

LEGISLATIVE UPDATE
James Heiser, PLS, Legislative Chairman

BILLS RECENTLY SENT TO GOVERNOR CHRISTIE FOR CONSIDERATION

In the normal course of business in the legislative process, a bill becomes a law when signed by the Governor, or after 45 days if the Governor takes no action. If the House of origin is not in session on the 45th day, the Governor has until the first session day after to act.

Different rules apply to bills passed during the last 45 days of a two-year legislative session. A bill passed between the 45th day and the 10th day before the expiration of the session becomes law unless the Governor vetoes it before noon of the day prior to the expiration of the two-year Legislature – the second Monday in January of an even-numbered year (i.e. January 8 of this year). The Legislature convenes on that day to consider any such vetoes.

A bill passed between the 10th and last day of the session will become law only upon the Governor's signature. The Governor has until seven days after the expiration of the two-year session to sign such a bill. If the Governor does not approve it, the bill is "pocket vetoed." This is the only situation in which a bill can be vetoed without being returned to the Legislature for reconsideration. If a bill is pocket vetoed, it needs to go get re-introduced and go through the entire legislative process again (committee hearings in both houses and passage by the Senate and Assembly).

On the final day of this legislative session, there are four bills which received final passage by the Legislature and were sent to Governor Christie for his consideration. He will have until January 15 to sign these bills into law or they will be pocket vetoed.

A-760/S-1599

Sponsors: Assembly Members Paul Moriarty (D-4); Patrick Diegnan (D-18); Angelica Jimenez (D-32); Jack Ciattarelli (R-16); and Jay Webber (R-26) and Senators Jeff Van Drew (D-1); and Shirley Turner (D-15)

This legislation would require any professional or occupational board, agency, or committee located in the Division of Consumer Affairs in the Department of Law and Public Safety or in the Department of Environmental Protection that administers examinations that determine, or that are otherwise related to, licensure in that profession or occupation, to report annually to the Legislature the passage and failure rates, and any additional information relevant to interpreting examination results, for each examination the board, agency, or committee administers.

S-2205/A-1133

Sponsors: Senators Jeff Van Drew (D-1); and Patrick Diegnan (D-18) and Assembly Members Shavonda Sumter (D-35); Betty Lou DeCroce (R-26); Nancy Pinkin (D-18); Gail Phoebus (R-24); Parker Space (R-24); Paul Moriarty (D-4); and Benjie Wimberly (D-35)

This legislation would require each of the 85 professional or occupational boards designated in Section 2 of P.L. 1978, c.73 (C.45:1-15), which includes the State Board of Professional Engineers and Land Surveyors, provide on its Internet website a secure process to allow applicants to complete online applications for initial licensure, certification or registration and renewals, including any fee payments. The bill would provide that applicants be able to submit electronically all necessary documentation for review and approval of the board. The secure websites are to be available by the first day of the 36th month next following enactment.

S-3233/A-1425

Sponsors: Senators Jeff Van Drew (D-1); and Steve Oroho (R-24); and Assembly Members Gordon Johnson (D-37); Benjie Wimberly (D-35); Eliana Pintor Marin (D-29); and John Wisniewski (D-19)

This legislation would modify the requirements for furnishing performance and maintenance guarantees under the “Municipal Land Use Law.” Performance and maintenance guarantees ensure that improvements required to be made by a developer under a development approval are completed and maintained.

Under current law, a municipality may require a developer to post performance guarantees to ensure that certain types of improvements are completed. These may include improvements that are not being dedicated to a public entity. Under this bill, a municipality will only be able to require developers to post performance guarantees that cover improvements being dedicated to a public entity.

The one exception to this is that a municipality may require a performance guarantee for privately-owned perimeter buffer landscaping. The bill would allow a developer to opt to post a separate performance guarantee for this item.

