

40:55D-53

LEGISLATIVE HISTORY CHECKLIST  
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NJSA: 40:55D-53 (Roads--dedication)

LAWS OF: 1991 CHAPTER: 301

Bill No: S2406

Sponsor(s): Rand

Date Introduced: March 5, 1990

Committee: Assembly: Municipal Government

Senate: Land Use

Amended during passage: Yes Amendments during passage denoted

Date of Passage: Assembly: August 22, 1991

Senate: May 9, 1991

Date of Approval: November 7, 1991

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

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[FIRST REPRINT]  
SENATE, No. 2406

STATE OF NEW JERSEY

INTRODUCED MARCH 5, 1990

By Senator RAND

1     **AN ACT** concerning dedication of certain municipal streets and  
2         improvements, and amending P.L.1975, c.291.

3

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

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

8         41. a. Before recording of final subdivision plats or as a  
9         condition of final site plan approval or as a condition to the  
10         issuance of a zoning permit pursuant to subsection 52d. of this  
11         act, the approving authority may require and shall accept in  
12         accordance with the standards adopted by ordinance for the  
13         purpose of assuring the installation and maintenance of on-tract  
14         improvements:

15         (1) The furnishing of a performance guarantee in favor of the  
16         municipality in an amount not to exceed 120% of the cost of  
17         installation for improvements it may deem necessary or  
18         appropriate including: streets, grading, pavement, gutters, curbs,  
19         sidewalks, street lighting, shade trees, surveyor's monuments, as  
20         shown on the final map and required by the "Map Filing Law,"  
21         P.L.1960, c.141 (C.46:23-9.9 et seq.), water mains, culverts,  
22         storm sewers, sanitary sewers or other means of sewage disposal,  
23         drainage structures, erosion control and sedimentation control  
24         devices, public improvements of open space and, in the case of  
25         site plans only, other on-site improvements and landscaping.

26         (2) Provision for a maintenance guarantee to be posted with  
27         the governing body for a period not to exceed 2 years after final  
28         acceptance of the improvement, in an amount not to exceed 15%  
29         of the cost of the improvement. In the event that other  
30         governmental agencies or public utilities automatically will own  
31         the utilities to be installed or the improvements are covered by a  
32         performance or maintenance guarantee to another governmental  
33         agency, no performance or maintenance guarantee, as the case  
34         may be, shall be required by the municipality for such utilities or  
35         improvements.

36         b. The time allowed for installation of the improvements for  
37         which the performance guarantee has been provided may be  
38         extended by the governing body by resolution. As a condition or  
39         as part of any such extension, the amount of any performance

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:

<sup>1</sup> Senate SLM committee amendments adopted September 24, 1990.

1 guarantee shall be increased or reduced, as the case may be, to  
2 an amount not to exceed 120% of the cost of the installation as  
3 determined as of the time of the passage of the resolution.

4 c. If the required improvements are not completed or  
5 corrected in accordance with the performance guarantee, the  
6 obligor and surety, if any, shall be liable thereon to the  
7 municipality for the reasonable cost of the improvements not  
8 completed or corrected and the municipality may either prior to  
9 or after the receipt of the proceeds thereof complete such  
10 improvements.

11 d. Upon substantial completion of all required appurtenant  
12 utility improvements, and the connection of same to the public  
13 system, the obligor may notify the governing body in writing, by  
14 certified mail addressed in care of the municipal clerk of the  
15 completion or substantial completion of improvements and shall  
16 send a copy thereof to the municipal engineer. Thereupon the  
17 municipal engineer shall inspect all improvements of which such  
18 notice has been given and shall file a detailed report, in writing,  
19 with the governing body, indicating either approval, partial  
20 approval or rejection of such improvements with a statement of  
21 reasons for any rejection. The cost of the improvements as  
22 approved or rejected shall be set forth.

23 e. The governing body shall either approve, partially approve  
24 or reject the improvements, on the basis of the report of the  
25 municipal engineer and shall notify the obligor in writing, by  
26 certified mail, of the contents of said report and the action of  
27 said approving authority with relation thereto, not later than 65  
28 days after receipt of the notice from the obligor of the  
29 completion of the improvements. Where partial approval is  
30 granted, the obligor shall be released from all liability pursuant  
31 to its performance guarantee, except for that portion adequately  
32 sufficient to secure provision of the improvements not yet  
33 approved; provided that 30% of the amount of the performance  
34 guarantee posted may be retained to ensure completion of all  
35 improvements. Failure of the governing body to send or provide  
36 such notification to the obligor within 65 days shall be deemed to  
37 constitute approval of the improvements and the obligor and  
38 surety, if any, shall be released from all liability pursuant to such  
39 performance guarantee for such improvements.

