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HOUSE BILL DRH10129-RW-7\* (03/02)

Short Title: Performance Guarantees/Subdivision Streets. (Public)

Sponsors: Representative Torbett.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE CHANGES TO STATE LAW CONCERNING PERFORMANCE  
3 GUARANTEES ON COUNTY SUBDIVISION STREETS OFFERED FOR PUBLIC  
4 DEDICATION.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 153A of the General Statutes is amended by adding a new  
7 section to read:

8 § 153A-331.1. Performance guarantees and acceptance of streets offered for public  
9 dedication.

10 (a) Applicability. – This section applies to county subdivision streets located outside  
11 municipal jurisdiction. This section applies to all developments approved on or after August 1,  
12 2017, and retroactively to all county residential subdivisions or development plans approved on  
13 or after October 1, 2010, that include an offer of dedication of roads and the roads that have  
14 been constructed and opened for travel and are fully completed.

15 (b) Performance and Residual Performance Guarantees to Be Provided. – The following  
16 shall apply to performance and residual performance guarantees:

17 (1) A county ordinance may or may not provide for performance guarantees for  
18 new streets offered for dedication. If a county ordinance does not provide for  
19 performance guarantees for new streets offered for dedication, that county  
20 shall not require the successful completion of the new street improvements  
21 prior to allowing a plat to be recorded.

22 (2) Ordinances shall provide for the residual performance guarantee pursuant to  
23 subsections (g) through (j) of this section.

24 (3) Developers may choose not to provide a performance guarantee. If a  
25 developer chooses not to provide a performance guarantee, the developer  
26 shall be permitted to record a plat and proceed to construct the street. Prior  
27 to the issuance of any building permit for a structure to be constructed within  
28 the subdivision or development, the developer shall provide the residual  
29 performance guarantee.

30 (4) For subdivision streets, the type of performance or residual performance  
31 guarantee shall be as defined in G.S. 160A-372(g)(1), and the type of  
32 security utilized shall be at the election of the developer.

33 (c) Amount of Performance Guarantee. – The amount of a street performance guarantee  
34 shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of  
35 completion provided by the engineer of record at the time the performance guarantee is issued.  
36 Any amount of any extension of the performance guarantee necessary to complete required



1 improvements shall not exceed one hundred twenty-five percent (125%) of the reasonably  
2 estimated cost of completion provided by the engineer of record to complete the remaining  
3 incomplete improvements. If the performance guarantee is extended beyond the first year, the  
4 principal amount for the revised guarantee shall be properly adjusted for any anticipated cost  
5 increase or decrease. The performance guarantee amount includes the reasonable cost to the  
6 county to administer and collect the guarantee.

7 (d) Use of Performance Guarantee. – A performance guarantee on a street shall only be  
8 used for completion of the required improvements and not for repairs or maintenance after  
9 completion.

10 (e) Extension of Street Performance Guarantee. – If the required improvements are not  
11 complete and the current performance guarantee is expiring, the performance guarantee shall be  
12 extended, or a new performance guarantee issued, for an additional period until the required  
13 improvements are complete. A developer shall demonstrate reasonable, good-faith progress  
14 toward completion of the required improvements that are the subject of the performance  
15 guarantee or any extension. The form of any extension or new performance guarantee shall be  
16 as defined in G.S. 160A-372(g)(1), and the type of security used shall remain at the election of  
17 the developer.

18 (f) Release of Performance Guarantee. – Any performance guarantee on a street shall  
19 be released upon confirmation from the Division of Highways that the street has been accepted  
20 for maintenance, but not later than six months following submittal to the Division of Highways  
21 of form SR-2, "Request for Addition to State Maintained Secondary Road System," and upon  
22 the presentation of any of the following documents:

23 (1) A county-issued construction inspection approval for the fully completed  
24 streets.

25 (2) Division of Highways-issued construction inspection approval for the fully  
26 completed streets.

27 (3) A sealed certification by the engineer of record confirming to the county and  
28 the Division of Highways that the street or road is fully completed and  
29 conforms to the approved plans and specifications.

