



10. PRESERVATION OF PRIVATE RIPARIAN/LITTORAL RIGHTS (TITLE 28.2)

SPONSORED BY COUNCIL MEMBER JAMES L. WOOD

Background Information:

The City of Virginia Beach has undertaken several sand placement projects along the Atlantic Ocean and the Chesapeake Bay, and the City will likely begin new sand placement projects to protect homes, businesses and public assets and infrastructure that are at serious risk from erosion and flooding.

In Virginia, lands that are submerged belong to the Commonwealth of Virginia (Virginia Code Ann. § 28.2-1200), and it has been claimed that when sand is placed on the water's edge, the Commonwealth continues to own the strip of emerged lands caused by the sand placement, thereby severing private property owners' riparian status. Riparian and littoral property owners own property that borders on a body of water and enjoy certain rights by virtue of being waterfront property owners.

"Riparian rights" (also called "littoral rights" along a bay or ocean) are property rights to use the submerged lands adjacent to an owner's waterfront property for certain purposes to maximize the waterfront nature of their land. Although the Commonwealth is the owner of the submerged lands, these lands may be used by the riparian owner for certain purposes. There are 5 recognized riparian rights in Virginia common law:

1. The right to be and remain a riparian owner and to enjoy the natural advantages of being adjacent to the water.
2. The right of access to the water, including a right of way to and from the navigable part.
3. The right to build a pier or wharf out to navigable water, subject to any regulations of the Commonwealth.
4. The right to accretions or alluvium. "Accretions" are the imperceptible additions of new land to the shore caused by natural deposits of sand or other material. "Alluvium" is the sand or other material that is deposited by natural forces such as wind and water.



5. The right to make a reasonable use of the water as it flows past or washes upon the land.

It is not the City's intention to sever or affect riparian or littoral rights when adding sand to public beaches. The City offers this legislation as a means to clarify the riparian status after a sand placement project and to maintain the status quo for private property rights when public projects cause the placement of sand on public beaches and easements. Although this legislation would preserve the fee interest and riparian rights of the private landowner, the newly created land will be subject to the public's right of use and maintenance.

The legislation simply deems such sand placement to be treated the same as if it had occurred naturally, which does not affect riparian status.

Request:

The General Assembly is requested to enact a new section in Title 28.2 to clarify the riparian/littoral status of private property owners after public sand placement projects on public beaches and waterways.

Requested Code Change:

TITLE 28.2: Notwithstanding any provision of law to the contrary, where sand or other material is placed upon state-owned beds of the bays, rivers, creeks and shores of the sea channelward of the mean low-water mark as part of the performance of a properly permitted beach nourishment, storm protection or dredging project undertaken by a public body, and the public has an established right of use and maintenance upon the adjacent land above mean low tide, such placement shall not be deemed a severance or taking of, or to otherwise have impaired, an adjacent landowner's riparian or littoral rights, and the newly created land channelward of the former mean low-water mark shall be deemed natural accretion for purposes of ownership, but such ownership shall be subject to the public's same right of use and maintenance upon the newly created land as previously existed on the adjacent land above the mean low-water mark.