

SENATE, No. 2307

STATE OF NEW JERSEY

INTRODUCED DECEMBER 1, 1997

By Senator KYRILLOS

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.

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

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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).

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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).

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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

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 according to the method of calculation set forth in section 15 of
2 P.L.1991, c.256 (C.40:55D-53.4), for improvements which the
3 approving authority may deem necessary or appropriate including:
4 streets, grading, pavement, gutters, curbs, sidewalks, street lighting,
5 shade trees, surveyor's monuments, as shown on the final map and
6 required by the "Map Filing Law," P.L.1960, c.141 (C.46:23-9.9 et
7 seq.), water mains, culverts, storm sewers, sanitary sewers or other
8 means of sewage disposal, drainage structures, erosion control and
9 sedimentation control devices, public improvements of open space
10 and, in the case of site plans only, other on-site improvements and
11 landscaping.

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

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

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

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

45 d. (1) Upon substantial completion of all required street
46 improvements (except for the top course) and appurtenant utility

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

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

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

45 For the purpose of releasing the obligor from liability pursuant to
46 its performance guarantee, the amount of the performance guarantee

1 attributable to each approved improvement shall be reduced by the
2 total amount for each such improvement, in accordance with the
3 itemized cost estimate prepared by the municipal engineer and
4 appended to the performance guarantee pursuant to subsection a. of
5 this section, including any contingency factor applied to the cost of
6 installation. If the sum of the approved improvements would exceed
7 70 percent of the total amount of the performance guarantee, then the
8 municipality may retain 30 percent of the amount of the total
9 performance guarantee to ensure completion and acceptability of all
10 improvements, as provided above.

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

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

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

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

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

44 h. The obligor shall reimburse the municipality for all reasonable
45 inspection fees paid to the municipal engineer for the foregoing
46 inspection of improvements; provided that the municipality may

1 require of the developer a deposit for the inspection fees in an amount
2 not to exceed, except for extraordinary circumstances, the greater of
3 \$500 or 5% of the cost of improvements, which cost shall be
4 determined pursuant to section 15 of P.L.1991, c.256
5 (C.40:55D-53.4). For those developments for which the inspection
6 fees are less than \$10,000, fees may, at the option of the developer, be
7 paid in two installments. The initial amount deposited by a developer
8 shall be 50% of the inspection fees. When the balance on deposit
9 drops to 10% of the inspection fees because the amount deposited by
10 the developer has been reduced by the amount paid to the municipal
11 engineer for inspection, the developer shall deposit the remaining 50%
12 of the inspection fees. For those developments for which the
13 inspection fees are \$10,000 or greater, fees may, at the option of the
14 developer, be paid in four installments. The initial amount deposited
15 by a developer shall be 25% of the inspection fees. When the balance
16 on deposit drops to 10% of the inspection fees because the amount
17 deposited by the developer has been reduced by the amount paid to the
18 municipal engineer for inspection, the developer shall make additional
19 deposits of 25% of the inspection fees. The municipal engineer shall
20 not perform any inspection if sufficient funds to pay for those
21 inspections are not on deposit.

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

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

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

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37 4. This act shall take effect immediately.

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STATEMENT

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

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