

# SENATE BILL 593

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CF HB 101

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By: **Senator Smith**

Introduced and read first time: February 6, 2023

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Condominiums – Common Elements – Clean Energy Equipment**

3 FOR the purpose of authorizing certain governing bodies of a condominium to grant an  
4 interest affecting the common elements of the condominium for the installation and  
5 use of leased clean energy equipment; and generally relating to the common  
6 elements of a condominium and leased clean energy equipment.

7 BY repealing and reenacting, with amendments,  
8 Article – Real Property  
9 Section 11–125  
10 Annotated Code of Maryland  
11 (2015 Replacement Volume and 2022 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
13 That the Laws of Maryland read as follows:

14 **Article – Real Property**

15 11–125.

16 (a) The existing physical boundaries of any unit or common element constructed  
17 or reconstructed in substantial conformity with the condominium plat shall be conclusively  
18 presumed to be its boundaries, regardless of the shifting, settlement, or lateral movement  
19 of any building and regardless of minor variations between the physical boundaries as  
20 described in the declaration or shown on the condominium plat and the existing physical  
21 boundaries of any such unit or common element. This presumption applies only to  
22 encroachments within the condominium.

23 (b) If any portion of any common element encroaches on any unit or if any portion  
24 of a unit encroaches on any common element or any other unit, as a result of the duly  
25 authorized construction or repair of a building, a valid easement for the encroachment and

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



for the maintenance of the encroachment exists so long as the building stands.

(c) An easement for mutual support shall exist in the units and common elements.

(d) The grant or other disposition of a condominium unit shall include and grant, and be subject to, any easement arising under the provisions of this section without specific or particular reference to the easement.

(e) (1) The council of unit owners or its authorized designee shall have an irrevocable right and an easement to enter units to investigate damage or make repairs when the investigation or repairs reasonably appear necessary for public safety or to prevent damage to other portions of the condominium.

(2) Except in cases involving manifest danger to public safety or property, the council of unit owners shall make a reasonable effort to give notice to the owner of any unit to be entered for the purpose of investigation or repair.

(3) If damage is inflicted on the common elements or any unit through which access is taken, the council of unit owners is liable for the prompt repair.

(4) An entry by the council of unit owners for the purposes specified in this subsection may not be considered a trespass.

(f) (1) **[The] EXCEPT AS PROVIDED IN PARAGRAPH (5) OF THIS SUBSECTION, THE** declaration or bylaws may give the council of unit owners authority to grant easements, rights-of-way, licenses, leases in excess of 1 year, or similar interests affecting the common elements of the condominium if the grant is approved by the affirmative vote of unit owners having **[66 2/3 percent] TWO-THIRDS** or more of the votes, and with the express written consent of the mortgagees holding an interest in those units as to which unit owners vote affirmatively. Any easement, right-of-way, license, or similar interest granted by the council of unit owners under this subsection shall state that the grant was approved by unit owners having at least **[66 2/3 percent] TWO-THIRDS** of the votes, and by the corresponding mortgagees.

(2) **[The] EXCEPT AS PROVIDED IN PARAGRAPH (5) OF THIS SUBSECTION, THE** board of directors may, by majority vote, grant easements, rights-of-way, licenses, leases in excess of 1 year, or similar interests for the provision of utility services or communication systems for the exclusive benefit of units within the condominium regime. These actions by the board of directors are subject to the following requirements:

(i) The action shall be taken at a meeting of the board held after at least 30-days' notice to all unit owners and mortgagees of record with the condominium;

(ii) At the meeting, the board may not act until all unit owners and

mortgagees shall be afforded a reasonable opportunity to present their views on the proposed easement, right-of-way, license, lease, or similar interest; **AND**

(iii) The easement, right-of-way, license, lease, or similar interest shall contain the following provisions:

1. The service or system shall be installed or affixed to the premises at no cost to the individual unit owners or the council of unit owners other than charges normally paid for like services by residents of similar or comparable dwelling units within the same area;

2. The unit owners and council of unit owners shall be indemnified for any damage arising out of the installation of the service or system; and

3. The board of directors shall be provided the right to approve of the design for installation of the service or system in order to insure that the installation conforms to any conditions which are reasonable to protect the safety, functioning, and appearance of the premises.

(3) By majority vote, the board of directors may grant to the State perpetual easements, rights-of-way, licenses, leases in excess of 1 year, or similar interests affecting the common elements of the condominium for bulkhead construction, dune construction or restoration, beach replenishment, or periodic maintenance and replacement construction, on Maryland's ocean beaches, including rights in the State to restrict access to dune areas. These actions by the board of directors are subject to the following requirements:

(i) The action shall be taken at a meeting of the board held after at least 30-days' notice to all unit owners and mortgagees of record with the condominium; and

(ii) At the meeting, the board may not act until all unit owners and mortgagees shall be afforded a reasonable opportunity to present their views on the proposed easement, right-of-way, license, lease, or similar interest.

