

Chapter 628

(House Bill 1350)

AN ACT concerning

**Sea Level Rise Inundation and Coastal Flooding – Construction, Adaptation,
and Mitigation, ~~and Disclosure~~**

FOR the purpose of altering the definition of the term “Coast Smart” for purposes of certain provisions of law relating to certain construction practices that address certain impacts associated with sea level rise and coastal flooding to apply to highway facilities; altering the composition of the Coast Smart Council to include the State Treasurer; altering the application of certain design and siting criteria established by the Coast Smart Council, in consultation with the Department of Natural Resources and the Department of Transportation, to apply, beginning on a certain date, to certain State and local projects for which a certain level of project costs are funded with State funds; altering certain design and siting criteria that the Coast Smart Council, in consultation with the Department of Natural Resources, is required to adopt; requiring the Department of Planning, in consultation with the Department of Natural Resources, the Department of the Environment, and the Department of Agriculture, to establish a plan to adapt to saltwater intrusion on or before a certain date; requiring a certain plan to adapt to saltwater intrusion to be updated at a certain frequency; requiring the Board of Public Works, in conjunction with the Department of Natural Resources, the Department of the Environment, and the Maryland Emergency Management Agency, to establish certain criteria to evaluate whether State funds may be used to mitigate certain hazards associated with sea level rise inundation and coastal flooding; requiring a certain local jurisdiction to ~~submit to the Department of Planning for approval~~ develop a certain plan to address nuisance flooding on or before a certain date; requiring a certain local jurisdiction to update a certain plan to address nuisance flooding at a certain frequency; requiring a local jurisdiction to publish certain nuisance flooding plans on the local jurisdiction’s website; ~~requiring a certain vendor of real property located on certain land that may be inundated from a certain sea level rise to, on or before entering into a contract for the sale of property, deliver certain information to each purchaser~~ requiring a local jurisdiction that develops a certain plan to submit a copy of the a certain plan to the Department of Planning under certain circumstances; repealing certain provisions of law relating to certain design and siting criteria for certain State capital projects; providing for the application of certain provisions of this Act; defining certain terms; and generally relating to sea level rise inundation and coastal flooding.

BY repealing and reenacting, without amendments,
 Article – Transportation
 Section 3–101(a) and (f) and 8–101(a) and (i)
 Annotated Code of Maryland
 (2015 Replacement Volume and 2017 Supplement)

BY repealing and reenacting, with amendments,

Article – Natural Resources

Section 3–1001 to be under the new part “Part I. General Provisions” and the amended subtitle “Subtitle 10. Sea Level Rise Inundation and Coastal Flooding”; and 3–1002 through 3–1004 to be under the new part “Part II. Coast Smart Council”

Annotated Code of Maryland

(2012 Replacement Volume and 2017 Supplement)

BY adding to

Article – Natural Resources

Section 3–1009 to be under the new part “Part III. Coast Smart Design and Siting Criteria”; 3–1012 to be under the new part “Part IV. Saltwater Intrusion”; 3–1015 to be under the new part “Part V. State Mitigation”; and 3–1018 to be under the new part “Part VI. ~~Local Plan for~~ Nuisance Flooding”

Annotated Code of Maryland

(2012 Replacement Volume and 2017 Supplement)

~~BY adding to~~

~~Article – Real Property~~

~~Section 10–711~~

~~Annotated Code of Maryland~~

~~(2015 Replacement Volume and 2017 Supplement)~~

BY repealing

Article – State Finance and Procurement

Section 3–602.3

Annotated Code of Maryland

(2015 Replacement Volume and 2017 Supplement)

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

Article – Transportation

3–101.

(a) In this title the following words have the meanings indicated.

(f) (1) In this definition, “highway” and “State highway system” have the meanings stated in § 8–101 of this article.

(2) “Highway facility” includes any one or more or combination of projects involving the rehabilitation and reconstruction of highways in the State highway system to meet present and future needs and the development and construction in new locations of

new highways necessitated by traffic demands to become parts of the State highway system, including federally aided highway projects partially funded by this State and all incidental property rights, materials, facilities, and structures.

8–101.

(a) In this title the following words have the meanings indicated.

