

BILL ANALYSIS

Senate Research Center
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S.B. 1980
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

When a developer enters into a contract with a municipality for the purpose of a public improvement project, the developer must first secure a performance bond. These performance bonds, usually issued by a bank or insurance agency, are granted to developers for the purpose of ensuring that the project is completed and satisfactory. In the instance that a developer fails to adequately complete a project, the entity issuing the bond can use the performance bond to complete the project.

Currently, municipalities can require developers to secure a performance bond that covers more than just the contracted project. Developers commonly enter into a contract with a municipality for the purpose of completing one specific project but are then required by the municipality to obtain a performance bond to cover additional measures beyond the original scope of the contracted project. For example, a developer may be contracted to fix a bridge but be required to secure a performance bond that covers the cost of fixing the bridge, a road, and a pipeline. This costly requirement places an undue burden on developers by requiring them to hold insurance on a project they have not been contracted to complete.

S.B. 1980 prohibits a municipality from requiring a performance bond to include coverage for projects that fall outside of the terms of the agreed contract between the developer and the municipality.

Additionally, this bill allows developers to utilize an irrevocable letter of credit (ILOC) in the amount that would otherwise be required of the performance bond if both parties agree to this method. An ILOC is an agreement between banks and parties that details specific prices and terms, and can only be broken by unanimous consent. This ensures the municipality will pay the developer for their work, while holding developers accountable for the completion of the project.

As proposed, S.B. 1980 amends current law relating to performance bonds for certain public improvements in certain municipalities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 212.073, Local Government Code, as follows:

Sec. 212.073. New heading: PERFORMANCE BOND; LETTER OF CREDIT. (a) Creates this subsection from existing text. Requires the developer, except as provided by Subsection (b), to execute a performance bond for the construction of the improvements that are the subject of the contract under Section 212.071 (Developer Participation Contract) to ensure completion of the project. Requires the amount of the bond to be for the contract price for the improvements. Prohibits the municipality from requiring the developer to include in the amount of the bond any other improvement related to the development that the developer did not contract with the municipality to construct under Section 212.071.

(b) Authorizes the municipality and developer to agree that, instead of a performance bond under Subsection (a), the developer may submit to the municipality an irrevocable letter of credit in the amount required under Subsection (a) for the bond. Prohibits the municipality, as part of the agreement, from paying any amount to the developer, issuing a building permit related to the development other than a permit necessary for the improvements that are the subject of contract, or approving a subdivision plat for the developer until improvements are complete or in the final phase of construction if the improvements are constructed in phase, and the developer has submitted to the municipality an affidavit stating that the developer has paid all costs associated with the construction.

SECTION 2. Makes application of this Act prospective regarding a contract entered into under Section 212.071, Local Government Code.

SECTION 3. Effective date: September 1, 2017.