30 (4) Proof of posting of the residual performance guarantee pursuant to  
31 subsection (h) of this section.

32 (f1) Release of Performance Guarantee if Street Built to More Stringent Standards. –  
33 Any performance guarantee on a street that is built with more stringent standards than those  
34 required by the Division of Highways standards of January 1, 2017, shall be released upon  
35 confirmation from the Division of Highways that the street has been accepted for maintenance,  
36 but not later than three months following submittal to the Division of Highways of form SR-2,  
37 "Request for Addition to State Maintained Secondary Road System," and upon the presentation  
38 of any of the following documents:

39 (1) A county-issued construction inspection approval for the fully completed  
40 streets.

41 (2) Division of Highways-issued construction inspection approval for the fully  
42 completed streets.

43 (3) A sealed certification by the engineer of record confirming to the county and  
44 the Division of Highways that the street or road is fully completed and  
45 conforms to the approved plans and specifications.

46 (4) Proof of posting of the residual performance guarantee pursuant to  
47 subsection (h) of this section.

48 (g) Incremental Reduction During Construction. – The principal amount of the  
49 performance guarantee may be incrementally reduced by the developer during the course of  
50 construction to reflect the level of completion of the road facility and its associated storm

1 drainage and other required appurtenances, but it shall not be reduced below the amount  
2 required in subsection (h) of this section.

3 (h) Reduction to Residual Amount Upon Certification. – Upon certification that the  
4 road has been fully constructed, the performance guarantee shall be reduced to a residual  
5 amount that is the greater of either fifteen percent (15%) of the total costs of construction or  
6 one hundred twenty-five percent (125%) of the costs of the travel surface pavement. This  
7 reduced guarantee shall be known as the residual performance guarantee.

8 (i) Purpose and Use of Residual Performance Guarantee. – The residual performance  
9 guarantee is for the purpose of allowing a reasonable period of time within which the  
10 completed new roads offered for dedication may attain the density required for acceptance and  
11 be accepted for maintenance by the Division of Highways. The residual performance guarantee  
12 shall only be used for necessary maintenance or repairs, including the removal of structural  
13 encroachments that impede maintenance or compromise the safety of the traveling public.

14 (j) Time Limit on Residual Performance Guarantee. – The residual performance  
15 guarantee shall remain in place until the road is accepted, or for a period of one year from the  
16 date of issuance, whichever is less. If at the end of one year the road is still not eligible for  
17 acceptance, the residual performance guarantee shall be extended for a second year. If the  
18 developer has fully constructed the street but not achieved the required density or alternate  
19 density pursuant to subdivision (4) of subsection (l) of this section, the residual performance  
20 guarantee shall be extended beyond the end of the second full year.

21 (k) Release of Residual Performance Guarantee. – The residual performance guarantee  
22 shall be released as follows:

23 (1) Within 30 days of the date the street or road is accepted for maintenance by  
24 the Division of Highways, but not later than six months following submittal  
25 to the Division of Highways of form SR-2, "Request for Addition to State  
26 Maintained Secondary Road System," and upon the presentation of any of  
27 the following documents:

28 a. A county-issued construction inspection approval for the fully  
29 completed streets.

30 b. Division of Highways-issued construction inspection approval for the  
31 fully completed streets.

32 c. A sealed certification by the engineer of record confirming to the  
33 county and the Division of Highways that the street or road is fully  
34 completed and conforms to the approved plans and specifications.

35 (2) Within 30 days following the second anniversary date of the issuance of the  
36 residual guarantee, provided that the road is fully constructed. In addition, in  
37 the case of a residential subdivision or development, the alternate density  
38 measures provided in subdivision (4) of subsection (l) of this section shall  
39 have been met. In the case of a nonresidential development, the street shall  
40 be accepted in the same time frame, provided one building has been  
41 constructed within the project on the street.

