

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 373*

Short Title: Performance Guarantees/Subdivision Streets. (Public)

Sponsors: Senators Meredith (Primary Sponsor); Ballard and Cook.

Referred to: Rules and Operations of the Senate

March 27, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO STATE LAW CONCERNING PERFORMANCE
3 GUARANTEES ON COUNTY SUBDIVISION STREETS OFFERED FOR PUBLIC
4 DEDICATION.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 153A of the General Statutes is amended by adding a new
7 section to read:

8 **"§ 153A-331.1. Performance guarantees and acceptance of streets offered for public**
9 **dedication.**

10 (a) Applicability. – This section applies to county subdivision streets located outside
11 municipal jurisdiction. This section applies to all developments approved on or after August 1,
12 2017, and retroactively to all county residential subdivisions or development plans approved on
13 or after October 1, 2010, that include an offer of dedication of roads and the roads that have
14 been constructed and opened for travel and are fully completed.

15 (b) Performance and Residual Performance Guarantees to Be Provided. – The following
16 shall apply to performance and residual performance guarantees:

17 (1) A county ordinance may or may not provide for performance guarantees for
18 new streets offered for dedication. If a county ordinance does not provide for
19 performance guarantees for new streets offered for dedication, that county
20 shall not require the successful completion of the new street improvements
21 prior to allowing a plat to be recorded.

22 (2) Ordinances shall provide for the residual performance guarantee pursuant to
23 subsections (g) through (j) of this section.

24 (3) Developers may choose not to provide a performance guarantee. If a
25 developer chooses not to provide a performance guarantee, the developer
26 shall be permitted to record a plat and proceed to construct the street. Prior
27 to the issuance of any building permit for a structure to be constructed within
28 the subdivision or development, the developer shall provide the residual
29 performance guarantee.

30 (4) For subdivision streets, the type of performance or residual performance
31 guarantee shall be as defined in G.S. 160A-372(g)(1), and the type of
32 security utilized shall be at the election of the developer.

33 (c) Amount of Performance Guarantee. – The amount of a street performance guarantee
34 shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of
35 completion provided by the engineer of record at the time the performance guarantee is issued.
36 Any amount of any extension of the performance guarantee necessary to complete required



1 improvements shall not exceed one hundred twenty-five percent (125%) of the reasonably
2 estimated cost of completion provided by the engineer of record to complete the remaining
3 incomplete improvements. If the performance guarantee is extended beyond the first year, the
4 principal amount for the revised guarantee shall be properly adjusted for any anticipated cost
5 increase or decrease. The performance guarantee amount includes the reasonable cost to the
6 county to administer and collect the guarantee.

7 (d) Use of Performance Guarantee. – A performance guarantee on a street shall only be
8 used for completion of the required improvements and not for repairs or maintenance after
9 completion.

10 (e) Extension of Street Performance Guarantee. – If the required improvements are not
11 complete and the current performance guarantee is expiring, the performance guarantee shall be
12 extended, or a new performance guarantee issued, for an additional period until the required
13 improvements are complete. A developer shall demonstrate reasonable, good-faith progress
14 toward completion of the required improvements that are the subject of the performance
15 guarantee or any extension. The form of any extension or new performance guarantee shall be
16 as defined in G.S. 160A-372(g)(1), and the type of security used shall remain at the election of
17 the developer.

18 (f) Release of Performance Guarantee. – Any performance guarantee on a street shall
19 be released upon confirmation from the Division of Highways that the street has been accepted
20 for maintenance, but not later than six months following submittal to the Division of Highways
21 of form SR-2, "Request for Addition to State Maintained Secondary Road System," and upon
22 the presentation of any of the following documents:

23 (1) A county-issued construction inspection approval for the fully completed
24 streets.

25 (2) Division of Highways-issued construction inspection approval for the fully
26 completed streets.

