

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

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SENATE BILL 635

Short Title: Orphan Roads.

(Public)

Sponsors: Senators Sawyer, McInnis, and Lazzara (Primary Sponsors).

Referred to: Rules and Operations of the Senate

April 6, 2023

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT TEMPORARY MAINTENANCE AND ACCEPTANCE  
GUARANTEES FOR SUBDIVISION DEVELOPMENTS TO PREVENT THE  
CREATION OF UNMAINTAINED PUBLICLY DEDICATED ROADS AND TO  
INCREASE TRANSPARENCY IN ROAD CLASSIFICATIONS.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 8 of Chapter 160D of the General Statutes is amended by  
adding a new section to read:

**"§ 160D-804.2. Temporary maintenance and acceptance guarantees.**

(a) To ensure proper maintenance of publicly dedicated subdivision roadways and compliance with G.S. 160D-804 and other development regulation requirements, a county shall require posting of a temporary maintenance guarantee, by the developer, for any publicly dedicated roadway to be transferred for public maintenance under G.S. 136-102.6 or under any applicable municipal ordinance.

(b) For purposes of this section, the following definitions apply:

(1) Administering entity. – The Board of Transportation or a municipality, whichever is applicable.

(2) Roadway system. – The State highway system or a municipal street system, as each is defined in G.S. 136-66.1, whichever is applicable.

(c) For purposes of this section, all of the following apply with respect to temporary maintenance and acceptance guarantees:

(1) Type. – The type of temporary maintenance and acceptance guarantee shall be at the election of the developer. The term "temporary maintenance and acceptance guarantee" includes any of the following forms of guarantee:

a. Surety bond issued by any company authorized to do business in this State.

b. Letter of credit issued by any financial institution licensed to do business in this State.

c. Other forms of guarantee that provide equivalent security to a surety bond or letter of credit.

(2) Use. – Temporary maintenance and acceptance guarantees shall only be used to ensure that a road or street meets the minimum standards set by the administering entity prior to acceptance to the applicable roadway system. Once the road or street meets all applicable requirements set by the administering entity, the developer may utilize the temporary maintenance and acceptance guarantee to meet minimum standards for acceptance into the



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- 1 roadway system. If the developer is unable, as determined by the county, to  
2 ensure the road meets minimum standards for acceptance, the county may  
3 utilize the temporary maintenance and acceptance guarantee and bid, pursuant  
4 to Chapter 143 of the General Statutes, for the repair of the roadway using  
5 funds from the temporary maintenance and acceptance guarantee in order to  
6 meet such minimum standards.
- 7 (3) Required acceptance. – If the road or street has not been accepted into the  
8 applicable roadway system for maintenance for a period of four years after the  
9 plat has been recorded in the office of the appropriate register of deeds, the  
10 administering entity shall automatically accept the road or street into its  
11 respective roadway system for maintenance.
- 12 (4) Petition. – Once the temporary maintenance and acceptance guarantee has  
13 been used to ensure the road or street meets the minimum standards of the  
14 respective administering entity, the county shall submit a petition to the  
15 administering entity for road addition to its roadway system within five days  
16 of completed construction, in compliance with G.S. 136-102.6(d).
- 17 (5) Release. – The following apply to the return or release of any temporary  
18 maintenance and acceptance guarantee established under this section:
- 19 a. The temporary maintenance and acceptance guarantee shall be  
20 returned or released, as appropriate, including any funds not utilized,  
21 once the road or street has been accepted for maintenance by the  
22 administering entity, within 30 days of acceptance.
- 23 b. If the road or street is accepted pursuant to subdivision (3) of this  
24 subsection, the temporary maintenance and acceptance guarantee shall  
25 be released by the county to the respective administering entity in an  
26 amount commensurate with the reasonable costs necessary for the road  
27 or street to meet minimum standards for acceptance into the respective  
28 roadway system. Any funds released under this sub-subdivision may  
29 be utilized absent any occupancy requirement.
- 30 (6) Amount. – The posted amount of the temporary maintenance and acceptance  
31 guarantee shall be set by the county but shall not exceed twenty percent (20%)  
32 of the reasonably estimated total cost of construction for the road or street  
33 secured by the temporary maintenance and acceptance guarantee, as  
34 determined by the county, of the transportation improvements at the time the  
35 guarantee is issued. If the temporary maintenance and acceptance guarantee  
36 is not sufficient to cover the total costs to ensure that the road meets the  
37 standards set by the administering entity, the county or administering entity  
38 may use other funds to supplement the cost. When calculating the estimated  
39 total cost of construction for the road or street, the county shall include costs  
40 for labor and materials. Where applicable, the costs shall be based on unit  
41 pricing.
- 42 (7) Timing. – A county, at its discretion, shall require the temporary maintenance  
43 and acceptance guarantee to be posted either at the time the plat is recorded or  
44 prior to recordation of the plat.
- 45 (8) Legal responsibilities. – No person shall claim any rights under or to any  
46 temporary maintenance and acceptance guarantee provided pursuant to this  
47 section or in the proceeds of any such temporary maintenance and acceptance  
48 guarantee other than the following:
- 49 a. The county for which the temporary maintenance and acceptance  
50 guarantee is provided.

- 1            b. The developer at whose request or for whose benefit the temporary  
2            maintenance and acceptance guarantee is given.  
3            c. The person or entity issuing or providing the temporary maintenance  
4            and acceptance guarantee at the request of or for the benefit of the  
5            developer.  
6            d. The administering entity, pursuant to subdivision (3) of this  
7            subsection.

