

# **SB21 Testimony.pdf**

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Position: FAV

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January 19, 2021

Hon. Senator Paul G. Pinsky  
Chair, Education, Health, and Environmental Affairs Committee  
Miller Senate Office Building, 2 West  
11 Bladen St.  
Annapolis MD 21401

**Re: Senate Bill 21**  
**Wetlands and Waterways – Riparian Rights – Prohibition on Termination or Impairment**  
**Hearing Date: January 28, 2021**  
**Position: Support**

This letter is submitted on behalf of the Maryland Legislative Action Committee (“MD-LAC”) of the Community Associations Institute (“CAI”). CAI represents individuals and professionals who reside in or work with condominiums, homeowners associations and cooperatives throughout the State of Maryland.

MD-LAC supports SB 21. CAI supports protections that enable property owners to challenge and resolve efforts to take common property. CAI opposes legislative, regulatory or judicial actions that would limit or restrict the ability and rights of community associations to maintain control over association common property. SB 21 codifies common law regarding deed restrictions and riparian rights. Rather than reviewing deed restrictions related to riparian rights in the courts after construction, the bill would require the deed restrictions to be reviewed prior to a project being approved. The cost of protecting one’s rights should not be such a burden as to disallow one from doing so.

Accordingly, the MD-LAC respectfully requests that the Committee give SB 21 a favorable report. We are available to answer any questions the Committee Members may have. Please feel free to contact Lisa Harris Jones, lobbyist for the MD-LAC, at 410-366-1500, or by e-mail at [lisa.jones@mdlobbyist.com](mailto:lisa.jones@mdlobbyist.com), or Steven Randol, Chair of the MD-LAC, 410-279-8054, or by e-mail at [srandol@pineyorchard.com](mailto:srandol@pineyorchard.com).

Sincerely,

*Brenda Reiber*

Brenda Reiber, CMCA, AMS  
Member, CAI MD-LAC

**Maryland Legislative Action Committee**  
**Post Office Box 6636**  
**Annapolis, Maryland 21401**

**SB21\_FWA\_SHYATT.pdf**

Uploaded by: Hyatt, Steven

Position: FWA

HEARING DATE: JANUARY 28, 2021  
BILL #/TITLE: ***SB 21 – WETLANDS AND WATERWAYS – RIPARIAN RIGHTS – PROHIBITION ON TERMINATION OR IMPAIRMENT***  
COMMITTEE: EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS  
POSITION: ***SUPPORT WITH AMENDMENTS***

Dear Chairman Pinsky and Committee Members:

The proposed language in SB 21 seeks to address a narrow issue in the broader world of Maryland's law governing riparian rights, and, in doing so, could have unintended legal consequences and implications on riparian owners throughout the State. Accordingly, I respectfully support SB 21 with the following amendments and request additional consideration and due diligence prior to a favorable report from this Committee.

**PROPOSED AMENDMENTS:**

§16-201[.1](a)(1) “AN [person]INDIVIDUAL, COMMUNITY ASSOCIATION, OR OTHER ENTITY who is the owner of land bounding on navigable water is PRESUMED TO POSSESS RIPARIAN RIGHTS, UNLESS, TO THE EXTENT PROVABLE, SUCH RIGHTS HAVE BEEN EXPRESSLY RESERVED OR OTHERWISE SEVERED FROM THE LAND, is entitled to any natural accretion to [the person's]THEIR land, AND to reclaim fast land lost by erosion or avulsion during [the person's]THEIR ownership of the land to the extent of provable existing boundaries. The [person] INDIVIDUAL, COMMUNITY ASSOCIATION, OR OTHER ENTITY may make improvements into the water [in front of the]BOUNDING THEIR land to preserve [that person's]THEIR access to the navigable water [or], subject to subsection (c), protect [the]THEIR shore [of that person]against erosion, OR OTHERWISE WHARF OUT INTO THE WATER, SUBJECT TO THE EXCEPTIONS AND LIMITATIONS OF SUBPARAGRAPH (a)(2). After an improvement has been constructed, the improvement is the property of the owner of the land to which the improvement is attached. A right covered in this subtitle does not preclude the owner from developing any other use approved by the Board. The right to reclaim lost fast land relates only to fast land lost after January 1, 1972, and the burden of proof that the loss occurred after this date is on the owner of the land.”

(2) THE DEPARTMENT OR THE BOARD SHALL NOT APPROVE OR ISSUE A LICENSE OR PERMIT FOR ANY IMPROVEMENT INTO NAVIGABLE WATER THAT WOULD IMPAIR OR TERMINATE THE RIPARIAN RIGHTS OF ANY INDIVIDUAL, COMMUNITY ASSOCIATION, OR OTHER ENTITY.

EXPLANATION: CAPITALS UNDERLINED INDICATES MATTER ADDED TO EXISTING LAW; [Brackets] indicate language deleted from existing law.

***For additional information, please contact:***

Steven Hyatt  
shyatt@hwlaw.com  
(410) 991-1095

**MDE\_SB21\_LOI.pdf**

Uploaded by: abbott, tyler

Position: INFO



January 28, 2021

The Honorable Paul G. Pinsky, Chair  
Education, Health, and Environmental Affairs Committee  
2 West, Miller Senate Office Building  
Annapolis, Maryland 21401

**Re: SB0021 Senate Bill 21 – Wetlands and Waterways – Riparian Rights – Prohibition on Termination or Impairment**

Dear Chairman Pinsky and Members of the Committee:

The Maryland Department of the Environment (MDE) has reviewed Senate Bill 21, Wetlands and Waterways – Riparian Rights – Prohibition on Termination or Impairment and would like to share some information regarding this legislation.