27 (3) A sealed certification by the engineer of record confirming to the county and
28 the Division of Highways that the street or road is fully completed and
29 conforms to the approved plans and specifications.

30 (4) Proof of posting of the residual performance guarantee pursuant to
31 subsection (h) of this section.

32 (f1) Release of Performance Guarantee if Street Built to More Stringent Standards. –
33 Any performance guarantee on a street that is built with more stringent standards than those
34 required by the Division of Highways standards of January 1, 2017, shall be released upon
35 confirmation from the Division of Highways that the street has been accepted for maintenance,
36 but not later than three months following submittal to the Division of Highways of form SR-2,
37 "Request for Addition to State Maintained Secondary Road System," and upon the presentation
38 of any of the following documents:

39 (1) A county-issued construction inspection approval for the fully completed
40 streets.

41 (2) Division of Highways-issued construction inspection approval for the fully
42 completed streets.

43 (3) A sealed certification by the engineer of record confirming to the county and
44 the Division of Highways that the street or road is fully completed and
45 conforms to the approved plans and specifications.

46 (4) Proof of posting of the residual performance guarantee pursuant to
47 subsection (h) of this section.

48 (g) Incremental Reduction During Construction. – The principal amount of the
49 performance guarantee may be incrementally reduced by the developer during the course of
50 construction to reflect the level of completion of the road facility and its associated storm

1 drainage and other required appurtenances, but it shall not be reduced below the amount
2 required in subsection (h) of this section.

3 (h) Reduction to Residual Amount Upon Certification. – Upon certification that the
4 road has been fully constructed, the performance guarantee shall be reduced to a residual
5 amount that is the greater of either fifteen percent (15%) of the total costs of construction or
6 one hundred twenty-five percent (125%) of the costs of the travel surface pavement. This
7 reduced guarantee shall be known as the residual performance guarantee.

8 (i) Purpose and Use of Residual Performance Guarantee. – The residual performance
9 guarantee is for the purpose of allowing a reasonable period of time within which the
10 completed new roads offered for dedication may attain the density required for acceptance and
11 be accepted for maintenance by the Division of Highways. The residual performance guarantee
12 shall only be used for necessary maintenance or repairs, including the removal of structural
13 encroachments that impede maintenance or compromise the safety of the traveling public.

14 (j) Time Limit on Residual Performance Guarantee. – The residual performance
15 guarantee shall remain in place until the road is accepted, or for a period of one year from the
16 date of issuance, whichever is less. If at the end of one year the road is still not eligible for
17 acceptance, the residual performance guarantee shall be extended for a second year. If the
18 developer has fully constructed the street but not achieved the required density or alternate
19 density pursuant to subdivision (4) of subsection (l) of this section, the residual performance
20 guarantee shall be extended beyond the end of the second full year.

21 (k) Release of Residual Performance Guarantee. – The residual performance guarantee
22 shall be released as follows:

23 (1) Within 30 days of the date the street or road is accepted for maintenance by
24 the Division of Highways, but not later than six months following submittal
25 to the Division of Highways of form SR-2, "Request for Addition to State
26 Maintained Secondary Road System," and upon the presentation of any of
27 the following documents:

28 a. A county-issued construction inspection approval for the fully
29 completed streets.

30 b. Division of Highways-issued construction inspection approval for the
31 fully completed streets.

32 c. A sealed certification by the engineer of record confirming to the
33 county and the Division of Highways that the street or road is fully
34 completed and conforms to the approved plans and specifications.

35 (2) Within 30 days following the second anniversary date of the issuance of the
36 residual guarantee, provided that the road is fully constructed. In addition, in
37 the case of a residential subdivision or development, the alternate density
38 measures provided in subdivision (4) of subsection (l) of this section shall
39 have been met. In the case of a nonresidential development, the street shall
40 be accepted in the same time frame, provided one building has been
41 constructed within the project on the street.

