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Committee



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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

February 26, 2021

House Bill 1135
Environment – State Wetlands – Piers and Other Improvements

Chairman Barve, Vice Chair Stein and Members of the Environment and Transportation Committee:

House Bill 1135 would prohibit a community association from preventing a riparian property owner from constructing a pier or making other improvements into the waters of the State if the riparian property owner has received certain Federal, State, and County approvals.

HB1135 is very straightforward. It simply ensures that **existing** – and **longstanding** – rights granted by **statute** relating to riparian rights are not improperly taken away from a riparian property owner by a community or homeowners association through the Association's refusal to provide permission to the riparian owner to build a pier via enforcement of a Covenant or similar property instrument when all of the requisite Federal, State, and County approvals have been issued.

As MDE has stated in its testimony on other Bills before this Committee earlier this session, and I quote:

“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.**”

Importantly, this right for riparian owners to build a pier is not something new – it has been codified in Maryland statute since 1862 – a period of over 160 years.

In addition, Maryland statute also states that “A riparian owner *may not be deprived of any right, privilege, or enjoyment of riparian ownership...*”

Before a pier is built, a riparian owner must apply for and be issued a building permit from the County. Additionally, MDE, through the Code of Maryland Regulations, comprehensively regulates the location, length, size, and construction of piers in the waters of the State. MDE is required to consider the ecological, economic, developmental, recreational, and aesthetic values of tidal wetlands when evaluating applications to build a pier. Finally, a riparian owner must obtain Federal approval from the U.S. Army Corps of Engineers to build the pier.

From the above, any application to construct a pier must undergo a thorough review by various technical experts via the comprehensive regulatory scheme established by the Federal, State, and County governments.

In cases where there is no dispute regarding whether a property is riparian, or whether the property owner has riparian rights – and that riparian owner properly obtains all of the required Federal, State, and County approvals to build a pier – an Association should not be able to then *deprive* the riparian owner of the right granted by statute to build the pier solely by refusing to provide the riparian owner permission to build the pier pursuant to a general provision in a Covenant or similar property instrument that requires the riparian owner to obtain permission from the Association prior to construction.

This is actually quite simple – the enforcement of a Covenant should not be permitted to go contrary to rights granted by statute. Unfortunately, this is not always the case.

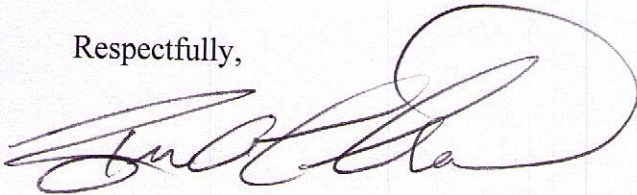
The responsibility for maintaining a balance between (1) the rights granted by statute for riparian owners to build a pier, and (2) the rights of the general public to use the State’s waterways, has been entrusted to the Federal, State and County governments and their technical experts. This responsibility should not be able to be effectively trumped by the subjective opinions of a group

of neighborhood volunteers responsible for enforcing Covenants, and specifically, a requirement for "Association approval" prior to construction.

In summary, **HB1135** simply closes a gap whereby a community or homeowners association can currently override the Federal, State, and County authorities, and deprive a riparian property owner of certain rights that have been granted by statute for over 160 years when there is no issue, concern, or dispute regarding who properly possesses the riparian rights to a property.

I respectfully ask for a Favorable report on **HB1135**.

Respectfully,

A handwritten signature in black ink, appearing to read "Brian A. Chisholm". The signature is fluid and cursive, with a large loop at the end.

Delegate Brian A. Chisholm