42 (k1) Release of Residual Performance Guarantee if Street Built to More Stringent  
43 Standards. – Any performance guarantee on a street that is built with more stringent standards  
44 than those required by the Division of Highways standards of January 1, 2017, shall be released  
45 upon confirmation from the Division of Highways that the street has been accepted for  
46 maintenance, but not later than three months following submittal to the Division of Highways  
47 of form SR-2, "Request for Addition to State Maintained Secondary Road System," and upon  
48 the presentation of any of the following documents:

49 (1) A county-issued construction inspection approval for the fully completed  
50 streets.

- 1           (2)    Division of Highways-issued construction inspection approval for the fully  
2           completed streets.  
3           (3)    A sealed certification by the engineer of record confirming to the county and  
4           the Division of Highways that the street or road is fully completed and  
5           conforms to the approved plans and specifications.

6           (l)    Department of Transportation Acceptance. – Roads with an offer of public  
7           dedication within subdivisions or developments approved on or after October 1, 2010, that are  
8           fully completed according to either the plans and specifications approved by the Department on  
9           the recorded plat of the project, or confirmed by a built-to-standards letter issued to the county  
10          by the Division of Highways, shall be accepted by the Department for maintenance as soon as  
11          is possible after January 1, 2018, provided that the following conditions for acceptance are all  
12          met:

- 13           (1)    The road has been fully constructed according to the plans and specifications  
14           approved when the subdivision plat was recorded.  
15           (2)    The road pavement, storm drainage, and signage are in proper condition.  
16           (3)    The street or road has been opened for public travel for at least six years, as  
17           of September 30, 2017. This subdivision shall not apply to streets opened on  
18           or after October 1, 2017.  
19           (4)    Either ten percent (10%) of the lots in the phase of a residential subdivision  
20           have occupied dwelling units constructed upon them, or if the phase contains  
21           fewer than 20 lots, a minimum of two homes are occupied in that phase.  
22           Each separately named street being considered for acceptance within the  
23           phase shall have at least one occupied home. If all of the named streets  
24           within the phase do not have occupied homes, nothing in this section shall  
25           prevent the acceptance of those streets within the phase that have occupied  
26           homes, while acceptance of those streets that do not have occupied homes  
27           may be deferred.  
28           (5)    There are no structural or vertical vegetative encroachments upon the  
29           right-of-way that either compromise the safety of the traveling public or  
30           impede maintenance of the roadway.

31          (m)    Change to Division of Highway Subdivision Street Construction Standards. – Any  
32          subdivision street completed prior to January 1, 2018, that has not yet been accepted by the  
33          Department, shall be subject to Division of Highway subdivision street construction standards  
34          that were in effect on January 1, 2017, and shall be accepted by the Department in accordance  
35          with this section.

36          (n)    County Proposal for Acceptance. – Roads meeting the requirements of subsection  
37          (l) of this section shall be proposed for acceptance by either the county or another party to the  
38          Division of Highways.

39          (o)    Time Limits for Division of Highways Acceptance. – Acceptance by the Division of  
40          Highways shall be issued as soon as the Division can review the streets and assure that they  
41          meet the Division standards. The review shall occur within 60 days of the request. The Division  
42          of Highways may issue a conditional acceptance based upon the completion of any necessary  
43          repairs to the roadway and its drainage facilities identified during the review, including the  
44          removal of encroachments that impede maintenance or compromise the safety of the traveling  
45          public.

46          (p)    County Assessments for Necessary Improvements. – If necessary to facilitate  
47          acceptance of streets, counties may finance the cost of improvements made under the  
48          supervision of the Department of Transportation to bring these streets up to the standards for  
49          acceptance, in the case of street or drainage improvements or necessary mowing, and recover  
50          all or any portion of those costs through an assessment, as provided in G.S. 153A-205, levied

1 upon the lots within the development or levied upon the offending lot in the case of an  
2 encroachment that impedes maintenance or compromises the safety of the traveling public.

3 (q) Applicability Exceptions. – The provisions of this section shall not apply to any of  
4 the following:

5 (1) Any proposed public road that has been platted but has not been properly  
6 constructed according to the plans and specifications that were in place at the  
7 time a map of the proposed right-of-way was recorded.

