

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 40:55D-53 (Inspection fees--developers)

LAWS OF: 1991 **CHAPTER:** 311

Bill No: A182

Sponsor(s): DeCroce

Date Introduced: Pre-filed

Committee: Assembly: Municipal Government

Senate: County & Municipal Government

Amended during passage: Yes Amendments during passage
denoted by asterisks

Date of Passage: Assembly: January 29, 1991

Senate: July 25, 1991

Date of Approval: November 8, 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

KBG/dgw

[SECOND REPRINT]

ASSEMBLY, No. 182

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Assemblymen DeCROCE, PENN and Villapiano

1 **AN ACT** concerning the deposit of inspection fees by developers
2 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. Guarantees requires; surety; release.

9 a. Before recording of final subdivision plats or as a condition
10 of final site plan approval or as a condition to the issuance of a
11 zoning permit pursuant to subsection [52d. of this act] d. of
12 section 52 of P.L.1975, c.291 (C.40:55D-65), the approving
13 authority may require and shall accept in accordance with the
14 standards adopted by ordinance for the purpose of assuring the
15 installation and maintenance of on-tract improvements:

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

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

37 b. The time allowed for installation of the improvements for
38 which the performance guarantee has been provided may be

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:

¹ Senate SCM committee amendments adopted February 25, 1991.

² Senate floor amendments adopted May 20, 1991.

1 extended by the governing body by resolution. As a condition or
2 as part of any such extension, the amount of any performance
3 guarantee shall be increased or reduced, as the case may be, to
4 an amount not to exceed 120% of the cost of the installation as
5 determined as of the time of the passage of the resolution.

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

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

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

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

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

1 h. The obligor shall reimburse the municipality for all
2 reasonable inspection fees paid to the municipal engineer for the
3 foregoing inspection of improvements; provided that the
4 municipality may require of the developer a deposit for [all or] a
5 portion of the reasonably anticipated fees to be paid to the
6 municipal engineer for such inspection. ²[The initial deposit
7 made by a developer shall not exceed 25% of the reasonably
8 anticipated inspection fees ¹unless the developer offers to pay an
9 additional deposit amount¹. The developer shall be required to
10 maintain the deposit at not less than 10% of the balance of the
11 anticipated inspection fees as that balance is adjusted from time
12 to time by the amount paid to the municipal engineer for
13 inspection.] For those developments for which the reasonably
14 anticipated fees are less than \$10,000, fees may, at the option of
15 the developer, be paid in two installments. The initial amount
16 deposited by a developer shall be 50% of the reasonably
17 anticipated fees. When the balance on deposit drops to 10% of
18 the reasonably anticipated fees because the amount deposited by
19 the developer has been reduced by the amount paid to the
20 municipal engineer for inspection, the developer shall deposit the
21 remaining 50% of the anticipated inspection fees. For those
22 developments for which the reasonably anticipated fees are
23 \$10,000 or greater, fees may, at the option of the developer, be
24 paid in four installments. The initial amount deposited by a
25 developer shall be 25% of the reasonably anticipated fees. When
26 the balance on deposit drops to 10% of the reasonably anticipated
27 fees because the amount deposited by the developer has been
28 reduced by the amount paid to the municipal engineer for
29 inspection, the developer shall make additional deposits of 25% of
30 the reasonably anticipated fees. The municipal engineer shall not
31 perform any inspection if sufficient funds to pay for those
32 inspections are not on deposit².

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

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

38 2. This act shall take effect immediately.

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41 LOCAL GOVERNMENT

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43 Limits amount developers must deposit for inspection fees.

1 h. The obligor shall reimburse the municipality for all
2 reasonable inspection fees paid to the municipal engineer for the
3 foregoing inspection of improvements; provided that the
4 municipality may require of the developer a deposit for [all or] a
5 portion of the reasonably anticipated fees to be paid to the
6 municipal engineer for such inspection. The initial deposit made
7 by a developer shall not exceed 25% of the reasonably anticipated
8 inspection fees. The developer shall be required to maintain the
9 deposit at not less than 10% of the balance of the anticipated
10 inspection fees as that balance is adjusted from time to time by
11 the amount paid to the municipal engineer for inspection.

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

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

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STATEMENT

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22 This bill limits the amount of the deposit a municipality may
23 require of a developer to cover the anticipated costs of the
24 municipal engineer's inspection fees. The initial deposit shall not
25 exceed 25% of the anticipated inspection fees. Thereafter the
26 developer shall be required to maintain the deposit at no less than
27 10% of the balance of the estimated inspection fees. The purpose
28 of the bill is to require a sufficient deposit by the developer to
29 ensure that the municipality's inspection costs are reimbursed
30 and also prohibit the municipality from requiring an excessive
31 cash deposit which would needlessly encumber a large sum of the
32 developer's capital.

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LOCAL GOVERNMENT

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37 Limits amount developers must deposit for inspection fees.

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 182

STATE OF NEW JERSEY

DATED: OCTOBER 11, 1990

The Assembly Municipal Government Committee reports favorably Assembly Bill No. 182.

This bill limits the amount of the deposit a municipality may require of a developer to cover the anticipated costs of the municipal engineer's inspection fees. The initial deposit shall not exceed 25% of the anticipated inspection fees. Thereafter the developer shall be required to maintain the deposit at no less than 10% of the balance of the estimated inspection fees. The purpose of the bill is to require a sufficient deposit by the developer to ensure that the municipality's inspection costs are reimbursed and also prohibit the municipality from requiring an excessive cash deposit which would needlessly encumber a large sum of the developer's capital.

This bill has been pre-filed for introduction in the 1990 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE COUNTY AND MUNICIPAL
GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 182

with Senate committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 25, 1991

The Senate County and Municipal Government Committee reports favorably Assembly Bill No. 182 with Senate committee amendments.

Assembly Bill No. 182, as amended by the committee, limits the amount of the deposit a municipality may require of a developer to cover the anticipated costs of the municipal engineer's inspection fees unless the developer offers to pay an additional deposit amount. The initial deposit shall not exceed 25% of the anticipated inspection fees. Thereafter the developer shall be required to maintain the deposit at no less than 10% of the balance of the estimated inspection fees. The purpose of the bill is to require a sufficient deposit by the developer to ensure that the municipality's inspection costs are reimbursed and also prohibit the municipality from requiring an excessive cash deposit which would needlessly encumber a large sum of the developer's capital.

The committee amended the bill to permit a developer to pay if he so desires an initial deposit amount in excess of 25% of the anticipated inspection fees.