

Bond Case Briefs

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Amendments to the PA MPC Clarify Municipal Bonding Requirements.

Kicking off 2022, we can celebrate a win for builders and developers with the enactment of PA Senate Bill 208, which was signed into law by Governor Wolf on December 22, 2021.

SB 208 made numerous changes to Section 509 of the Pennsylvania Municipalities Planning Code (the “MPC”), which deals with posting financial security to guarantee completion of the public improvements depicted on a plat. Pursuant to Section 509, a municipality can require a developer to post financial security (usually in the form of a letter of credit or a bond) in an amount equal to 110% of the cost of the public improvements shown on the plan before releasing it for recording. These bonded improvements typically include roads, stormwater and drainage facilities, open space improvements, and required buffer landscaping.

Under the procedures outlined in Section 509, developers can request periodic reductions to the amount of financial security that a municipality is holding for a project as work progresses. Before SB 208, however, Section 509 contained language that some municipalities used to retain financial security equal to both the cost of the outstanding improvements and 10% of the original bond. As an example, imagine a situation where a developer is required to post a \$1,000,000 bond with a municipality. The developer completes all but \$75,000 of the required work and requests a partial release of the bond. Under former Section 509, even though the developer only has \$75,000 of work to complete, some municipalities took the position that they were entitled to hold a bond of \$175,000 (10% of the original amount of financial security posted plus the cost of the remaining improvements) – more than 2 times the cost of the remaining improvements. Obviously, such an outcome goes far beyond protecting a municipality’s interest in ensuring a project is completed and negatively impacts a developer’s ability to get bonded for other projects.

SB 208 modifies Section 509 to clarify that a municipality may only retain 110% of the value of the remaining improvements. So, in the previous situation, the municipality could hold \$82,500 (the cost of the remaining improvements plus a 10% contingency). The full language of SB 208, which will take effect 60 days from the date of enactment, is available [here](#).

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