

April 13, 1972

LEGISLATIVE HISTORY OF R.S.40:55-1.21 through 40:55-1.22
(Performance guarantees)

(1968 Amendment)

Previous bills:

1965 - A651 - Died in Committee.
1966 - A793 - " "
- S353 - " "
1967 - S310 - " "

L.1968 - chap.369 - S494.

Mar.11 - Introduced by Schiaffo and others.

Apr.18 - Passed in Senate.

June 13 - Passed in Assembly.

Nov.15 - Returned by Governor with recommended amendment.

Nov.15 - Amended as recommended, re-enacted in Senate.

Nov.25 - Re-enacted in Assembly.

Dec.27 - Approved, chap.369.

Amended (copy enclosed).

No statement.

No hearings or reports were located.

G.C.-Yes-1965-A651
1966-A793

JH/EH
Encl.

CHAPTER 369 LAWS OF N. J. 1968

APPROVED 12/27/68

[OFFICIAL COPY REPRINT]

SENATE, No. 494

STATE OF NEW JERSEY

INTRODUCED MARCH 11, 1968

By Senators SCHIAFFO, DICKINSON, HAGEDORN,
KNOWLTON and WOODCOCK

Referred to Committee on County and Municipal Government

AN ACT to amend the "Municipal Planning Act (1953)," approved
September 18, 1953 (P. L. 1953, c. 433).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 22 of the act of which this act is amendatory is
2 amended to read as follows:

3 22. The governing body may accept adequate performance guar-
4 antees for the purpose of assuring improvements, as provided in
5 section 21 of this act and section 10 of the Official Map and Building
6 Permit Act (1953).

7 The amount of any performance guarantee may be reduced by
8 the governing body by resolution when portions of the improve-
9 ments have been completed, and the time allowed for installation of
10 the improvements for which the performance guarantee has been
11 provided may be extended by said body by resolution.

12 If the required improvements shall not have been installed in
13 accordance with the performance guarantee, the obligor and surety,
14 if any, shall be liable thereon to the municipality for the reasonable
15 cost of the improvements not installed and upon the receipt of the
16 proceeds thereof the municipality shall install such improvements.

17 *When all of the necessary and appropriate improvements have*
18 *been completed the obligor shall notify the municipal governing*
19 *body, in writing, by certified or registered mail, of the completion*
20 *of the aforesaid improvements and shall send a copy thereof to*
21 *the municipal engineer. The municipal governing body shall***[***
22 *within 45 days after receipt of such notice,**]**** *direct and authorize*
23 *the municipal engineer to inspect all of the aforesaid improvements.*
24 *The municipal engineer shall, thereupon, file a report, in writing,*
25 *with the municipal governing body, which report shall be ***[made***

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

26 within 60 days after receipt by him of the aforesaid authorization
27 from the governing body; said report shall be] * detailed and shall
28 indicate * [approval or rejection of said improvements, either in
29 whole or in part, and if] * * either approval, partial approval, or
30 rejection. If * said improvements, or any portion thereof, shall not
31 be approved or shall be rejected by the municipal engineer, said
32 report shall contain a statement of reasons for such nonapproval
32A or rejection. * Where said report indicates partial approval of said
32B improvements, it shall indicate the cost of the improvements for
32C which approval is rejected or withheld.*

33 The municipal governing body shall * accept or reject the im-
34 provements, grant partial approval, or withhold approval, on the
35 basis of such report and shall * notify the obligor in writing by
35A certified or registered mail, of the contents of said report and the
35B action of said municipal governing body with relation thereto * not
35C later than 180 days after receipt of the notice from the obligor of
35D the completion of the improvements. Where partial approval is
35E granted, the obligor shall be released from all liability pursuant to
35F its performance guaranty bond, except for that portion adequately
35G sufficient to secure the improvements not yet approved.*

36 * [If the municipal governing body or the municipal engineer fails
37 to comply with the time limitation provisions contained herein, all
38 improvements will be deemed to have been approved and the obligor
39 and surety, if any, shall be released from all liability, pursuant to
40 its performance guaranty bond.] *

40A * If the municipal governing body fails to send such notification
40B to the obligor within 180 days, the obligor may notify the governing
40C body, in writing, by certified or registered mail, with a copy thereof
40D sent to the municipal engineer, that failure of the governing body
40E to provide the obligor with such notification within 60 days shall
40F constitute approval of the improvements. Within 60 days after
40G receipt of this warning notice, the governing body shall send such
40H notification of the contents of the report and its action with relation
40I thereto to the obligor by certified or registered mail. Failure of the
40J governing body to send or provide such notification to the obligor
40K within 60 days shall be deemed to constitute approval of the im-
40L provements and the obligor and surety, if any, shall be released
40M from all liability, pursuant to its performance guaranty bond.*

41 If any portion of the said improvements shall not be approved
42 or shall be rejected by the municipal governing body, the obligor
43 shall cause the same to be completed and, upon completion, the
44 same procedure of notification, as outlined herein, shall be followed.

