

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

S

4

SENATE BILL 778  
Transportation Committee Substitute Adopted 5/11/16  
House Committee Substitute Favorable 6/14/16  
Fourth Edition Engrossed 6/16/16

Short Title: Performance Guarantees/Subdivision Streets.

(Public)

Sponsors:

Referred to:

April 28, 2016

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO STATE LAW CONCERNING PERFORMANCE  
GUARANTEES ON COUNTY SUBDIVISION STREETS OFFERED FOR PUBLIC  
DEDICATION; AND NCDOT AND CITY REQUIREMENTS FOR ROAD  
IMPROVEMENTS ADJACENT TO SCHOOLS.

The General Assembly of North Carolina enacts:

**PERFORMANCE GUARANTEES ON COUNTY SUBDIVISION STREETS OFFERED  
FOR PUBLIC DEDICATION**

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

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

(a) Applicability. – This section applies to county subdivision streets located outside  
municipal jurisdiction. This section applies to all developments approved on or after October 1,  
2016, and retroactively 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.

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

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

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

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



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

4           (c)   Amount of Performance Guarantee. – The amount of a street performance guarantee  
5           shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of  
6           completion provided by the engineer of record at the time the performance guarantee is issued.  
7           Any amount of any extension of the performance guarantee necessary to complete required  
8           improvements shall not exceed one hundred twenty-five percent (125%) of the reasonably  
9           estimated cost of completion provided by the engineer of record to complete the remaining  
10           incomplete improvements. If the performance guarantee is extended beyond the first year, the  
11           principal amount for the revised guarantee shall be properly adjusted for any anticipated cost  
12           increase or decrease. The performance guarantee amount includes the reasonable cost to the  
13           county to administer, mobilize, and collect the guarantee.

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

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

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

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

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

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

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

38           (g)   Incremental Reduction During Construction. – The principal amount of the  
39           performance guarantee may be incrementally reduced by the developer during the course of  
40           construction to reflect the level of completion of the road facility and its associated storm drainage  
41           and other required appurtenances, but it shall not be reduced below the amount required in  
42           subsection (h) of this section.

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

48           (i)   Purpose and Use of Residual Performance Guarantee. – The residual performance  
49           guarantee is for the purpose of allowing a reasonable period of time within which the completed  
50           new roads offered for dedication may attain the density required for acceptance and be accepted  
51           for maintenance by the Division of Highways. The residual performance guarantee shall only be

1 used for necessary maintenance or repairs, including the removal of inappropriate structural  
2 encroachments that impede maintenance or compromise the safety of the traveling public.

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

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

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

17 a. A county-issued construction inspection approval for the fully  
18 completed streets.

19 b. Division of Highways-issued construction inspection approval for the  
20 fully completed streets.

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

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

31 (l) Department of Transportation Acceptance. – Roads with an offer of public dedication  
32 within subdivisions or developments approved on or after October 1, 2010, that are fully  
33 completed according to either the plans and specifications approved by the Department on the  
34 recorded plat of the project, or confirmed by a built-to-standards letter issued to the county by the  
35 Division of Highways, shall be accepted by the Department for maintenance as soon as is possible  
36 after January 1, 2017, provided that the following conditions for acceptance are all met:

37 (1) The road has been fully constructed according to the plans and specifications  
38 approved when the subdivision plat was recorded.

39 (2) The road pavement, storm drainage, and signage are in proper condition.

40 (3) The street or road has been opened for public travel for at least six years, as of  
41 September 30, 2016. This subdivision shall not apply to streets opened on or  
42 after October 1, 2016.

43 (4) Either ten percent (10%) of the lots in the phase of a residential subdivision  
44 have occupied dwelling units constructed upon them, or if the phase contains  
45 fewer than 20 lots, a minimum of two homes are occupied in that phase. Each  
46 separately named street being considered for acceptance within the phase shall  
47 have at least one occupied home. If all of the named streets within the phase do  
48 not have occupied homes, nothing in this section shall prevent the acceptance of  
49 those streets within the phase that have occupied homes, while acceptance of  
50 those streets that do not have occupied homes may be deferred.

1           (5) There are no structural or vertical vegetative encroachments upon the  
2           right-of-way that either compromise the safety of the traveling public or impede  
3           maintenance of the roadway.

4           (m) County Proposal for Acceptance. – Roads meeting the requirements of subsection (l) of  
5           this section shall be proposed for acceptance by either the county or another party to the Division  
6           of Highways.

