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## SENATE BILL NO. 177

Offered January 11, 2012

Prefiled January 10, 2012

A *BILL to amend and reenact § 15.2-2245 of the Code of Virginia, relating to provisions for periodic and final release of certain performance guarantees for street construction.*

Patron—Stuart

Referred to Committee on Local Government

**Be it enacted by the General Assembly of Virginia:**

**1. That § 15.2-2245 of the Code of Virginia is amended and reenacted as follows:**

§ 15.2-2245. Provisions for periodic partial and final release of certain performance guarantees.

A. A subdivision ordinance shall provide for the periodic partial and final complete release of any bond, escrow, letter of credit, or other performance guarantee required by the governing body under this article within ~~thirty~~ 30 days after receipt of written notice by the subdivider or developer of completion of part or all of any public facilities, *other than streets*, required to be constructed hereunder unless the governing body or its designated administrative agency notifies the subdivider or developer in writing of nonreceipt of approval by an applicable state agency, or of any specified defects or deficiencies in construction and suggested corrective measures prior to the expiration of the thirty day period. Any inspection of such public facilities, *other than streets*, shall be based solely upon conformance with the terms and conditions of the performance agreement and the approved design plan and specifications for the facilities for which the performance guarantee is applicable, and shall not include the approval of any person other than an employee of the governing body, its administrative agency, the Virginia Department of Transportation or other political subdivision or a person who has contracted with the governing body, its administrative agency, the Virginia Department of Transportation or other political subdivision. *The governing body shall not be required to reduce or release any bond, escrow, letter of credit, or other performance guarantee covering a street until said street has been accepted by and taken over for operation and maintenance by the state agency, local government department or agency, or other public authority that is responsible for maintaining and operating such public facility.*

B. If no such action is taken by the governing body or administrative agency within the time specified above *and the completed section of any street being constructed has been accepted by and taken over for operation and maintenance by the state agency, local government department or agency, or other public authority that is responsible for maintaining and operating such public facility*, the request shall be deemed approved, and a partial release granted to the subdivider or developer. No final release shall be granted until after expiration of such ~~thirty~~ 30-day period and there is an additional request in writing sent by certified mail return receipt to the chief administrative officer of such governing body. The governing body or its designated administrative agency shall act within ten working days of receipt of the request; then if no action is taken the request shall be deemed approved and final release granted to the subdivider or developer.

C. After receipt of the written notices required above, if the governing body or administrative agency takes no action within the times specified above and the subdivider or developer files suit in the local circuit court to obtain partial or final release of a bond, escrow, letter of credit, or other performance guarantee, as the case may be, the circuit court, upon finding the governing body or its administrative agency was without good cause in failing to act, shall award such subdivider or developer his reasonable costs and ~~attorneys'~~ attorney fees. *The court shall not order the release of a bond, escrow, letter of credit, or other performance guarantee until all completed or partially completed streets have been accepted by and taken over for operation and maintenance by the state agency, local government department or agency, or other public authority that is responsible for maintaining and operating such public facility.*

D. No governing body or administrative agency shall refuse to make a periodic partial or final release of a bond, escrow, letter of credit, or other performance guarantee for any reason not directly related to the specified defects or deficiencies in construction of the public facilities covered by said bond, escrow, letter of credit or other performance guarantee *except for instances in which a street has not been taken over for operation and maintenance by the state agency, local government department or agency, or other public authority that is responsible for maintaining and operating such public facility.*

E. Upon written request by the subdivider or developer, the governing body or its designated administrative agency shall be required to make periodic partial releases of such bond, escrow, letter of credit, or other performance guarantee in a cumulative amount equal to no less than ~~ninety~~ 90 percent of

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59 the original amount for which the bond, escrow, letter of credit, or other performance guarantee was  
60 taken, and may make partial releases to such lower amounts as may be authorized by the governing  
61 body or its designated administrative agency based upon the percentage of public facilities completed  
62 and approved by the governing body, local administrative agency, or state agency having jurisdiction.  
63 Periodic partial releases may not occur before the completion of at least ~~thirty~~ 30 percent of the public  
64 facilities covered by any bond, escrow, letter of credit, or other performance guarantee. The governing  
65 body or administrative agency shall not be required to execute more than three periodic partial releases  
66 in any ~~twelve~~ 12-month period. Upon final completion and acceptance of the public facilities, the  
67 governing body or administrative agency shall release any remaining bond, escrow, letter of credit, or  
68 other performance guarantee to the subdivider or developer. ~~For the purpose of final release~~ As used in  
69 this section, the term "acceptance" means: when the public facility is accepted by and taken over for  
70 operation and maintenance by the state agency, local government department or agency, or other public  
71 authority which is responsible for maintaining and operating such public facility upon acceptance.

72 F. For the purposes of this section, a certificate of partial or final completion of such public facilities  
73 from either a duly licensed professional engineer or land surveyor, as defined in and limited to  
74 § 54.1-400, or from a department or agency designated by the locality may be accepted without  
75 requiring further inspection of such public facilities.

76 G. *Notwithstanding any contrary provisions of this chapter, if a developer or any of a developer's*  
77 *partners are in default with regard to street completions in another development within a locality, even*  
78 *if under a different corporation or partnership, the locality may withhold acceptance of securities or*  
79 *plat approvals. Furthermore, a locality may withhold building permits or occupancy permits within a*  
80 *development until all completed or partially completed streets have been accepted by and taken over for*  
81 *operation and maintenance by the state agency, local government department or agency, or other public*  
82 *authority that is responsible for maintaining and operating such public facility.*