40 f. If any portion of the required improvements are rejected,  
41 the approving authority may require the obligor to complete such  
42 improvements and, upon completion, the same procedure of  
43 notification, as set forth in this section shall be followed.

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

47 h. The obligor shall reimburse the municipality for all  
48 reasonable inspection fees paid to the municipal engineer for the

1 foregoing inspection of improvements; provided that the  
2 municipality may require of the developer a deposit for all or a  
3 portion of the reasonably anticipated fees to be paid to the  
4 municipal engineer for such inspection.

5 i. In the event that final approval is by stages or sections of  
6 development pursuant to subsection a. of section 29 of this act  
7 (C.40:55D-38), the provisions of this section shall be applied by  
8 stage or section.

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

19 (cf: P.L.1979, c.216, s.17)

20 2. This act shall take effect on the first day of the second  
21 month next following enactment.

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LAND USE

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26 Requires municipalities to accept dedication of certain  
27 improvements upon release of performance guarantee.

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1 foregoing inspection of improvements; provided that the  
2 municipality may require of the developer a deposit for all or a  
3 portion of the reasonably anticipated fees to be paid to the  
4 municipal engineer for such inspection.

5 i. In the event that final approval is by stages or sections of  
6 development pursuant to subsection a. of section 29 of this act  
7 (C.40:55D-38), the provisions of this section shall be applied by  
8 stage or section.

9 j. The municipal governing body shall, upon the release of any  
10 performance guarantee required pursuant to subsection a. of this  
11 section, accept dedication for public use of streets or roads and  
12 any other improvements made thereon according to site plans and  
13 subdivision plats approved by the municipal planning board,  
14 provided that such improvements have been inspected and have  
15 received final approval by the municipal engineer.

16 (cf: P.L.1979, c.216, s.17)

17 2. This act shall take effect on the first day of the second  
18 month next following enactment.

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#### STATEMENT

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23 This bill would require that a municipality accept dedication  
24 for public use of streets or roads and any other improvements  
25 made thereon according to site plans and subdivision plats which  
26 have been approved by the municipal planning board, provided  
27 that the municipal engineer has inspected and given final  
28 approval to the improvements. Currently, a municipality does  
29 not accept dedication, and therefore become responsible for  
30 streets and other improvements, until it adopts an ordinance or  
31 asserts its jurisdiction over the street or improvement.

32 The cost and supply of housing is affected when developers  
33 must maintain municipal streets and other improvements, and  
34 must also provide services to residents of those streets, after a  
35 housing development is completed. The provisions of this bill  
36 would allow a developer to relinquish responsibility for the  
37 upkeep of these developments and commence new development  
38 projects, creating new sources of housing. Also, any costs which  
39 a developer incurs as a result of the continued maintenance of  
40 such property or the provision of services is ultimately reflected  
41 in the purchase price of the properties within the development.

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#### LAND USE

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46 Requires municipalities to accept dedication of certain  
47 improvements upon release of performance guarantee.

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 2406

STATE OF NEW JERSEY

DATED: JUNE 24, 1991

The Assembly Municipal Government Committee favorably reports Senate Bill No. 2406(1R).

Senate Bill No. 2406 (1R) would require any improvements that have been dedicated to a municipality on the subdivision plat or site plan, and approved by the approving authority, to be deemed accepted for dedication by the municipal governing body when the performance guarantee authorized under the "Municipal Land Use Law" is released, provided that the improvements have been inspected and have received final approval by the municipal engineer.

SENATE LAND USE MANAGEMENT AND  
REGIONAL AFFAIRS COMMITTEE

STATEMENT TO

**SENATE, No. 2406**

with committee amendments

**STATE OF NEW JERSEY**

DATED: SEPTEMBER 24, 1990

Senate Land Use Management and Regional Affairs Committee reports favorably Senate Bill No. 2406, with committee amendments.

Senate Bill No. 2406, as amended by the committee, would require that, to the extent that any improvements have been dedicated to a municipality on the subdivision plat or site plan, the municipal governing body shall be deemed, upon the release of any performance guarantee required under existing law, to accept dedication for public use of streets or roads and any other improvements made thereon, provided that the improvements have been inspected and have received the final approval of the municipal engineer.

The committee amended the bill to clarify that the bill applies only to improvements which have been dedicated to the municipality on the subdivision plat or site plan. Further, the committee amended the bill to clarify that a municipal governing body shall "be deemed" to accept dedication for public use of streets or roads and any other improvements which have been dedicated, upon the release of any performance guarantee required pursuant to the "Municipal Land Use Law."

Finally, the committee amended the bill to delete the reference to the municipal planning board and substitute the term "approving authority" in subsection j., since, in certain instances, the board of adjustment maintains jurisdiction over site plan applications. As defined in the "Municipal Land Use Law," "approving authority" means the planning board of the municipality, unless a different agency is designated by ordinance when acting pursuant to the authority of that law.