45 Nothing herein, however, shall be construed in limitation of the

46 obligor's right to contest or question by legal proceedings or other-
47 wise, any determination of the municipal governing body or the
48 municipal engineer.

49 The obligor shall be responsible for all of the inspection fees of
50 the municipal engineer incurred in making the foregoing inspec-
51 tions.

52 Nothing herein shall affect the obligation of any person relating
53 to the posting of appropriate maintenance bonds, when required.

54 Where herein reference is made to the municipal engineer, it shall
55 be deemed to include any municipal official acting in such capacity.

1 *2. Section 21 of the act of which this act is amendatory is
2 amended to read as follows:

3 21. Before final approval of plats the governing body may require,
4 in accordance with the standards adopted by ordinance, the instal-
5 lation, or the furnishing of a performance guarantee in lieu thereof,
6 of any or all of the following improvements it may deem to be
7 necessary or appropriate: street grading, pavement, gutters, curbs,
8 sidewalks, street lighting, shade trees, surveyor's monuments, water
9 mains, culverts, storm sewers, sanitary sewers or other means of
10 sewage disposal, drainage structures, and such other subdivision
11 improvements as the municipal governing body may find necessary
12 in the public interest.

13 The municipality may also require a maintenance guarantee for a
14 period not to exceed 2 years after final acceptance of the improve-
15 ment, in an amount not to exceed 15 per cent of the cost of the im-
16 provement or of the original installation.*

1 *~~[2.]~~* *3.* This act shall take effect *~~[immediately]~~* *90 days
2 after approval*.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

November 15, 1968

SENATE BILL NO. 494

To the Senate:

Pursuant to Article V, Section I, paragraph 14(b) of the Constitution, I herewith return Senate Bill No. 494, with my objections, for reconsideration.

This bill would amend the "Municipal Planning Act (1953)," P. L. 1953, c. 433, to specify more detailed procedures whereby subdivision developers may obtain release of the performance guarantees which municipalities may require to assure satisfactory installation of improvements. I recognize the desirability of spelling out such procedures in the statute so as to attempt to reduce the quantity of litigation on this subject.

Ideally, such steps should be considered as part of an over-all, systematic revision of our land use laws. Regardless of whatever action this Legislature takes with respect to this bill, I would hope that it will give further attention to the subject in considering a new Land Use Law during the next session.

In the meantime, however, I am recommending certain amendments to the present bill in order to assure protection of the interests of municipal taxpayers and of prospective residents of subdivisions as well to prevent undue hardships to the developers.

The 60-day period in which the municipal engineer would be required by this bill to make his inspections of the improvements and to submit his report to the governing body may sometimes prove inadequate to complete the thorough inspection that the public interest may require. Furthermore, the bill in its present form fails to achieve its purpose of assuring the developer that the municipality will act within a reasonable time to release the performance guaranty bond, because no time limit is provided for municipal action after receipt of the engineer's report. Since the developer is concerned only with the total time it takes to obtain release of the bond, I suggest that a single

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EXECUTIVE DEPARTMENT

Senate Bill No. 494

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time period of 180 days be established to cover the three steps of (1) the governing body directing the engineer to make the inspection, (2) the engineer completing the inspection and submitting his report, and (3) the governing body acting on the report.

In order to avoid any danger that municipal claims under a performance bond may be forfeited because of a misunderstanding, it appears sensible to require the developer to indicate clearly his intent to take advantage of the bill's time limit, before the provision for automatic approval through municipal inaction can take effect. Otherwise, situations could arise in which the developer concedes that the municipal engineer's inspection has revealed the need for further improvements and while the municipality delays final action to permit completion of such work, the expiration of the time period causes forfeiture of the municipality's claims regardless of the merits of the case. Notification of the completion of the improvements is normally a routine step; a conflict between the developer and the municipality because of failure of the municipality to grant approval is less routine. The initial routine notice probably should not be allowed to trigger the running of a period which could automatically result in substantial losses to a municipality and its taxpayers. The requirement of a second notice is not too onerous a burden to place upon the developers. Although the maximum period of eight months in which a municipality could stall is longer than normally should be necessary to complete municipal action, it nevertheless would be a vast improvement over the far longer delays that now sometimes occur. I invite further review of this procedure during consideration of the forthcoming Land Use Law.

Although the bill exempts maintenance bonds from the effects of its provisions, it appears desirable to accompany the drastic restrictions here placed on the utilization of performance bonds with explicit provisions for, and restrictions on, maintenance bonds. Otherwise, the litigation now surrounding

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performance bonds is likely merely to be transferred to the subject of maintenance bonds. I am, therefore, proposing that this bill incorporate a provision on this subject which had been prepared as a recommendation for inclusion in the proposed Land Use Law.