(4) By majority vote, the board of directors may settle an eminent domain proceeding or grant to the State or any county, municipality, or agency or instrumentality thereof with condemnation authority, perpetual easements, rights-of-way, licenses, leases in excess of 1 year, or similar interests affecting the common elements of the condominium for road, highway, sidewalk, bikeway, storm drain, sewer, water, utility, and similar public purposes. These actions by the board of directors are subject to the following requirements:

(i) The action shall be taken at a meeting of the board held after at least 60-days' notice to all unit owners and all first mortgagees listed with the condominium;

(ii) The notice shall include information provided by the

condemnation authority that describes the purpose and the extent of the property being acquired for public use; and

(iii) At the meeting, the board may not act until all unit owners and mortgagees in attendance have been afforded a reasonable opportunity to present their views on the proposed easement, right-of-way, license, lease, or similar interest.

**(5) (I) 1. IN THIS PARAGRAPH “CLEAN ENERGY EQUIPMENT” MEANS EQUIPMENT THAT CONTRIBUTES TO:**

**A. THE PRODUCTION OF ENERGY FROM RENEWABLE OR SUSTAINABLE SOURCES; OR**

**B. THE IMPROVEMENT OF EFFICIENCY IN THE USE OF ENERGY.**

**2. “CLEAN ENERGY EQUIPMENT” INCLUDES ELECTRIC VEHICLE RECHARGING EQUIPMENT AND SOLAR, GEOTHERMAL, OR OTHER ENERGY-EFFICIENT EQUIPMENT USED FOR HEATING, COOLING, OR LIGHTING.**

**(II) SUBJECT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH, THE BOARD OF DIRECTORS, BY A MAJORITY VOTE, OR THE COUNCIL OF UNIT OWNERS, BY THE AFFIRMATIVE VOTE OF UNIT OWNERS HAVING AT LEAST 51% OF THE VOTES IN THE COUNCIL, MAY GRANT EASEMENTS, RIGHTS-OF-WAY, LICENSES, LEASES IN EXCESS OF 1 YEAR, OR SIMILAR INTERESTS AFFECTING THE COMMON ELEMENTS OF THE CONDOMINIUM FOR THE INSTALLATION AND USE OF LEASED CLEAN ENERGY EQUIPMENT.**

**(III) THE BOARD OF DIRECTORS MAY GRANT AN INTEREST UNDER THIS PARAGRAPH ONLY AT A MEETING OF THE BOARD HELD AFTER AT LEAST 30-DAYS’ NOTICE TO ALL UNIT OWNERS OF RECORD.**

**(IV) A MORTGAGEE OR GROUP OF MORTGAGEES MAY NOT OVERRULE A VOTE TO GRANT AN INTEREST UNDER THIS PARAGRAPH.**

**[(5)] (6)** The action of the board of directors granting any easement, right-of-way, license, lease, or similar interest under paragraphs (2), (3), or (4) of this subsection shall not be final until the following have occurred:

(i) Within 15 days after the vote by the board to grant an easement, right-of-way, license, lease, or similar interest, a petition may be filed with the board of directors signed by the unit owners having at least [15 percent] **15%** of the votes calling for a special meeting of unit owners to vote on the question of a disapproval of the action of the board of directors granting such easement, right-of-way, license, lease, or similar interest. If no such petition is received within 15 days, the decision of the board shall be

1 final;

2 (ii) If a qualifying petition is filed, a special meeting shall be held no  
3 less than 15 days or more than 30 days from receipt of the petition. At the special meeting,  
4 if a quorum is not present, the decision of the board of directors shall be final;

5 (iii) 1. If a special meeting is held and **[50 percent] 50%** of the  
6 unit owners present and voting disapprove the grant, and the unit owners voting to  
7 disapprove the grant are more than **[33 percent] 33%** of the total votes in the condominium,  
8 then the grant shall be void; or

9 2. If the vote of the unit owners is not more than **[33 percent]**  
10 **33%** of the total votes in the condominium, the decision of the board or council to make the  
11 grant shall be final;

12 (iv) Mortgagees shall receive notice of and be entitled to attend and  
13 speak at such special meeting; and

14 (v) Any easement, right-of-way, license, lease, or similar interest  
15 granted by the board of directors under the provisions of this subsection shall state that  
16 the grant was approved in accordance with the provisions of this subsection.

17 **[(6)] (7)** The provisions of this subsection are applicable to all  
18 condominiums, regardless of the date they were established.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
20 October 1, 2023.