7           (n) Time Limits for Division of Highways Acceptance. – Acceptance by the Division of  
8           Highways shall be issued as soon as the Division can review the streets and assure that they meet  
9           the conditions. The review shall occur within 60 days of the request. The Division of Highways  
10           may issue a conditional acceptance based upon the completion of any necessary repairs to the  
11           roadway and its drainage facilities identified during the review, including the removal of  
12           encroachments that impede maintenance or compromise the safety of the traveling public.

13           (o) County Assessments for Necessary Improvements. – If necessary to facilitate  
14           acceptance of streets, counties may make necessary improvements to bring these streets up to the  
15           standards for acceptance, in the case of street or drainage improvements or necessary mowing, and  
16           recover all or any portion of those costs through an assessment, as provided in G.S. 153A-205,  
17           levied upon the lots within the development or levied upon the offending lot in the case of an  
18           inappropriate encroachment.

19           (p) Applicability Exceptions. – The provisions of this section shall not apply to any of the  
20           following:

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

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

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

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

36           (1) The soil base and related compaction.

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

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

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

42           (5) Appropriate signage and pavement striping.

43           (r) Prohibited Grounds for Denial of Acceptance. – None of the following shall be a basis  
44           for denial or delay of the acceptance by the Department for streets or roads completed between  
45           October 1, 2010, and September 30, 2016, that meet the acceptance conditions of this section:

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

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

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

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

6       (s)    Development of Street Database. – The Department shall work cooperatively with each  
7       county to provide the necessary information to the counties to enable the counties to compile a  
8       readily available "County Public Street Information Database" and place it in operation on or  
9       before January 1, 2018. The information provided shall accurately convey the status of roads  
10       within the jurisdictional area of the county, including municipal extraterritorial jurisdictions, and it  
11       shall be updated at least monthly. The data shall reside on any existing database system chosen by  
12       the county for this purpose such as, but not limited to, a GIS mapping system or property tax  
13       records system. The system chosen shall be able to convey clear and concise information  
14       regarding the status of roads to the public and more particularly to those individuals involved in  
15       the research of real property records and information. The data may be made available to the  
16       public in either graphic or tabular format, or both. The status of roads to be conveyed shall be:

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

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

19           (3)    City-maintained.

20           (4)    Pending public acceptance with a financial consideration in place for the  
21       maintenance and repair of the street until it is accepted. This subdivision shall  
22       only apply to new streets offered for public dedication after October 1, 2016.

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

25           (6)    Private street requiring private maintenance."

## 27 **CHANGES TO STATE LAW CONCERNING NCDOT AND CITY REQUIREMENTS** 28 **FOR ROAD IMPROVEMENTS ADJACENT TO SCHOOLS**

29       **SECTION 2.** G.S. 136-18 reads as rewritten:

### 30 **"§ 136-18. Powers of Department of Transportation.**

31       The said Department of Transportation is vested with the following powers:

32       ...

33       (17)    The Department of Transportation is hereby authorized and required to  
34       maintain and keep in repair, sufficient to accommodate the public school buses,  
35       roads leading from the state-maintained public roads to all public schools and  
36       public school buildings to which children are transported on public school  
37       buses to and from their homes. Said Department of Transportation is further  
38       authorized to construct, pave, and maintain school bus driveways and sufficient  
39       parking facilities for the school buses at those schools. The Department of  
40       Transportation is further authorized to construct, pave, and maintain all other  
41       driveways and entrances to the public schools leading from public roads not  
42       required in the preceding portion of this subdivision. This subdivision applies to  
43       improvement located on the school site. For purposes of this subdivision, the  
44       Department shall have the power to grant final approval of any project design.  
45       For purposes of this subdivision, project cost shall not exceed sixty thousand  
46       dollars (\$60,000). For the purposes of this subdivision, the term "public school"  
47       includes a public charter school subject to Article 14A of Chapter 115C of the  
48       General Statutes. For the purposes of this subdivision, the term "public charter  
49       school" shall include public charter schools opened on or after July 1, 2015,  
50       including expansion buildings. Nothing in this section shall preclude the  
51       Department from entering into an agreement with the school whereby the

1 school installs the agreed upon improvements and the Department provides full  
2 reimbursement for the associated costs incurred by the school, including design  
3 fees and any costs of right-of-way or easements.

