



HOUSE BILL 457: Performance Guarantees/Subdivision Streets.

2017-2018 General Assembly

Committee:	House Transportation	Date:	April 4, 2017
Introduced by:	Reps. Torbett, Iler, Hastings, Shepard	Prepared by:	Giles Perry Staff Attorney
Analysis of:	PCS to First Edition H457-CSRW-15		

OVERVIEW: House Bill 457 (PCS) makes changes to State law concerning performance guarantees on county subdivision streets offered for public dedication.

The PCS made a technical change to language of G.S. 153A-331.1(f)(3), in Section 1.

[As introduced, this bill was identical to S373, as introduced by Sen. Meredith, which is currently in Senate Rules and Operations of the Senate.]

CURRENT LAW: G.S. 153A-331 and G.S. 160A-372 authorize counties and cities, as a part of their subdivision ordinances, to require performance guarantees to assure successful completion of improvements required under the ordinance.

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 August 1, 2017, 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.
- Developers may choose not to provide the performance guarantee prior to construction of a subdivision street, but must provide a residual performance guarantee prior to the issuance of a building permit for a structure within the development.
- 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 for extension of the performance guarantee, if the required improvements are not complete.
- 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

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months following submittal to the DOT form SR-2, "Request for Addition to State Maintained Secondary Road System"; and proof the street is fully completed.

- Provides, for streets built to more stringent standards than DOT required as of January 1, 2017, for the release of a performance guarantee, upon confirmation DOT has accepted the Street, but no later than three months following submittal of DOT form SR-2; and presentation of a county issue construction inspection, a DOT construction inspection approval, a sealed engineer certification of completion, or proof of posting of a residual performance guarantee.
- 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.
- 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 within 30 days of the date the street or road is accepted for maintenance by the DOT, but not later than six months following submittal to the DOT form SR-2; and presentation of a county issue construction inspection, a DOT construction inspection approval, or a sealed engineer certification of completion.
- Provides, for streets built to more stringent standards than DOT required as of January 1, 2017, for the release of a residual performance guarantee, upon confirmation DOT has accepted the Street, but no later than three months following submittal of DOT form SR-2; and presentation of a county issue construction inspection, a DOT construction inspection approval, or a sealed engineer certification of completion.

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, 2018, 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, 2017, if the street was opened before October 1, 2017; (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.

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- If DOT subdivision street construction standards change, DOT shall apply DOT construction standards in effect January 1, 2017 for any subdivision streets completed prior to January 1, 2018.
- 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 street or drainage improvements, or mowing, 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, 2017, that otherwise meet the acceptance conditions, for minor encroachments, removal of debris, grass cutting, sidewalk or lack thereof.

Development of County Road Database

- Requires counties, on or before January 1, 2019, and with DOT's assistance, to create a "County Public Street Information Database" that accurately conveys the status of roads within the jurisdictional area of the county.

Updating of DOT Subdivision Manual

- Requires DOT to update its Subdivision Roads Minimum Construction Standards Manual by July 1, 2018

EFFECTIVE DATE: This act becomes effective July 1, 2017.