(i) “Highway” includes:

(1) Rights-of-way, roadway surfaces, roadway subgrades, shoulders, median dividers, drainage facilities and structures, related stormwater management facilities and structures, roadway cuts, roadway fills, guardrails, bridges, highway grade separation structures, railroad grade separations, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, and other structures forming an integral part of a street, road, or highway, including bicycle and walking paths; and

(2) Any other property acquired for the construction, operation, or use of the highway.

Article – Natural Resources

Subtitle 10. [Coast Smart Council] **SEA LEVEL RISE INUNDATION AND COASTAL FLOODING.**

PART I. GENERAL PROVISIONS.

3–1001.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) “Coast Smart” means a construction practice in which preliminary planning, siting, design, construction, operation, maintenance, and repair of a structure **OR HIGHWAY FACILITY** avoids or minimizes future impacts associated with coastal flooding and sea level rise **INUNDATION**.

(2) “Coast Smart” includes design criteria and siting criteria that are applicable throughout the entire life cycle of a project.

(c) “Council” means the Coast Smart Council.

(d) “Design criteria” means standard specifications related to the shape, size, or form of a construction practice.

(E) “FRESHWATER” MEANS WATER WITH A TOTAL DISSOLVED-SOLID CONCENTRATION OF LESS THAN 1,000 MG/L.

(F) “HIGHWAY FACILITY” HAS THE MEANING STATED IN § 3-101(F) OF THE TRANSPORTATION ARTICLE.

(G) “NUISANCE FLOODING” MEANS HIGH-TIDE FLOODING THAT CAUSES PUBLIC INCONVENIENCE.

(H) (1) “REPLACEMENT COST” MEANS, AT THE TIME OF RECONSTRUCTION, THE COST OF RECONSTRUCTING A STRUCTURE ~~OR HIGHWAY FACILITY~~ AND ITS SURROUNDING PROPERTY TO FULL USE WITH MATERIALS OF THE SAME KIND AND QUALITY AS THE ORIGINAL MATERIALS.

(2) “REPLACEMENT COST” DOES NOT INCLUDE:

(I) THE VALUE OF THE LAND ON WHICH A STRUCTURE ~~OR HIGHWAY FACILITY~~ IS LOCATED; OR

(II) FOR TAX PURPOSES, A DEDUCTION FOR DEPRECIATION.

(I) (1) “SALTWATER INTRUSION” MEANS THE MOVEMENT OF WATER WITH A TOTAL DISSOLVED-SOLID CONCENTRATION GREATER THAN OR EQUAL TO 1,000 MG/L TO FRESHWATER.

(2) “SALTWATER INTRUSION” INCLUDES SALTWATER INTRUSION INTO SURFACE WATER, AQUIFERS, AND SOILS.

(J) “SEA LEVEL RISE INUNDATION” MEANS THE INUNDATION OF LAND FROM A SEA LEVEL RISE OF 2 FEET, AS ~~SHOWN ON THE SEA LEVEL RISE VULNERABILITY LAYER OF THE DEPARTMENT’S MARYLAND COASTAL ATLAS DETERMINED BY THE COUNCIL.~~

[(e)] (K) “Siting criteria” means specifications related to the location or use of a structure ~~OR HIGHWAY FACILITY.~~

(L) “STRUCTURE” MEANS:

(1) A WALLED OR ROOFED BUILDING;

(2) A MANUFACTURED HOME; OR

(3) A GAS OR LIQUID STORAGE TANK THAT IS PRINCIPALLY ABOVE GROUND.

(M) “SUBSTANTIAL DAMAGE” MEANS DAMAGE CAUSED BY ANY SOURCE THAT IS SUSTAINED BY A STRUCTURE ~~OR HIGHWAY FACILITY~~ SUCH THAT THE COST OF RECONSTRUCTION TO ITS BEFORE-DAMAGED CONDITION IS AT LEAST HALF OF THE STRUCTURE’S ~~OR HIGHWAY FACILITY’S~~ REPLACEMENT COST BEFORE THE DAMAGE OCCURRED.

3-1002. RESERVED.

3-1003. RESERVED.

PART II. COAST SMART COUNCIL.

[3-1002.] 3-1004.

- (a) There is a Coast Smart Council in the Department.
- (b) The Department shall provide staff support for the Council.

[3-1003.] 3-1005.

