



# SENATE BILL 778: Performance Guarantees/Subdivision Streets.

2016-2017 General Assembly

|                       |                                       |                     |                   |
|-----------------------|---------------------------------------|---------------------|-------------------|
| <b>Committee:</b>     | House Transportation                  | <b>Date:</b>        | June 12, 2016     |
| <b>Introduced by:</b> | Sens. Wade, Brock, B. Jackson         | <b>Prepared by:</b> | Giles Perry       |
| <b>Analysis of:</b>   | PCS to Second Edition<br>S778-CSRW-67 |                     | Committee Counsel |

**SUMMARY:** *Senate Bill 778 (Proposed Committee Substitute) makes changes to State law concerning performance guarantees on county subdivision streets offered for public dedication; NCDOT and city requirements for road improvements adjacent to schools; and zoning applicable to schools.*

### BILL ANALYSIS:

**Section 1** of the bill amends State law governing performance guarantees on county subdivision streets, as follows:

This section applies to developer performance guarantees on streets located outside municipal jurisdiction, in developments approved on or after October 1, 2016, and to all county residential subdivisions or development plans approved on or after October 1, 2010 that include an offer of dedication of roads and the roads have been constructed and opened for travel and are fully completed.

#### Performance Guarantees

- Provides that a county ordinance may, but is not required to, provide for performance guarantees for new streets offered for dedication.
- Provides that the amount of a street performance guarantee shall not exceed 125% of the cost of completion.
- Provides that a performance guarantee shall only be used for completion of the required improvements, and not for repairs or maintenance after completion.
- Provides that any performance guarantee on a street shall be released upon confirmation from the Division of Highways that the street has been accepted for maintenance, but not later than six months following submittal to the Division of Highways of form SR 2, "Request for Addition to State Maintained Secondary Road System"; and proof the street is fully completed.
- Provides that the principal amount of the performance guarantee may be incrementally reduced by the developer during the course of construction to reflect the level of completion of the road.

#### Residual Performance Guarantees

- Provides that upon certification that the road has been fully constructed, the performance guarantee shall be reduced to a residual amount (15% of construction cost or 125% of the pavement cost).
- Provides the purpose of the residual performance guarantee is to allow time for completed new roads offered for dedication to attain the density required for acceptance.

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- Provides that the residual performance guarantee shall only be used for specified maintenance or repairs.
- Provides that the residual performance guarantee shall remain in place until the road is accepted, or for one year from the date of issuance, whichever is less. If at the end of one year the road is still not eligible for acceptance the residual performance guarantee shall be extended for a second year. If the developer has fully constructed the street but not achieved the required density the residual performance guarantee shall be extended beyond the end of the second full year.
- Provides for release of residual performance guarantee: (1) Within 30 days of the date the street or road is accepted for maintenance by the Division of Highways, but not later than six months following submittal to the Division of Highways of form SR 2, "Request for Addition to State Maintained Secondary Road System"; and upon the presentation of proof of completion; or (2) within 30 days following the second anniversary date of the issuance of the residual guarantee, provided that the road is full constructed, and required density has been met.

## DOT acceptance standards

- Provides that DOT shall accept subdivision roads offered of public dedication within subdivisions or developments approved on or after October 1, 2010, that are fully completed, as soon as is possible after January 1, 2017, if (1) The road has been fully constructed; (2) The road pavement, storm drainage and signage are in proper condition; (3) The road has been opened for public travel for at least six years, as of September 30, 2016, if the street was opened before October 1, 2016; (4) Either 10% of the lots have occupied dwelling units, or if the phase contains fewer than 20 lots, a minimum of two homes are occupied, and each street shall have at least one occupied home; and (5) There are no structural or vertical vegetative encroachments.
- Roads meeting the requirements shall be proposed for acceptance by either the county or another party to the Division of Highways.
- Acceptance by the Division of Highways shall be issued as soon as the Division can review the streets and assure that they meet the conditions. The review shall occur within 60 days of the request.

## County assessments

- Authorizes County assessments for drainage improvements or mowing improvements to facilitate State acceptance of streets.

## Prohibited Ground for Denial of Acceptance by DOT

- Prohibits DOT from denying acceptance of streets or roads completed between October 1, 2010 and September 30, 2016, that otherwise meet the acceptance conditions, for minor encroachments, removal of debris, grass cutting, sidewalk or lack thereof.
- County Road Database Requires DOT to work with each county to create a "County Public Street Information Database" on or before January 1, 2018. The information provided shall accurately convey the status of roads within the jurisdictional area of the county including municipal extraterritorial jurisdictions, and it shall be updated at least monthly.

**Section 2** of the bill amends the powers of NC DOT related to State requirements for road improvements related to K-12 schools. This section:

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- Amends DOT's current power to make improvements to roadways and driveways, and bus parking on public K-12 school sites, to provide that DOT can expend up to \$60,000 per project, DOT has final design approval, and the term "public school" includes a public charter school.
- Amends DOT current power to oversee improvements to public roads adjacent to any K-12 school, to provide that: DOT can only require highway improvements that are required for safe ingress and egress to the State highway system, and that are physically connected to a driveway on the school site; the total cost of any improvements to the State highway system provided by a school shall be reimbursed by the Department; the Department shall have the power to grant final approval of the any project design; schools may engage their own independent traffic engineers for design; and clarifies that "schools" include public charter schools.

**Section 3** of the bill addresses city-required road improvements related to K-12 schools. This section provides that:

- A city may only require street improvements related to K-12 schools that are required for safe ingress and egress to the municipal street system, and that are physically connected to a driveway on the school site.
- The cost of any improvements to the municipal street system shall be reimbursed by the Department of Transportation.
- For purposes of this section, the Department of Transportation shall have the power to grant final approval of the any project design for which it provides reimbursement.
- Any agreement between a school and a city to make improvements to the municipal street system shall not include a requirement for acquisition of right of way by the school, unless the school is owned by an entity that has eminent domain power.
- Any right of way costs incurred by a school for a required improvement pursuant to this section shall be reimbursed by the Department of Transportation.
- For purposes of this section, the term "school", means K-12 schools, including public charter schools.

**Sections 4 and 5** of the bill amend the laws governing planning and regulation of development by counties and cities, to provide that:

- Relocatable or modular school units shall be permitted in all zoning districts.
- High school lighted athletic facilities of 2600 seats or more located on high school sites may be subject to special use permit standards as accessory uses to the school, but the special use standards shall be limited to the portions of the school site upon which the athletic facility is located.
- The only public street improvements that can be required for athletic facilities are those directly attributable to and physically connected to planned access drives from the athletic facilities connecting to public streets.
- For the purpose of this section "schools" means 9-12 schools, including public charter schools.

**EFFECTIVE DATE:** October 1, 2016.