Maintenance bonds enable the municipality to retain some protection against latent defects in the improvements which may not be readily apparent. The passage of time is needed to allow for soil settling and to reveal whether the improvements will withstand freezing weather and the effects of other seasonal changes, before a municipality can confidently release all security on subdivision improvements.

Other amendments recommended here are in the nature of clarifying language. A slight delay in the effective date appears desirable to permit adjustment to the new procedures required under the bill.

Accordingly, I herewith return Senate Bill No. 494 for reconsideration and recommend that it be amended in the following manner:

On page 1, lines 21 and 22, after "shall" delete ", within 45 days after receipt of such notice,".

On page 1, line 25, delete "made within".

On page 2, lines 26 and 27, delete "60 days after receipt by him of the aforesaid authorization from the governing body; said report shall be".

On page 2, lines 28 and 29, delete "approval or rejection of said improvements, either in whole or in part, and if" and insert in lieu thereof "either approval, partial approval, or rejection. If".

On page 2, line 32, insert the following additional sentence: "Where said report indicates partial approval of said improvements, it shall indicate the cost of the improvements for which approval is rejected or withheld."

On page 2, line 33, after "shall" insert "accept or reject the improvements, grant partial approval, or withhold approval, on the basis of such report and shall".

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Senate Bill No. 494

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On page 2, line 35, delete "." and insert thereafter "not later than 180 days after receipt of the notice from the obligor of the completion of the improvements. Where partial approval is granted, the obligor shall be released from all liability pursuant to its performance guaranty bond, except for that portion adequately sufficient to secure the improvements not yet approved."

On page 2, lines 36 through 40, delete this paragraph in its entirety and insert in lieu thereof the following:

"If the municipal governing body fails to send such notification to the obligor within 180 days, the obligor may notify the governing body, in writing, by certified or registered mail, with a copy thereof sent to the municipal engineer, that failure of the governing body to provide the obligor with such notification within 60 days shall constitute approval of the improvements. Within 60 days after receipt of this warning notice, the governing body shall send such notification of the contents of the report and its action with relation thereto to the obligor by certified or registered mail. Failure of the governing body to send or provide such notification to the obligor within 60 days shall be deemed to constitute approval of the improvements and the obligor and surety, if any, shall be released from all liability, pursuant to its performance guaranty bond."

On page 2, after line 55, insert the following:

"2. Section 21 of the act of which this act is amendatory is amended to read as follows:

"Before final approval of plats the governing body may require, in accordance with the standards adopted by ordinance, the installation, or the furnishing of a performance guarantee in lieu thereof, of any or all of the following improvements it may deem to be necessary or appropriate: street grading, pavement, gutters, curbs, sidewalks, street lighting, shade trees, surveyor's monuments, water mains, culverts, storm sewers, sanitary sewers or other means of sewage disposal, drainage structures, and such other subdivision improvements as the municipal governing body may find necessary in the public interest.

"The municipality may also require a maintenance guarantee for a period not to exceed 2 years after final acceptance of the improvement, in an amount not to exceed 15 per cent of the cost of the improvement or of the original installation."

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On page 2, section 2, line 1, delete the figure "2"
and insert in lieu thereof the figure "3".

On page 2, section 2, line 1, delete "immediately"
and insert in lieu thereof "90 days after approval".

Respectfully,

/S/ RICHARD J. HUGHES

GOVERNOR

[Seal]

Attest:

/S/ ALAN J. KARCHER

Acting Secretary to the Governor

SENATE AMENDMENTS TO
SENATE, No. 494

STATE OF NEW JERSEY

ADOPTED NOVEMBER 15, 1968

Amend page 1, lines 21 and 22, after "shall" delete ", within 45 days after receipt of such notice,".

Amend page 1, line 25, delete "made within".

Amend page 2, lines 26 and 27, delete "60 days after receipt by him of the aforesaid authorization from the governing body; said report shall be".

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Amend page 2, line 33, after "shall" insert "accept or reject the improvements, grant partial approval, or withhold approval, on the basis of such report and shall".

Amend page 2, line 35, before "." insert "not later than 180 days after receipt of the notice from the obligor of the completion of the improvements. Where partial approval is granted, the obligor shall be released from all liability pursuant to its performance guaranty bond, except for that portion adequately sufficient to secure the improvements not yet approved."

Amend page 2, lines 36 through 40, delete this paragraph in its entirety and insert in lieu thereof the following:

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“The municipality may also require a maintenance guarantee for a period not to exceed 2 years after final acceptance of the improvement, in an amount not to exceed 15% of the cost of the improvement or of the original installation.”.

Amend page 2, section 2, line 1, delete the figure “2” and insert in lieu thereof the figure “3”.

Amend page 2, section 2, line 1, delete “immediately” and insert in lieu thereof “90 days after approval”.

9/15/68

STATE OF NEW JERSEY

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1 2. This act shall take effect immediately.