- (a) The Coast Smart Council shall include:
 - (1) The Secretary of Natural Resources, or the Secretary’s designee;
 - (2) The Secretary of Budget and Management, or the Secretary’s designee;
 - (3) The Secretary of the Environment, or the Secretary’s designee;
 - (4) The Secretary of General Services, or the Secretary’s designee;
 - (5) The Secretary of Planning, or the Secretary’s designee;
 - (6) The Secretary of Transportation, or the Secretary’s designee;
 - (7) The Secretary of Commerce, or the Secretary’s designee;
 - (8) The Chair of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, or the Chair’s designee;
 - (9) The Director of the Maryland Emergency Management Agency, or the Director’s designee;

(10) THE STATE TREASURER, OR THE STATE TREASURER’S DESIGNEE;

~~(10)~~ **(11)** The Chancellor of the University System of Maryland, or the Chancellor's designee; and

~~(11)~~ **(12)** Five members appointed by the Governor to represent local government, environmental, and business interests.

(b) The Secretary of Natural Resources or the Secretary's designee shall chair the Council.

(c) (1) Subject to paragraph (2) of this subsection, the term of a member appointed by the Governor is 2 years.

(2) The Governor shall stagger the terms of the initial appointed members.

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) A member who is appointed after a term has begun serves only for the remainder of that term and until a successor is appointed and qualifies.

(5) The Governor may remove an appointed member for incompetence, misconduct, or failure to perform the duties of the position.

(d) A member appointed by the Governor may not receive compensation but is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

[3-1004.] 3-1006.

(a) The Council shall:

(1) Study and provide analysis regarding standards and factors relevant to the establishment of Coast Smart siting criteria and design criteria;

(2) Develop siting and design criteria to establish and implement Coast Smart practices and requirements;

(3) Develop eligibility criteria, standards, and procedures for applying for and obtaining a waiver from compliance with the Coast Smart requirements; and

(4) Establish procedures for evaluating Coast Smart waiver applications that include the consideration of proposed [capital] projects with regard to:

(i) The anticipated need to prepare for, respond to, and recover from extreme weather events, sea level rise inundation, coastal flooding, storm surges, and shoreline erosion; and

(ii) The need to prevent danger to life and property and to avoid environmental, socio-economic, and economic harm.

(b) The chair of the Council may establish subcommittees consisting of members of the Council, experts in fields related to climate change and sea level rise, and interested parties to address or study specific issues.

3-1007. RESERVED.

3-1008. RESERVED.

PART III. COAST SMART DESIGN AND SITING CRITERIA.

3-1009.

(A) (1) THIS SECTION APPLIES TO STATE AND LOCAL PROJECTS FOR WHICH AT LEAST ~~30%~~ 50% OF THE PROJECT COSTS ARE FUNDED WITH STATE FUNDS.

(2) THIS SECTION DOES NOT APPLY TO A PUBLIC WORK CONTRACT OF LESS THAN \$500,000.

(B) (1) BEGINNING JULY 1, 2019, IF A STATE OR LOCAL PROJECT INCLUDES THE CONSTRUCTION OF A STRUCTURE OR HIGHWAY FACILITY ~~OR THE RECONSTRUCTION OF A STRUCTURE OR HIGHWAY FACILITY WITH SUBSTANTIAL DAMAGE,~~ THE STRUCTURE OR HIGHWAY FACILITY SHALL BE CONSTRUCTED ~~OR RECONSTRUCTED~~ IN COMPLIANCE WITH SITING AND DESIGN CRITERIA ESTABLISHED UNDER SUBSECTION (C) OF THIS SECTION.

(2) BEGINNING JULY 1, 2019, IF A STATE OR LOCAL PROJECT INCLUDES THE RECONSTRUCTION OF A STRUCTURE WITH SUBSTANTIAL DAMAGE, THE STRUCTURE SHALL BE RECONSTRUCTED IN COMPLIANCE WITH SITING AND DESIGN CRITERIA ESTABLISHED UNDER SUBSECTION (C) OF THIS SECTION.

(C) (1) THE COUNCIL, IN CONSULTATION WITH THE DEPARTMENT AND THE DEPARTMENT OF TRANSPORTATION, SHALL ESTABLISH COAST SMART SITING AND DESIGN CRITERIA TO ADDRESS SEA LEVEL RISE INUNDATION AND COASTAL FLOOD IMPACTS ON STATE AND LOCAL PROJECTS.