In addition, the bill would eliminate the following types of improvements from the list of improvements that may be subject to a performance guarantee requirement under current law: culverts, storm sewers, erosion control and sedimentation control devices, other on-site improvements and landscaping. The bill would also modify the description of some of the types of improvements that may currently be subjected to a performance guarantee requirement.

The bill would authorize municipalities to require two additional types of guarantees: a “temporary certificate of occupancy guarantee,” and a “safety and stabilization guarantee.”

Under the bill, if a developer seeks a temporary certificate of occupancy for a development, unit, lot, building, or phase of development, a municipality may require the developer to furnish a “temporary certificate of occupancy guarantee” in favor of the municipality in an amount equal to 120% of the cost of installation of improvements which will remain to be completed and which are required to be completed prior to the issuance of the permanent certificate of occupancy. Upon posting a “temporary certificate of occupancy guarantee,” all sums remaining under a performance guarantee will be released because the new “temporary certificate of occupancy guarantee” adequately ensures completion of the improvements.

The bill would specify that the scope and the amount of a “temporary certificate of occupancy guarantee” will be determined by the zoning officer, the municipal engineer, or another municipal official so designated by the ordinance. The bill also specifies that a “temporary certificate of occupancy guarantee” will be released by the zoning officer, the municipal engineer, or another municipal official so designated by the ordinance, upon the issuance of a permanent certificate of occupancy with regard to the applicable improvements.

The bill would authorize a municipality to require a developer to furnish a “safety and stabilization guarantee,” which will provide the municipality a source of funding to return property to a safe and stable condition or to implement measures to protect the public from access to an unsafe or unstable condition. A municipality could claim payment under this guarantee if a developer ceases all work on the development for at least 60 consecutive days and does not recommence work within 30 days after the municipality notifies the developer of the municipality’s intent to claim payment under the guarantee. The bill would specify the manner of calculating the amount of a “safety and stabilization guarantee.”

The bill would also modify provisions of law that control the posting of maintenance guarantees. Under current law, a municipality may require a developer to provide a maintenance guarantee for a period of

two years after the completion and acceptance of an improvement in an amount not to exceed 15% of the cost of the improvement. Under the bill, a municipality may require a developer to provide a maintenance guarantee for: improvements that were the subject of a performance guarantee, and specific private stormwater management improvements.

The bill would change the current requirements concerning a developer's responsibility to pay fees to cover the municipal engineer's inspection of improvements completed by the developer. Under the bill, a developer would be required to reimburse a municipality for reasonable inspection fees paid to the municipal engineer for the inspection of improvements. A municipality may require a developer to post in escrow for this purpose:

- an amount not to exceed, except for extraordinary circumstances, the greater of \$500 or 5% of the cost of bonded improvements that are subject to a performance guarantee, and
- an amount not to exceed 5% of the cost of private site improvements that are not subject to a performance guarantee.

The bill would also delete from current law a provision that prohibits a municipal engineer from performing an inspection if there are insufficient funds to pay for those inspections. The bill would authorize a municipality that determines there are insufficient funds in escrow to cover the cost of additional required inspections to require the developer to deposit additional funds in escrow provided that the municipality delivers to the developer a written inspection escrow deposit request, specifying details about the additional required inspections.

The amendments adopted in committee clarify that a developer may comply with a "safety and stabilization guarantee" requirement imposed under municipal ordinance either by posting a separate guarantee or as a line item within a performance guarantee. The amendments anticipate that there may be circumstances when a municipality may require a developer to post a "safety and stabilization guarantee" before it is necessary for the developer to furnish a performance guarantee. Under those circumstances, the amendments would allow the developer the option of posting a separate "safety and stabilization guarantee" and require the municipality to release the separate "safety and stabilization guarantee" to the developer upon the developer's furnishing of a performance guarantee which includes an adequate line item for safety and stabilization.

The amendments would also require a municipality to release the entire amount of a "safety and stabilization guarantee" if the municipal engineer determines that development of the project site has reached a point that the improvements installed are adequate to avoid any potential threat to public safety.