8            (9) Multiple guarantees. – The developer shall have the option to post one type of  
9            a temporary maintenance and acceptance guarantee as provided for in  
10           subdivision (1) of this subsection, in lieu of multiple bonds, letters of credit,  
11           or other equivalent security, for all development matters related to the same  
12           project requiring temporary maintenance and acceptance guarantees."

13           **SECTION 2.** G.S. 160D-804.1(1)c. reads as rewritten:

- 14           "c. ~~Other~~ Another form of guarantee that provides equivalent security to  
15           a surety bond or letter of credit."

16           **SECTION 3.** Article 8 of Chapter 160D of the General Statutes is amended by  
17 adding a new section to read:

18           **"§ 160D-809. Subdivision roadway minimum standards.**

19           Any subdivision roadway that is publicly dedicated on a final plat shall be regulated by those  
20           standards or regulations in effect at the time the final plat was recorded."

21           **SECTION 4.** G.S. 160D-202 is amended by adding a new subsection to read:

22           "(l) Roadway Development Standards. – Notwithstanding any provision of law to the  
23           contrary, the design of streets and rights-of-way designated as public shall be in accordance with  
24           the minimum right-of-way and construction standards established by the Department of  
25           Transportation for acceptance on the State highway system."

26           **SECTION 5.(a)** G.S. 136-18.06 reads as rewritten:

27           **"§ 136-18.06. Public Street Information Database.**

28           The Department shall compile a readily available "Public Street Information Database" and  
29           place it in operation on or before January 1, 2020. The information shall convey the status of  
30           roads within the State, and it shall be updated at least monthly, except as provided in subdivision  
31           (1) of this section. The data shall reside on any existing database system chosen by the  
32           Department for this purpose, including a geographic information system (GIS) mapping system.  
33           The system chosen shall convey clear and concise information regarding the status of roads to  
34           the public. The data shall be available to the public in either graphic or tabular format, or both.  
35           The status of roads to be conveyed shall be:

- 36           (1) Federally owned, updated as often and with as much information as the State  
37           is provided from the federal government.  
38           (2) State-maintained with a State road number assigned.  
39           (3) State-owned with a State road number assigned.  
40           (4) Municipality-owned with a local road number assigned.  
41           (5) Municipality-maintained with a local road number assigned.  
42           (6) Roads pending public acceptance pursuant to G.S. 136-102.6. This  
43           subdivision applies only to new streets offered for public dedication."

44           **SECTION 5.(b)** The Department of Transportation shall include the additional data  
45           required in this section in the Public Street Information Database no later than January 1, 2024.

46           **SECTION 6.** G.S. 136-55.1 reads as rewritten:

47           **"§ 136-55.1. Notice of abandonment.**

48           (a) At least 60 days prior to any action by the Department of Transportation abandoning  
49           a segment of road and removing the same from the State highway system for maintenance, except  
50           roads abandoned on request of the county commissioners under G.S. 136-63, the Department of  
51           Transportation shall notify by registered mail or personal delivery all owners of property

1 adjoining the section of road to be abandoned whose whereabouts can be ascertained by due  
2 diligence. Said notice shall describe the section of road which is proposed to be abandoned and  
3 shall give the date, place and time of the Department of Transportation meeting at which the  
4 action abandoning said section of road is to be taken.

5 (b) ~~In keeping with its overall zoning scheme and long-range plans regarding the~~  
6 ~~extraterritorial jurisdiction area, a municipality may keep open and assume responsibility for~~  
7 ~~maintenance of a road within one mile of its corporate limits once it is abandoned from the State~~  
8 ~~highway system."~~

9 **SECTION 7.** G.S. 136-102.6 reads as rewritten:

10 **"§ 136-102.6. Compliance of subdivision streets with minimum standards of the Board of**  
11 **Transportation required of developers.**

12 ...

13 (f) Prior to entering any agreement or any conveyance with any prospective buyer, the  
14 developer and seller shall prepare and sign, and the buyer of the subject real estate shall receive  
15 and sign an acknowledgment of receipt of a separate instrument known as the subdivision streets  
16 disclosure statement (hereinafter referred to as disclosure statement). Said disclosure statement  
17 shall fully and completely disclose the status (whether public or private) of the street upon which  
18 the house or lot fronts. If the street is designated by the developer and seller as a public street,  
19 the developer and seller shall certify (i) that the right-of-way and design of the street has been  
20 approved by the Division of ~~Highways, and Highways or the municipality, as applicable, (ii) that~~  
21 ~~the street has been or will be constructed by the developer and seller in accordance with the~~  
22 ~~standards for subdivision streets adopted by the Board of Transportation or the municipality, as~~  
23 ~~applicable, for acceptance on the State or municipal highway system—system at the time of~~  
24 ~~recordation of the plat, and (iii) whether any party is currently maintaining the public street. If~~  
25 the street is designated by the developer and seller as a private street, the developer and seller  
26 shall include in the disclosure statement an explanation of the consequences and responsibility  
27 as to maintenance of a private street, and shall fully and accurately disclose the party or parties  
28 upon whom responsibility for construction and maintenance of such street or streets shall rest,  
29 and shall further disclose that the street or streets will not be constructed to minimum standards,  
30 sufficient to allow their inclusion on the State highway system for maintenance. The disclosure  
31 statement shall contain a duplicate original which shall be given to the buyer. Written  
32 acknowledgment of receipt of the disclosure statement by the buyer shall be conclusive proof of  
33 the delivery thereof.

34 ...."

35 **SECTION 8.** This act is effective when it becomes law.