(2) THE CRITERIA ADOPTED UNDER THIS SUBSECTION SHALL INCLUDE:

(I) GUIDELINES AND ANY OTHER DIRECTIVES APPLICABLE TO THE PRELIMINARY PLANNING AND CONSTRUCTION OF A PROPOSED PROJECT;

(II) A REQUIREMENT THAT A STRUCTURE ~~OR HIGHWAY FACILITY~~ BE DESIGNED AND CONSTRUCTED OR RECONSTRUCTED IN A MANNER TO WITHSTAND THE STORM SURGE FROM A STORM THAT REGISTERS AS A CATEGORY 2 ON THE SAFFIR-SIMPSON HURRICANE WIND SCALE, INCLUDING A REQUIREMENT FOR STRUCTURES TO BE CONSTRUCTED OR RECONSTRUCTED AT A MINIMUM ELEVATION ABOVE THE PROJECTED STORM SURGE; AND

(III) PROVISIONS ESTABLISHING A PROCESS TO ALLOW A UNIT OF STATE OR LOCAL GOVERNMENT TO OBTAIN A WAIVER FROM COMPLYING WITH THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION.

3-1010. RESERVED.

3-1011. RESERVED.

PART IV. SALTWATER INTRUSION.

3-1012.

(A) ON OR BEFORE DECEMBER 15, 2019, THE DEPARTMENT OF PLANNING, IN CONSULTATION WITH THE DEPARTMENT, THE DEPARTMENT OF THE ENVIRONMENT, AND THE DEPARTMENT OF AGRICULTURE, SHALL ESTABLISH A PLAN TO ADAPT TO SALTWATER INTRUSION.

(B) THE PLAN ESTABLISHED UNDER SUBSECTION (A) OF THIS SECTION SHALL BE UPDATED AT LEAST ONCE EVERY 5 YEARS.

3-1013. RESERVED.

3-1014. RESERVED.

PART V. STATE MITIGATION.

3-1015.

(A) THE BOARD OF PUBLIC WORKS, IN CONJUNCTION WITH THE DEPARTMENT ~~AND~~, THE DEPARTMENT OF THE ENVIRONMENT, AND THE MARYLAND EMERGENCY MANAGEMENT AGENCY, SHALL ESTABLISH CRITERIA TO EVALUATE WHETHER STATE FUNDS MAY BE USED TO MITIGATE HAZARDS ASSOCIATED WITH SEA LEVEL RISE INUNDATION AND COASTAL FLOODING.

(B) THE CRITERIA ESTABLISHED UNDER SUBSECTION (A) OF THIS SECTION SHALL INCORPORATE TOOLS TO ASSESS THE VULNERABILITY OF AN AREA OR A STRUCTURE TO HAZARDS ASSOCIATED WITH SEA LEVEL RISE INUNDATION AND COASTAL FLOODING, INCLUDING TOOLS TO MEASURE:

(1) THE LEVEL OF EXPOSURE OF AN AREA OR A STRUCTURE TO HAZARDS; AND

(2) THE DEGREE TO WHICH AN AREA OR A STRUCTURE IS LIKELY TO BE AFFECTED BY THE EXPOSURE TO HAZARDS.

3-1016. RESERVED.

3-1017. RESERVED.

PART VI. ~~LOCAL PLAN FOR~~ NUISANCE FLOODING.

3-1018.

(A) (1) ON OR BEFORE JULY 1, 2019, A LOCAL JURISDICTION THAT EXPERIENCES NUISANCE FLOODING SHALL ~~SUBMIT TO THE DEPARTMENT OF PLANNING FOR APPROVAL~~ DEVELOP A PLAN TO ADDRESS NUISANCE FLOODING.

(2) A LOCAL JURISDICTION SHALL UPDATE THE PLAN REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION AT LEAST ONCE EVERY 5 YEARS.

(3) A LOCAL JURISDICTION SHALL PUBLISH THE PLANS REQUIRED UNDER THIS SUBSECTION ON THE LOCAL JURISDICTION’S WEBSITE.

(B) ~~THE DEPARTMENT OF PLANNING SHALL CONSULT WITH THE COUNCIL BEFORE APPROVING OR DISAPPROVING A PLAN SUBMITTED UNDER SUBSECTION (A) OF THIS SECTION~~ A LOCAL JURISDICTION THAT DEVELOPS A PLAN TO ADDRESS NUISANCE FLOODING SHALL SUBMIT A COPY OF THE NUISANCE FLOODING PLAN TO THE DEPARTMENT OF PLANNING.

