



# SENATE BILL 313: Perf. Guar. to Streamline Afford. Housing.

2019-2020 General Assembly

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<b>Committee:</b>		<b>Date:</b>	January 2, 2020
<b>Introduced by:</b>		<b>Prepared by:</b>	Jeremy Ray Staff Attorney
<b>Analysis of:</b>	S.L. 2019-79		

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**OVERVIEW:** *S.L. 2019-79 makes various changes to State law concerning performance guarantees for the successful completion of required improvements.*

*This act became effective July 4, 2019, and applies to performance guarantees issued on or after that date.*

**CURRENT LAW:** G.S. 153A-331 and G.S. 160A-372 authorize cities and counties, as a part of their subdivision ordinances, to require performance guarantees to assure successful completion of improvements required under the ordinance. The requirements for performance guarantees required by cities are found in G.S. 160A-372(g). Pursuant to G.S. 153A-331(g), those same requirements apply to performance guarantees required by counties.

## **BILL ANALYSIS:**

**SECTION 1** of S.L. 2019-79 amends State law governing performance guarantees as part of a subdivision ordinance as follows:

- Makes conforming changes to G.S. 160A-372(c), by removing and transferring language to a revised G.S. 160A-372(g).
- Creates a new subsection (1a) which applies to the *duration* of performance guarantees.
  - The duration of the performance guarantee is initially one year unless the developer determines that the scope of the work for the improvements requires a longer duration. In the case of a bonded obligation, it is set at one year from the date the bond is issued unless the developer determines that the scope of the work for the improvements requires a longer duration.
- Creates a new subsection (1b) which applies to *extensions* of performance guarantees.
  - Provides that extensions, or the issuance of a new performance guarantee as the result of a performance guarantee that is likely to expire prior to completion of improvements, only be for a duration necessary to complete the improvements.
    - For new performance guarantees issued, the amount may not exceed one hundred and twenty-five percent (125%) of the reasonably estimated cost of completion at the time it is issued and must include the total cost of all incomplete improvements.
    - Extensions can not exceed one hundred and twenty-five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is granted.
- Revises subsection (2) which applies to *releases* of performances guarantees.

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- Requires a city or county to return letters of credit or escrowed funds upon the completion of improvements to their specifications, or upon acceptance of the improvements, if such acceptance is required. For improvements secured by a bond, a city or county is required to provide written acknowledgement that the improvements have been completed following the completion or acceptance of the improvements and upon receiving such a request for acknowledgment by the developer.
- Revises subsection (3) which applies to the *amount* of performance guarantees.
  - Performance guarantees remain at an amount not to exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. In determining this amount, a city or county may determine the amount, or use a cost estimate determined by the developer. The reasonably estimated cost of completion includes one hundred percent (100%) of the costs for labor and materials necessary for completion of the improvements, based on unit price where applicable, and the remaining twenty-five percent (25%) includes inflation and all costs of administration.
- Creates a new subsection (3a) which applies to timing of performance guarantees.
  - Clarifies that a city or county at its discretion, may require the performance guarantee to be posted either at the time the plat is recorded, or at a time subsequent to recordation.
- Makes conforming changes to subsections (4) and (5).
- Creates a new subsection (6) which applies to *multiple guarantees*.
  - The developer has the option to post one type of a performance guarantee in lieu of multiple bonds, letters of credit, or other equivalent security, for all development matters related to the same project requiring the performance guarantee. Performance guarantees associated with erosion control and stormwater control measures are not be subject to these provisions.

**SECTION 2.** makes conforming changes to G.S. 153A-331(e).

**EFFECTIVE DATE:** This act became effective July 4, 2019 and applies to performance guarantees issued on or after that date.

\*\*\*Jason Moran-Bates of the Legislative Analysis Division, substantially contributed to this summary.\*\*\*