8 (2) Any subdivision or development recorded prior to October 1, 1975, where  
9 the road construction has not been completed.

10 (3) Any road completed after October 1, 1975, that was not constructed to the  
11 minimum standards for a paved road that were in place on the date of  
12 recordation of the plat or where it can be clearly shown by the Department  
13 that the construction did not meet the plans and specifications by which the  
14 road was designed.

15 (r) Terms. – For the purposes of this section, the use of the terms "road construction,"  
16 or "completion," and any reference to maintenance of roads prior to final acceptance, refer to  
17 all of the physically constructed components of the road within the designated right-of-way,  
18 including, but not limited to, the proper installation, according to approved plans and  
19 specifications, of any of the following:

20 (1) The soil base and related compaction.

21 (2) Base pavement courses and final travel surface pavement.

22 (3) Shoulders where specified with appropriately sloped side ditches, including  
23 appropriate drainage structures, pipes, outlets, and related appurtenances.

24 (4) Curb and gutter where specified along with appropriately designed storm  
25 drainage pipes, structures, outlets, and related appurtenances.

26 (5) Appropriate signage and pavement striping.

27 (s) Prohibited Grounds for Denial of Acceptance. – None of the following shall be a  
28 basis for denial or delay of the acceptance by the Department for streets or roads completed  
29 between October 1, 2010, and September 30, 2017, that meet the acceptance conditions of this  
30 section:

31 (1) Removal of encroachments that are neither structural nor pose a safety  
32 hazard to the motoring public, including, but not limited to, planted  
33 ornamental vegetation or nuisance plant materials.

34 (2) Removal of debris from ditches or drainage pipes, culverts, or related  
35 appurtenances that is not significantly impeding the drainage function.

36 (3) Cosmetic trimming of grass or weeds, and other similar maintenance items  
37 not related to the maintenance of the paved travel surface of the roadway and  
38 its related storm drainage facilities, unless trimming is necessary to allow for  
39 a proper visual inspection of the street and drainage facilities.

40 (4) Sidewalks, or lack of sidewalks, located adjacent to a road.

41 (t) Development of Street Database. – The Department shall work cooperatively with  
42 each county to provide the necessary information to the counties to enable the counties to  
43 compile a readily available "County Public Street Information Database" and place it in  
44 operation on or before January 1, 2019. The information provided shall accurately convey the  
45 status of roads within the jurisdictional area of the county, including municipal extraterritorial  
46 jurisdictions, and it shall be updated at least monthly. The data shall reside on any existing  
47 database system chosen by the county for this purpose, such as, but not limited to, a geographic  
48 information system (GIS) mapping system or property tax records system. The system chosen  
49 shall be able to convey clear and concise information regarding the status of roads to the public  
50 and more particularly to those individuals involved in the research of real property records and

1 information. The data may be made available to the public in either graphic or tabular format,  
2 or both. The status of roads to be conveyed shall be:

3 (1) Federally maintained with a federal route number assigned.

4 (2) State-maintained with a State road number assigned.

5 (3) City-maintained.

6 (4) Pending public acceptance with a financial consideration in place for the  
7 maintenance and repair of the street until it is accepted. This subdivision  
8 shall only apply to new streets offered for public dedication after October 1,  
9 2017.

10 (5) Pending public acceptance without a financial consideration being in place  
11 for the maintenance and repair of the street until it is accepted.

12 (6) Private street requiring private maintenance.

13 (u) Department Subdivision Roads Manual. – The Department shall update its  
14 Subdivision Roads Minimum Construction Standards Manual, and any related pavement or  
15 other policies, by July 1, 2018, and regularly thereafter, to accurately reflect current federal and  
16 State law and applicable judicial decisions. The Department shall report all updates to the  
17 Manual to the Joint Legislative Transportation Oversight Committee."

18 **SECTION 2.** This act becomes effective July 1, 2017.