42 (k1) Release of Residual Performance Guarantee if Street Built to More Stringent
43 Standards. – Any performance guarantee on a street that is built with more stringent standards
44 than those required by the Division of Highways standards of January 1, 2017, shall be released
45 upon confirmation from the Division of Highways that the street has been accepted for
46 maintenance, but not later than three months following submittal to the Division of Highways
47 of form SR-2, "Request for Addition to State Maintained Secondary Road System," and upon
48 the presentation of any of the following documents:

49 (1) A county-issued construction inspection approval for the fully completed
50 streets.

1 (2) Division of Highways-issued construction inspection approval for the fully
2 completed streets.

3 (3) A sealed certification by the engineer of record confirming to the county and
4 the Division of Highways that the street or road is fully completed and
5 conforms to the approved plans and specifications.

6 (l) Department of Transportation Acceptance. – Roads with an offer of public
7 dedication within subdivisions or developments approved on or after October 1, 2010, that are
8 fully completed according to either the plans and specifications approved by the Department on
9 the recorded plat of the project, or confirmed by a built-to-standards letter issued to the county
10 by the Division of Highways, shall be accepted by the Department for maintenance as soon as
11 is possible after January 1, 2018, provided that the following conditions for acceptance are all
12 met:

13 (1) The road has been fully constructed according to the plans and specifications
14 approved when the subdivision plat was recorded.

15 (2) The road pavement, storm drainage, and signage are in proper condition.

16 (3) The street or road has been opened for public travel for at least six years, as
17 of September 30, 2017. This subdivision shall not apply to streets opened on
18 or after October 1, 2017.

19 (4) Either ten percent (10%) of the lots in the phase of a residential subdivision
20 have occupied dwelling units constructed upon them, or if the phase contains
21 fewer than 20 lots, a minimum of two homes are occupied in that phase.
22 Each separately named street being considered for acceptance within the
23 phase shall have at least one occupied home. If all of the named streets
24 within the phase do not have occupied homes, nothing in this section shall
25 prevent the acceptance of those streets within the phase that have occupied
26 homes, while acceptance of those streets that do not have occupied homes
27 may be deferred.

28 (5) There are no structural or vertical vegetative encroachments upon the
29 right-of-way that either compromise the safety of the traveling public or
30 impede maintenance of the roadway.

31 (m) Change to Division of Highway Subdivision Street Construction Standards. – Any
32 subdivision street completed prior to January 1, 2018, that has not yet been accepted by the
33 Department, shall be subject to Division of Highway subdivision street construction standards
34 that were in effect on January 1, 2017, and shall be accepted by the Department in accordance
35 with this section.

36 (n) County Proposal for Acceptance. – Roads meeting the requirements of subsection
37 (l) of this section shall be proposed for acceptance by either the county or another party to the
38 Division of Highways.

39 (o) Time Limits for Division of Highways Acceptance. – Acceptance by the Division of
40 Highways shall be issued as soon as the Division can review the streets and assure that they
41 meet the Division standards. The review shall occur within 60 days of the request. The Division
42 of Highways may issue a conditional acceptance based upon the completion of any necessary
43 repairs to the roadway and its drainage facilities identified during the review, including the
44 removal of encroachments that impede maintenance or compromise the safety of the traveling
45 public.

46 (p) County Assessments for Necessary Improvements. – If necessary to facilitate
47 acceptance of streets, counties may finance the cost of improvements made under the
48 supervision of the Department of Transportation to bring these streets up to the standards for
49 acceptance, in the case of street or drainage improvements or necessary mowing, and recover
50 all or any portion of those costs through an assessment, as provided in G.S. 153A-205, levied

1 upon the lots within the development or levied upon the offending lot in the case of an
2 encroachment that impedes maintenance or compromises the safety of the traveling public.

3 (q) Applicability Exceptions. – The provisions of this section shall not apply to any of
4 the following:

5 (1) Any proposed public road that has been platted but has not been properly
6 constructed according to the plans and specifications that were in place at the
7 time a map of the proposed right-of-way was recorded.