4 ...

5 (29a) To coordinate with all public and private entities planning schools to provide  
6 written recommendations and evaluations of driveway access and traffic  
7 operational and safety impacts on the State highway system resulting from the  
8 development of the proposed sites. All public and private entities shall, upon  
9 acquiring land for a new school or prior to beginning construction of a new  
10 school, relocating a school, or expanding an existing school, request from the  
11 Department a written evaluation and written recommendations to ensure that all  
12 proposed access points comply with the criteria in the current North Carolina  
13 Department of Transportation "Policy on Street and Driveway Access". The  
14 Department shall provide the written evaluation and recommendations within a  
15 reasonable time, which shall not exceed 60 days. This subdivision applies to  
16 improvements that are not located on the school property. For purposes of this  
17 subdivision, the Department shall have the power to grant final approval of any  
18 project design. To facilitate completion of the evaluation and recommendations  
19 within the required 60 days, in lieu of the evaluation by the Department,  
20 schools may engage their own independent traffic engineer. The resulting  
21 evaluation and recommendations from the independent traffic engineer shall  
22 also fulfill any similar requirements imposed by a unit of local government.  
23 This subdivision shall not be construed to require the public or private entities  
24 planning schools to meet the recommendations made by the Department,  
25 Department or the independent traffic engineer, except those highway  
26 improvements that are required for safe ingress and egress to the State highway  
27 system-system, pursuant to subdivision (29) of this section, and that are  
28 physically connected to a driveway on the school site. The total cost of any  
29 improvements to the State highway system provided by a school pursuant to  
30 this subdivision, including those improvements pursuant to subdivision (29) of  
31 this section, shall be reimbursed by the Department. Any agreement between a  
32 school and the Department to make improvements to the State highway system  
33 shall not include a requirement for acquisition of right-of-way by the school,  
34 unless the school is owned by an entity that has eminent domain power.  
35 Nothing in this subdivision shall preclude the Department from entering into an  
36 agreement with the school, providing that the school installs the agreed upon  
37 improvements and the Department provides full reimbursement for the  
38 associated costs incurred by the school, including design fees and any costs of  
39 right-of-way or easements. The term "school," as used in this subdivision,  
40 means any facility engaged in the educational instruction of children in any  
41 grade or combination of grades from kindergarten through the twelfth grade at  
42 which attendance satisfies the compulsory attendance law, and includes public  
43 charter schools. The term "improvements" as used in this subdivision refers to  
44 all facilities within the right-of-way required to be installed to satisfy the road  
45 cross-section requirements depicted upon the approved plans. These facilities  
46 shall include, but not be limited to, roadway construction, including pavement  
47 installation and medians; ditches and shoulders; storm drainage pipes, culverts,  
48 and related appurtenances; and, where required, curb and gutter; signals,  
49 including pedestrian safety signals; street lights; sidewalks; and design fees.  
50 Improvements shall not include any costs for public utilities.

51 ...."

1           **SECTION 3.** Chapter 160A of the General Statutes is amended by adding a new  
2 section to read:

3 **"§ 160A-307.1. Limitation on city requirements for street improvements related to schools.**

4       A city may only require street improvements related to schools that are required for safe  
5 ingress and egress to the municipal street system and that are physically connected to a driveway  
6 on the school site. The required improvements shall not exceed those required pursuant to  
7 G.S. 136-18(29). G.S. 160A-307 shall not apply to schools. A city may only require street  
8 improvements related to schools as provided in G.S. 160A-372. The cost of any improvements to  
9 the municipal street system shall be reimbursed by the Department of Transportation. For  
10 purposes of this section, the Department of Transportation shall have the power to grant final  
11 approval of any project design for which it provides reimbursement. Any agreement between a  
12 school and a city to make improvements to the municipal street system shall not include a  
13 requirement for acquisition of right-of-way by the school, unless the school is owned by an entity  
14 that has eminent domain power. Any right-of-way costs incurred by a school for required  
15 improvements pursuant to this section shall be reimbursed by the Department of Transportation.  
16 The term "school," as used in this section, means any facility engaged in the educational  
17 instruction of children in any grade or combination of grades from kindergarten through the  
18 twelfth grade at which attendance satisfies the compulsory attendance law, and includes public  
19 charter schools."

20  
21 **EFFECTIVE DATE**

22           **SECTION 4.** This act becomes effective October 1, 2016.