

SENATE BILL 206

N1, M5
SB 593/23 – JPR

(PRE-FILED)

4r1056
CF HB 216

By: **Senator Smith**

Requested: October 20, 2023

Introduced and read first time: January 10, 2024

Assigned to: Judicial Proceedings

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 certain
4 interests 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 (2023 Replacement Volume)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 authorized construction or repair of a building, a valid easement for the encroachment and
2 for the maintenance of the encroachment exists so long as the building stands.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (ii) The notice shall include information provided by the
2 condemnation authority that describes the purpose and the extent of the property being
3 acquired for public use; and

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

7 **(5) (I) IN THIS PARAGRAPH, "CLEAN ENERGY EQUIPMENT" MEANS**
8 **ELECTRIC VEHICLE RECHARGING EQUIPMENT, SOLAR ENERGY EQUIPMENT, AND**
9 **ENERGY STORAGE SYSTEMS.**

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

16 **(III) THE BOARD OF DIRECTORS MAY GRANT AN INTEREST**
17 **UNDER THIS PARAGRAPH ONLY AT A MEETING OF THE BOARD HELD AFTER AT LEAST**
18 **30-DAYS' NOTICE TO ALL UNIT OWNERS OF RECORD.**

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

21 **[(5)] (6)** The action of the board of directors granting any easement,
22 right-of-way, license, lease, or similar interest under paragraphs (2), (3), or (4) of this
23 subsection shall not be final until the following have occurred:

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

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

34 (iii) 1. If a special meeting is held and **[50 percent] 50%** of the
35 unit owners present and voting disapprove the grant, and the unit owners voting to

1 disapprove the grant are more than ~~[33 percent]~~ **33%** of the total votes in the condominium,
2 then the grant shall be void; or

3 2. If the vote of the unit owners is not more than ~~[33 percent]~~
4 **33%** of the total votes in the condominium, the decision of the board or council to make the
5 grant shall be final;

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

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

11 ~~[(6)] (7)~~ The provisions of this subsection are applicable to all
12 condominiums, regardless of the date they were established.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2024.