has been reduced by the amount paid to the  
9 municipal engineer for inspection, the developer shall make additional  
10 deposits of 25% of the inspection fees. The municipal engineer shall  
11 not perform any inspection if sufficient funds to pay for those  
12 inspections are not on deposit.

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

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

26 (cf: P.L.1997, c.126, s.1)

27

28 4. This act shall take effect immediately.

29

30

31

#### STATEMENT

32

33 This bill requires the use of standardized forms for performance  
34 guarantees, maintenance guarantees and letters of credit for assuring  
35 the installation and maintenance of on-tract improvements in  
36 developments under the "Municipal Land Use Law."

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

**SENATE, No. 164**

**STATE OF NEW JERSEY**

DATED: OCTOBER 19, 1998

The Senate Community and Urban Affairs Committee reports favorably Senate Bill No. 164.

Senate Bill 164 requires the Department of Banking and Insurance to adopt by regulation a standardized form for a performance guarantee, maintenance guarantee and letter of credit required by an approving authority under the "Municipal Land Use Law."

The bill requires an approving authority to accept the standardized form developed and promulgated by the Department of Banking and Insurance as complying with the provisions of the performance and maintenance guarantee, as appropriate, under the "Municipal Land Use Law."

This bill was prefiled for introduction in the 1998 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

STATEMENT TO  
**SENATE, No. 164**

with Assembly Floor Amendments  
(Proposed By Assemblymen AZZOLINA and ARNONE)

ADOPTED: JANUARY 28, 1999

These amendments change the department responsible for adopting a standardized performance guarantee form from the Department of Banking and Insurance to the Department of Community Affairs.

**ASSEMBLY, No. 1775**

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**STATE OF NEW JERSEY**  
**208th LEGISLATURE**

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INTRODUCED MARCH 2, 1998

**Sponsored by:**

**Assemblyman JOSEPH AZZOLINA**

**District 13 (Middlesex and Monmouth)**

**Assemblyman MICHAEL J. ARNONE**

**District 12 (Monmouth)**

**SYNOPSIS**

Requires standardized form for bonds and letters of credit for improvements in developments.

**CURRENT VERSION OF TEXT**

As introduced.





A1775 AZZOLINA, ARNONE

2

1 AN ACT concerning guarantees required in regard to the installation  
2 and maintenance of on-tract improvements and amending and  
3 supplementing P.L.1975, c.291.

4

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

7

8 1. (New section) The Department of Banking and Insurance shall  
9 adopt by regulation a standardized form for a performance guarantee,  
10 maintenance guarantee and letter of credit required by an approving  
11 authority pursuant to section 41 of P.L.1975, c.291 (C.40:55D-53).

12

13 2. (New section) Notwithstanding any ordinance to the contrary,  
14 an approving authority shall accept the standardized form for a  
15 performance guarantee, maintenance guarantee or letter of credit  
16 adopted by regulation by the Department of Banking and Insurance  
17 pursuant to section 1 of P.L. , c. (C. ) (now before the  
18 Legislature as this bill) as complying with the provisions of section 41  
19 of P.L.1975, c.291 (C.40:55D-53).

20

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

23 41. Guarantees required; surety; release. a. Before recording of  
24 final subdivision plats or as a condition of final site plan approval or  
25 as a condition to the issuance of a zoning permit pursuant to  
26 subsection d. of section 52 of P.L.1975, c.291 (C.40:55D-65), the  
27 approving authority may require and shall accept in accordance with  
28 the standards adopted by ordinance and regulations adopted pursuant  
29 to section 1 of P.L. , c. (C. ) (now before the Legislature as  
30 this bill) for the purpose of assuring the installation and maintenance  
31 of on-tract improvements:

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

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

**Matter underlined thus is new matter.**

1 and, in the case of site plans only, other on-site improvements and  
2 landscaping.

3 The municipal engineer shall prepare an itemized cost estimate of  
4 the improvements covered by the performance guarantee, which  
5 itemized cost estimate shall be appended to each performance  
6 guarantee posted by the obligor.

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

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

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

36 d. (1) Upon substantial completion of all required street  
37 improvements (except for the top course) and appurtenant utility  
38 improvements, and the connection of same to the public system, the  
39 obligor may request of the governing body in writing, by certified mail  
40 addressed in care of the municipal clerk, that the municipal engineer  
41 prepare, in accordance with the itemized cost estimate prepared by the  
42 municipal engineer and appended to the performance guarantee  
43 pursuant to subsection a. of this section, a list of all uncompleted or  
44 unsatisfactory completed improvements. If such a request is made, the  
45 obligor shall send a copy of the request to the municipal engineer. The  
46 request shall indicate which improvements have been completed and

1 which improvements remain uncompleted in the judgment of the  
2 obligor. Thereupon the municipal engineer shall inspect all  
3 improvements covered by obligor's request and shall file a detailed list  
4 and report, in writing, with the governing body, and shall  
5 simultaneously send a copy thereof to the obligor not later than 45  
6 days after receipt of the obligor's request.

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

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

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

1 improvements, as provided above.

