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SENATE BILL NO. 1092

Offered January 17, 2020

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

Patron—Surovell

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 days after receipt of written notice by the subdivider or developer of completion of part or all of any public facilities 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. *Additionally, final complete release of any remaining bond, escrow, letter of credit, or other performance guarantee to the subdivider or developer shall not occur until all common areas are transferred from the subdivider or developer to the association, if any.* Any inspection of such public facilities 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.

B. If no such action is taken by the governing body or administrative agency within the time specified above, 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-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, *and all common areas are transferred from the subdivider or developer to the association, if any.* 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, *unless there are remaining common areas to be transferred to the association, if any.*

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' fees.

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; *or related to the failure to transfer the common areas to the association, if any.*

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 percent of the original amount for which the bond, escrow, letter of credit, or other performance guarantee was taken, and may make partial releases to such lower amounts as may be authorized by the governing body or its designated administrative agency based upon the percentage of public facilities completed and approved by the governing body, local administrative agency, or state agency having jurisdiction. Periodic partial releases may not occur before the completion of at least thirty percent of the public facilities covered by any bond, escrow, letter of credit, or other performance guarantee. The governing body or administrative agency shall not be required to execute more than three periodic partial releases in any twelve-month period. Upon final completion and acceptance of the public facilities, the governing

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59 body or administrative agency shall release any remaining bond, escrow, letter of credit, or other
60 performance guarantee to the subdivider or developer. *Final release of any remaining bond, escrow,*
61 *letter of credit, or other performance guarantee to the subdivider or developer may not occur before all*
62 *common areas are transferred from the subdivider or developer to the association, if any. The declarant*
63 *is liable for property taxes until the transfer from the subdivider or developer to the association, if any.*
64 For the purpose of final release, the term "acceptance" means: when the public facility is accepted by
65 and taken over for operation and maintenance by the state agency, local government department or
66 agency, *association*, or other public authority which is responsible for maintaining and operating such
67 public facility upon acceptance.

68 F. For the purposes of this section, a certificate of partial or final completion of such public facilities
69 from either a duly licensed professional engineer or land surveyor, as defined in and limited to §
70 54.1-400, or from a department or agency designated by the locality may be accepted without requiring
71 further inspection of such public facilities. *For the purposes of this section, the terms "association,"*
72 *"common area," and "declarant" are as defined in § 55.1-1800.*

73 Code 1950, §§ 15-781, 15-967.1; 1950, p. 183; 1962, c. 407, § 15.1-466; 1970, c. 436; 1973, cc.
74 169, 480; 1975, c. 641; 1976, c. 270; 1978, cc. 429, 439, 440; 1979, cc. 183, 188, 395; 1980, cc. 379,
75 381; 1981, c. 348; 1983, cc. 167, 609; 1984, c. 111; 1985, cc. 422, 455; 1986, c. 54; 1987, c. 717;
76 1988, cc. 279, 735; 1989, cc. 332, 393, 403, 495; 1990, cc. 170, 176, 287, 708, 973; 1991, cc. 30, 47,
77 288, 538; 1992, c. 380; 1993, cc. 836, 846, 864; 1994, c. 421; 1995, cc. 386, 388, 389, 452, 457, 474;
78 1996, cc. 77, 325, 452, 456; 1997, c. 587; 2002, c. 779.