



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

2019-2020 General Assembly

Committee: Senate Rules and Operations of the Senate	Date: May 2, 2019
Introduced by: Sens. Wells, Krawiec, Woodard	Prepared by: Jeremy Ray
Analysis of: First Edition	Staff Attorney

OVERVIEW: *Senate Bill 313 makes various changes to State law concerning performance guarantees for the successful completion of required improvements.*

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.

BILL ANALYSIS:

SECTION 1 of the bill 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 would initially be 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 would be 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 could 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 could 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.
 - Would require 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 would be required to provide written acknowledgement that the improvements

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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 would 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 would include 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%) would include inflation and all costs of administration.
- Creates a new subsection (3a) which applies to timing of performance guarantees.
 - Would clarify 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 would have 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 would not be subject to these provisions.

SECTION 2. makes conforming changes to G.S. 153A-331(e) so that all of the requirements listed above apply to counties.

EFFECTIVE DATE: This act is effective when it becomes law and applies to performance guarantees issued on or after that date.