The State of Maryland—like all other states in the Union—owns the submerged lands beneath the navigable waters within its borders. In Maryland riparian landowners—whose privately owned land extends to the mean high water line—generally have a common-law right of reasonable access to navigable water and, by statute, the right to build a pier out over State-owned submerged lands to provide such access. Those riparian rights, however, have always been subject to the State’s obligation under the public trust doctrine to hold State-owned property for the use of all citizens. Many court cases have supported that the area between mean high water and mean low water, title to which is vested in the State of Maryland, is held for the benefit of the inhabitants of the State.

The intent of this legislation is not clear, however as drafted the bill significantly conflicts with current State statute and regulations. Specifically, the legislation states MDE or Board of Public Works (BPW) cannot terminate or impair the riparian rights to install a pier. Currently, State regulations such as COMAR 26.24.01.02, 26.24.02.03, & 26.24.04.02 specifically define riparian owners and identify the criteria for evaluating tidal wetlands licenses or permit applications. Furthermore, Env’t §16-103 already does what this legislation is proposing, “Except as specifically provided in this title, a riparian owner may not be *deprived* of any right, privilege, or enjoyment of riparian ownership that the riparian owner had prior to July 1, 1970.” In addition, COMAR 26.24.04.02, identifies pier criteria that all piers must conform to and that all pier activities should conform to State, federal, or local land use requirements. MDE considers these items in its application review to make a determination. If this statute prohibits the state from conditioning a pier permit in accordance with other applicable laws and regulations, or prohibits the State from denying a permit application, then MDE and BPW are unable to carry out their mission to protect the waters of the State for all of Maryland’s citizens. The denial of an application for a pier does not terminate a person's riparian rights or interests. A pier permit may be denied for various other reasons supported by existing statute or regulation, but that denial does not terminate a person's riparian rights. This

may increase litigation costs associated with appeals of permit decisions or MDE's inability to act on a permit application due to conflicting statute and regulations.

The broad and ambiguous language would suggest that any criteria used to review piers, which allow riparian access while also minimizing adverse effects to other natural resources, water quality, and navigation, may not be used. MDE permit decisions support many goals for maintaining tidal wetlands and their numerous benefits for recreation, including recreation fishing, commercial fish and shellfish harvesting, aesthetics, and natural shoreline protection. If MDE lacked the ability to consider these other factors in permit decisions, the benefits of tidal waters and wetlands may be greatly diminished.

The bill proposes to add provisions which would require MDE to devote considerable resources to investigating community associations and their riparian rights and access. MDE currently has limited staffing and will be unable to divert resources to address this without neglecting other existing statutory mandates, including process permit applications in a timely manner for projects statewide if resources are tasked with this additional research. Staff in the Wetlands and Waterways Program are responsible for providing guidance to the regulated community during pre-application visits, and for reviewing permit applications, technical reports and documents that provide detailed analysis of impacts to regulated resources. Additionally, this Program already assists in the development and implementation of policy relating to the regulation, management and restoration of wetlands.

MDE processes approximately 600 sole pier applications on average annually and over 1,000 permits in total, any number of which can include a pier component of work. The additional review with current staffing will increase plan reviewers' review time impairing the Department's ability to meet the statutory and regulatory obligation. An applicant for a permit is required to provide all property information pertaining to their parcel that may restrict their use, this includes any deeded restrictions. However, this legislation appears to shift that burden to the state. Existing staff lack the expertise to perform this work solely to determine full legal interpretations of legal documents pertaining to riparian rights within community association documents, therefore, existing staff cannot absorb the additional work. Furthermore, existing staff have full-time roles and responsibilities to complete, as mandated under statute and regulation.

Thank you for considering the Department's information regarding this legislation. We will continue to monitor Senate Bill 0021 during the Committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me by e-mail at [tyler.abbott@maryland.gov](mailto:tyler.abbott@maryland.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Abbott", written in a cursive style.

Tyler Abbott

**CDeegan\_SB21\_LetterofInformation.pdf**

Uploaded by: Charbonneau, Kate

Position: INFO

Larry Hogan  
*Governor*

Boyd K. Rutherford  
*Lt. Governor*



Charles C. Deegan  
*Chairman*

Katherine Charbonneau  
*Executive Director*

**STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

January 22, 2021

The Honorable Paul G. Pinsky  
Chair, Education, Health and Environmental Affairs Committee  
2 West Miller Senate Office Building  
Annapolis, MD 21401

Re: Information Only – Senate Bill Bill 21 - Environment – Wetlands and Waterways –  
Riparian Rights - Prohibition on Termination or Impairment

Dear Chair Pinsky and Committee Members:

I am writing to provide information on Senate Bill 21 and how it may impact Critical Area law and local Critical Area programs. It is our understanding that this bill would prohibit the Department of the Environment (the Department) and the Board of Public Works (the Board) from terminating or impairing – i.e., denying or conditionally approving – a pier license.

This bill, as proposed, may have unintended consequences on local Critical Area programs. Under current Critical Area law (Natural Resources Article 8-1808.5), local jurisdictions are prohibited from approving an individual private pier for a residential development approved by the local jurisdiction with a community pier. In those cases, it would be appropriate for the Department and the Board to continue to be able to deny licenses for individual private piers and not be prohibited from the ability to deny a license.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Charles C. Deegan".

Charles C. Deegan  
Chairman, Critical Area Commission  
Chesapeake and Atlantic Coastal Bays