8 (2) Any subdivision or development recorded prior to October 1, 1975, where
9 the road construction has not been completed.

10 (3) Any road completed after October 1, 1975, that was not constructed to the
11 minimum standards for a paved road that were in place on the date of
12 recordation of the plat or where it can be clearly shown by the Department
13 that the construction did not meet the plans and specifications by which the
14 road was designed.

15 (r) Terms. – For the purposes of this section, the use of the terms "road construction,"
16 or "completion," and any reference to maintenance of roads prior to final acceptance, refer to
17 all of the physically constructed components of the road within the designated right-of-way,
18 including, but not limited to, the proper installation, according to approved plans and
19 specifications, of any of the following:

20 (1) The soil base and related compaction.

21 (2) Base pavement courses and final travel surface pavement.

22 (3) Shoulders where specified with appropriately sloped side ditches, including
23 appropriate drainage structures, pipes, outlets, and related appurtenances.

24 (4) Curb and gutter where specified along with appropriately designed storm
25 drainage pipes, structures, outlets, and related appurtenances.

26 (5) Appropriate signage and pavement striping.

27 (s) Prohibited Grounds for Denial of Acceptance. – None of the following shall be a
28 basis for denial or delay of the acceptance by the Department for streets or roads completed
29 between October 1, 2010, and September 30, 2017, that meet the acceptance conditions of this
30 section:

31 (1) Removal of encroachments that are neither structural nor pose a safety
32 hazard to the motoring public, including, but not limited to, planted
33 ornamental vegetation or nuisance plant materials.

34 (2) Removal of debris from ditches or drainage pipes, culverts, or related
35 appurtenances that is not significantly impeding the drainage function.

36 (3) Cosmetic trimming of grass or weeds, and other similar maintenance items
37 not related to the maintenance of the paved travel surface of the roadway and
38 its related storm drainage facilities, unless trimming is necessary to allow for
39 a proper visual inspection of the street and drainage facilities.

40 (4) Sidewalks, or lack of sidewalks, located adjacent to a road.

41 (t) Development of Street Database. – The Department shall work cooperatively with
42 each county to provide the necessary information to the counties to enable the counties to
43 compile a readily available "County Public Street Information Database" and place it in
44 operation on or before January 1, 2019. The information provided shall accurately convey the
45 status of roads within the jurisdictional area of the county, including municipal extraterritorial
46 jurisdictions, and it shall be updated at least monthly. The data shall reside on any existing
47 database system chosen by the county for this purpose, such as, but not limited to, a geographic
48 information system (GIS) mapping system or property tax records system. The system chosen
49 shall be able to convey clear and concise information regarding the status of roads to the public
50 and more particularly to those individuals involved in the research of real property records and

1 information. The data may be made available to the public in either graphic or tabular format,
2 or both. The status of roads to be conveyed shall be:

3 (1) Federally maintained with a federal route number assigned.

4 (2) State-maintained with a State road number assigned.

5 (3) City-maintained.

6 (4) Pending public acceptance with a financial consideration in place for the
7 maintenance and repair of the street until it is accepted. This subdivision
8 shall only apply to new streets offered for public dedication after October 1,
9 2017.

10 (5) Pending public acceptance without a financial consideration being in place
11 for the maintenance and repair of the street until it is accepted.

12 (6) Private street requiring private maintenance.

13 (u) Department Subdivision Roads Manual. – The Department shall update its
14 Subdivision Roads Minimum Construction Standards Manual, and any related pavement or
15 other policies, by July 1, 2018, and regularly thereafter, to accurately reflect current federal and
16 State law and applicable judicial decisions. The Department shall report all updates to the
17 Manual to the Joint Legislative Transportation Oversight Committee."

18 **SECTION 2.** This act becomes effective July 1, 2017.