



HOUSE BILL 376: Subdivision Improvement Guarantee Changes.

2017-2018 General Assembly

Committee:	House State and Local Government II	Date:	April 19, 2017
Introduced by:	Reps. McGrady, Henson	Prepared by:	Cindy Avrette Staff Attorney
Analysis of:	PCS to First Edition H376-CSR-6		

OVERVIEW: *House Bill 376 provides that if a county or city receives funds from a performance guarantee and the funds are insufficient to complete the required improvement, or the subdivision for which the improvement secured by the performance guarantee is obtained is not completed, then the county or city may, at its discretion, administer the funds in accordance with standards adopted by the governing body. The PCS consolidates the provisions; it does not change the bill substantively.*

The bill also provides that a county may contract with an entity other than a municipality to develop roads if the subdivision is not located in whole or in part within a municipality.

CURRENT LAW: Counties and cities may adopt subdivision ordinances that require developers to construct or fund certain improvements, such as streets, utilities, recreation areas, and other public facilities. If a developer chooses to provide funds to be used for the development of roads, the county must transfer the funds to a municipality to be used solely for the development of roads.

If a developer chooses to construct the required improvements, G.S. 153A-331 and G.S. 160A-372 allow counties and cities to require a developer to provide a performance guarantee to assure successful completion of the improvements. The amount of the performance guarantee cannot exceed 125% of the estimated cost of the improvement, and it may be in the form of a surety bond, a letter of credit, or another form of guarantee that provides equivalent security. If the developer fails to successfully complete the improvement, the county or city may make a claim on the performance guarantee. Any funds received from the performance guarantee must be used for completion of the required improvement; it cannot be used for repairs or maintenance after completion. The law does not address what a county or city may do with the funds from a performance guarantee if the funds are insufficient to complete the improvement or the subdivision for which the improvement secured by the performance guarantee is obtained is not completed.¹

BILL ANALYSIS: House Bill 376 provides what a county or city may do if it receives funds from a performance guarantee and the funds are insufficient to complete the improvement or the subdivision for which the improvement is to be made is not completed. In these instances, the county or city may adopt standards as to how to apply the proceeds. The bill provides that the provisions of G.S. 160A-393 apply to the review of any decision made by the governing body concerning the standards adopted. Under G.S. 160A-393, a person may file a petition for writ of certiorari in the superior court.

The bill also allows a county to contract with another entity to construct roads if the subdivision is not located in whole or in part in a municipality

EFFECTIVE DATE: This act is effective when it becomes law.

¹ Henderson County had a recent experience where the subdivision was not completed and the county had to seek judicial intervention as to how to apply the proceeds from the performance guarantee.

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