~~Article Real Property~~

~~10-711.~~

~~A VENDOR OF REAL PROPERTY LOCATED ON LAND THAT MAY BE INUNDATED FROM A SEA LEVEL RISE OF 2 FEET, AS SHOWN ON THE SEA LEVEL RISE VULNERABILITY LAYER OF THE DEPARTMENT OF NATURAL RESOURCES’ MARYLAND COASTAL ATLAS, SHALL, ON OR BEFORE ENTERING INTO A CONTRACT FOR THE SALE OF PROPERTY, DELIVER TO EACH PURCHASER:~~

~~(1) NOTICE THAT ALL OR A PORTION OF THE PROPERTY IS LOCATED ON LAND THAT MAY BE INUNDATED FROM A SEA LEVEL RISE OF 2 FEET, AS SHOWN ON THE SEA LEVEL RISE VULNERABILITY LAYER OF THE DEPARTMENT OF NATURAL RESOURCES' MARYLAND COASTAL ATLAS; AND~~

~~(2) A COPY OF THE DEPARTMENT OF NATURAL RESOURCES' MARYLAND COASTAL ATLAS THAT SHOWS THE PROPERTY WITH THE APPLICABLE SEA LEVEL RISE VULNERABILITY LAYER.~~

Article – State Finance and Procurement

[3-602.3.

(a) (1) In this section the following words have the meanings indicated.

(2) “100-year base flood” means a flood having a 1% chance of being equaled or exceeded in any given year.

(3) “Base flood elevation” means:

(i) the water surface elevation of the 100-year base flood as specified on Federal Emergency Management Agency flood insurance rate maps; or

(ii) in an area of shallow flooding:

1. the highest adjacent natural grade added to the depth number specified in feet on the flood insurance rate map; or

2. if the depth number is not specified on the flood insurance rate map, 4 feet.

(4) (i) “Coast Smart” means a construction practice in which preliminary planning, siting, design, construction, operation, maintenance, and repair of a structure avoids or minimizes future impacts associated with coastal flooding and sea level rise.

(ii) “Coast Smart” includes design criteria and siting criteria that are applicable throughout the entire life cycle of a project.

(5) “Design criteria” means standard specifications related to the shape, size, or form of a construction practice.

(6) (i) “Replacement cost” means, at the time of reconstruction, the cost of reconstructing a structure and its surrounding property to full use with materials of the same kind and quality as the original materials.

(ii) “Replacement cost” does not include:

1. the value of the land on which a structure is located; or
2. for tax purposes, a deduction for depreciation.

(7) “Siting criteria” means specifications related to the location or use of a structure.

(8) “Special flood hazard area” means land in a tidally influenced floodplain that is:

- (i) subject to at least a 1% chance of flooding in any given year; and
- (ii) designated by the Federal Emergency Management Agency in flood insurance studies and on flood insurance rate maps as Zone A, AE, AH, AO, A1–30, A99, VE, or V1–30.

(9) “Structure” means:

- (i) a walled or roofed building;
- (ii) a manufactured home; or
- (iii) a gas or liquid storage tank that is principally above ground.

(10) “Substantial damage” means damage caused by any source that is sustained by a structure such that the cost of reconstruction to its before-damaged condition is at least half of the structure’s replacement cost before the damage occurred.

(b) (1) This subsection applies to State capital projects planned and built by units of State government that are partially or fully funded with State funds.

(2) Beginning July 1, 2015, if a State capital project includes the construction of a structure or the reconstruction of a structure with substantial damage, the structure shall be constructed or reconstructed in compliance with siting and design criteria established under subsection (c) of this section.

(c) (1) In consultation with the Department of Natural Resources, the Coast Smart Council established under § 3–1002 of the Natural Resources Article shall establish Coast Smart siting and design criteria to address sea level rise and coastal flood impacts on capital projects.

(2) The criteria adopted under this subsection shall include:

(i) guidelines, and any other directives applicable to the preliminary planning and construction of a proposed capital project;

(ii) a requirement that the lowest floor elevation of each structure located within a special flood hazard area is built at an elevation of at least 2 feet above the base flood elevation; and

(iii) provisions establishing a process to allow a unit of State government to obtain a waiver from complying with the requirements of subsection (b) of this section.]

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2018.

Approved by the Governor, May 15, 2018.