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

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

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

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

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

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

1 the developer has been reduced by the amount paid to the municipal  
2 engineer for inspection, the developer shall deposit the remaining 50%  
3 of the inspection fees. For those developments for which the  
4 inspection fees are \$10,000 or greater, fees may, at the option of the  
5 developer, be paid in four installments. The initial amount deposited  
6 by a developer shall be 25% of the inspection fees. When the balance  
7 on deposit drops to 10% of the inspection fees because the amount  
8 deposited by the developer has been reduced by the amount paid to the  
9 municipal engineer for inspection, the developer shall make additional  
10 deposits of 25% of the inspection fees. The municipal engineer shall  
11 not perform any inspection if sufficient funds to pay for those  
12 inspections are not on deposit.

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

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

26 (cf: P.L.1997, c.126, s.1)

27

28 4. This act shall take effect immediately.

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#### STATEMENT

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33 This bill requires the use of standardized forms for performance  
34 guarantees, maintenance guarantees and letters of credit for assuring  
35 the installation and maintenance of on-tract improvements in  
36 developments under the "Municipal Land Use Law."

ASSEMBLY LOCAL GOVERNMENT AND HOUSING  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1775**

**STATE OF NEW JERSEY**

DATED: OCTOBER 5, 1998

The Assembly Local Government and Housing Committee reports favorably Assembly Bill No. 1775.

This bill requires the use of standardized forms under the "Municipal Land Use Law" for performance guarantees, maintenance guarantees and letters of credit for assuring the installation and maintenance of on-tract improvements in developments

The bill requires the Department of Banking and Insurance to adopt by regulation a standardized form for a performance guarantee, maintenance guarantee and letter of credit required by an approving authority pursuant to section 41 of P.L.1975, c.291 (C.40:55D-53). The bill also requires an approving authority to accept the standardized form adopted by the department.

*Office of the Governor*  
**NEWS RELEASE**

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RELEASE: April 22, 1999

Gov. Christie Whitman today signed the following legislation:

**S-164/A-1775**, sponsored by Senators Joseph M. Kyrillos, Jr. (R-Middlesex/Monmouth) and Wayne R. Bryant (D-Camden/Gloucester) and Assemblymen Joseph Azzolina (R-Middlesex/ Monmouth) and Michael J. Arnone (R-Monmouth), requires a standardized form for bonds and letters of credit for improvements in developments. This bill requires that a standardized form be used for performance guarantees, maintenance guarantees and letters of credit, which assure the installation and maintenance of on-tract improvements in developments that are regulated by the Municipal Land Use Law (MLUL). The legislation mandates that the Department of Community Affairs adopt, through regulation, standardized forms to be used in all cases that are required by an approving authority under the MLUL. The approving authority, according to the MLUL, is the planning board of a municipality, unless a different agency is designated by ordinance when acting pursuant to the authority of the MLUL. **S-375/A-2682**, sponsored by Senators Bernard F. Kenny, Jr. (D- Hudson) and Diane B. Allen (R-Burlington/Camden) and Assemblymen Joseph Charles, Jr. (D-Hudson) and Joseph V. Doria, Jr. (D-Hudson), reallocates up to \$7.5 million to offset federal administrative funding reductions in the New Jersey Food Stamp Program and provides reimbursement for certain administrative costs of the program. The bill fulfills Governor Whitman's promise to offset federal cuts to the administration of the Food Stamp Program, by reimbursing counties for certain administrative costs and restoring federal reductions that would otherwise have a significant impact on the county welfare agencies.

The bill provides that the Division of Family Development in the Department of Human Services shall reimburse counties for all documented administrative costs incurred between January 1 and June 30, 1998, associated with the implementation of the State Food Stamp Program.

These costs arose under the state's extension of funding to provide Food Stamp assistance to groups who became ineligible for the federal food stamp program under the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The Governor provided benefits to many who had lost federal eligibility by signing executive order No. 74 in 1997. Many of these people were restored eligibility for federal benefits under subsequent federal legislation, the rest continue to receive state-funded food stamps under State law after the Executive Order expired on June 30, 1998.

This bill will reimburse counties' costs associated with administering the food stamp program between January 1 and June 30, 1998.

The legislation also reallocates \$7.5 million of the fiscal year 1999 appropriation from the General Fund for Income Maintenance Management to offset the federal administrative funding reductions in the Food Stamp Program. Without these funds, county property taxes would have to increase to offset the federal funding reductions or county welfare agencies would have to lay off workers. The reimbursement is a

state fiscal year reimbursement that would offset county expenditures in calendar years 1998 and 1999 without regard to county fiscal years.

**S-803/A-2040**, sponsored by Senators William Gormley (R-Atlantic) and Edward O'Connor, Jr. (D-Hudson) and Assembly Members Christopher "Kip" Bateman (R-Morris/Somerset) and Joan Quigley (D- Bergen/Hudson), simplifies the statutes relating to county surrogates. The surrogate, a county officer, has jurisdiction over the administration of probate matters. The statutes governing surrogates date back more than 100 years and included out-of-date and sometimes conflicting language on salaries, performance bond amounts and references to county courts. The statutes mandated procedures no longer followed including the signing by hand certain recorded documents.