

HOUSE BILL NO. 771

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Counties, Cities and Towns

on _____)

(Patron Prior to Substitute—Delegate Zehr)

A BILL to amend and reenact § 15.2-2245 of the Code of Virginia, relating to land subdivision and development; periodic partial and final release of certain performance guarantees.

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 designated agent 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 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 designated agent 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. The designated agent 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

31 court to obtain partial or final release of a bond, escrow, letter of credit, or other performance guarantee, as
32 the case may be, the circuit court, upon finding the governing body or its administrative agency was without
33 good cause in failing to act, shall award such subdivider or developer his reasonable costs and attorneys' fees.

34 D. No designated agent shall refuse to make a periodic partial or final release of a bond, escrow, letter of
35 credit, or other performance guarantee for any reason not directly related to the specified defects or
36 deficiencies in construction of the public facilities covered by said bond, escrow, letter of credit or other
37 performance guarantee.

38 E. Upon written request by the subdivider or developer, the designated agent shall be required to make
39 periodic partial releases of such bond, escrow, letter of credit, or other performance guarantee in a cumulative
40 amount equal to no less than ninety percent of the original amount for which the bond, escrow, letter of
41 credit, or other performance guarantee was taken, and may make partial releases to such lower amounts as
42 may be authorized by the designated agent based upon the percentage of public facilities completed and
43 approved by the governing body, local administrative agency, or state agency having jurisdiction. Periodic
44 partial releases may not occur before the completion of at least thirty percent of the public facilities covered
45 by any bond, escrow, letter of credit, or other performance guarantee. The designated agent shall not be
46 required to execute more than three periodic partial releases in any twelve-month period. Upon final
47 completion and acceptance of the public facilities, the designated agent shall release any remaining bond,
48 escrow, letter of credit, or other performance guarantee to the subdivider or developer. For the purpose of
49 final release, the term "acceptance" means: when the public facility is accepted by and taken over for
50 operation and maintenance by the state agency, local government department or agency, or other public
51 authority which is responsible for maintaining and operating such public facility upon acceptance.

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