



HOUSE BILL 507: Land-Use Regulatory Changes.

2017-2018 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	June 13, 2018
Introduced by:	Reps. Jordan, J. Bell, Conrad, W. Richardson	Prepared by:	Erika Churchill & Billy R. Godwin
Analysis of:	Fourth Edition		Staff Attorneys

OVERVIEW: *House Bill 507 would make various changes to the land-use regulatory laws of the State.*

[As introduced, this bill was identical to S575, as introduced by Sens. Gunn, Wade, Krawiec, which is currently in Senate Rules and Operations of the Senate.]

CURRENT LAW & BILL ANALYSIS:

Permit Choice Changes. Sections 1-2.

Current law provides that if a State agency, county, or city rule or ordinance changes between the time a permit application was submitted and the permit decision is made, the applicant can choose which version of the rule or ordinance will apply.

House Bill 507 would make changes to the applicability of the permit choice statute as follows:

- Clarify that the permit choice statutes apply to land development regulations, and defines that term.
- Provide that if the applicant opts for the version of a rule or ordinance in place at the time of the application for the development permit, that applicant cannot be required to wait for action on the outcome of any pending changes to that rule or ordinance.
- Provide that any person asserting a claim for non-compliance by the State or a local government with the permit choice statutes may ask the Court for an order compelling compliance.
- Provide for expedited calendaring and review of permit choice related court actions at both the trial and appellate level.
- Amend the county and city permit choice statutes to clarify that the definitions set out in the permit choice statute, such as land development regulations, also apply to those statutes.

Vested Rights Statutes Changes. Section 3.

House Bill 507 provides all of the following related to the county and city statutes concerning vested rights:

- That unless the land owner grants written consent, land development regulation amendments do not apply in any of the following situations:
 - Uses of buildings or land, or subdivisions of land, for which a development permit has been issued that authorizes the use or subdivision of land.

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- Buildings, or uses thereof, for which a building permit has been issued.
- A vested right has been established and the vested right remains valid.
- A vested right is established by the terms of a development agreement.
- Statutory vesting starts when the application for the development permit or building permit is submitted, and lasts as long as the permit remains valid.
- Provides that local development permits expire one year after issuance unless work authorized by the permit has substantially commenced, unless otherwise specified in statute.
- Provides that the establishment of a vested right under one law does not preclude vesting under another, or vesting by application of common law principles.
- Provides that a vested right, once established, precludes any action by a county or city that would change, delay, or stop the development or use of the property, except where a change in State or federal law applies.
- Multi-Phase Development Changes: Time of Vesting, Change to Applicability.
 - Current G.S. 153A-344(b1) and G.S. 160A-385(b1) provide that a right which has been vested as provided for in this subsection shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development.
 - Section 3 provides that a multi-phased development is vested for the entire development with land development regulations in place at the time the site plan approval is granted for the initial phase; and redefines a "multi-phased development" to mean a development containing 25 acres or more (100 acres in current law) that (i) is submitted for development permit approval to occur in more than one phase and (ii) is subject to a master development plan with committed elements, showing the type and intensity of use of each phase.
 - Effective with respect to multi-phased development approvals that are valid and unexpired on the effective date.

Civil Actions. Sections 4 and 5.

Section 4 adds a new section to the General Statutes authorizing landowners or permit applicants to bring challenges to county or city land use ordinances directly to Superior Court, for claims of unconstitutionality, preemption, or in excess of authority.

Section 5 provides that a statute of limitation will not bar a party from raising the issue of the enforceability of an ordinance.

Performance Guarantee Changes. Section 6.

Sections 6 make changes to the law governing city and county subdivision ordinance provisions providing for performance guarantees to ensure completion of required improvements. Specifically, this Section provides:

- A city may require a performance guarantee either at the time the subdivision plat is recorded, or after the recording of the subdivision plat.
- For any specific development, the type and term of performance guarantee, or any extension of the performance guarantee, shall be at the election of the developer.

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- At the election of the developer, 125% of the reasonably estimated cost of completion may be determined by a licensed architect or registered engineer, with unit pricing provided by a licensed general contractor or other competent source.
- The developer shall have the option to post one form of a performance guarantee in lieu of multiple forms, for all development matters related to the same project requiring performance guarantees.
- The developer shall be allowed to reduce the amount of the performance guarantee to reflect only the remaining incomplete items.

Municipal Driveway Connection Regulatory Authority. Section 7.

Section 7 amends current municipal driveway connection regulatory authority to provide that a municipality may not require a driveway permit applicant to acquire right-of-way from property the applicant does not own. Nothing would prohibit the applicant from voluntarily agreeing to acquire the right-of-way.

EFFECTIVE DATE: Except as otherwise provided, effective when it becomes law and applies to permits previously issued that remain valid and unexpired on the date this act becomes law and to permit actions filed, actions filed in court, and claims and defenses asserted on or after that date.