



The Maryland Department of the Environment
Secretary Serena McIlwain

House Bill 1209

Environment – Flood Control – Flood Risk Assessment and Model Ordinance
(Climate Ready Floodplain Act of 2023)

Position: SUPPORT WITH AMENDMENTS
Committee: Environment and Transportation
Date: March 8, 2023
From: Gabrielle Leach

The Maryland Department of the Environment (MDE or the Department) **SUPPORTS WITH AMENDMENTS** House Bill 1209. The bill would require the Department to develop and carry out a long range program for controlling flood waters in the state, assist local jurisdictions in controlling these flood waters, and exercise regulatory control over them for waters of the State.

There are approximately 9,000 stream miles in Maryland with a drainage area greater than 30 acres that can generate stream flows large enough to cause flooding. Only a small percentage are currently covered in Maryland's flood risk maps. This is because Maryland's flood risk maps are developed for insurance purposes to meet the requirements of FEMA's National Flood Insurance Program (NFIP). FEMA's flood risk maps are for streams with a drainage area greater than 640 acres and are based on precipitation data and land cover that exists at the time the map is created. These maps do not incorporate future climate change projections or assumptions on future land use change. As a condition to qualify for federally backed flood insurance, local jurisdictions, and the State are required to adopt floodplain ordinances that meet FEMA's NFIP requirements and implement a floodplain management program to restrict construction in the FEMA floodplain. There are an estimated 54,000 buildings located in the FEMA floodplain. MDE predicts this number will increase by 69% as climate change impacts rainfall patterns, sea level rise, and coastal flooding.

House Bill 1209, as originally drafted, would require MDE to create and publish a new statewide flood risk assessment map projected to 2050 that shows areas with a 0.2 % chance of flooding (which corresponds to the 500 year floodplain) or a 1% chance of flooding (which corresponds to the 100 year floodplain) and that includes projections in feet of how high the water level may rise in those areas, educate the public about the map, establish a new model floodplain ordinance, and review, approve and require revisions, as needed, to proposed floodplain ordinances from every unit of local government with planning and zoning authority in the State.

As introduced, the bill's floodplain management provisions are not consistent with FEMA's NFIP requirements. The bill has the potential to conflict with the NFIP, especially to the extent that the bill's model floodplain ordinance is meant to replace the one used for purposes of the NFIP. MDE has indicated that FEMA encourages higher standards, but if contained in a floodplain ordinance tied to the FEMA map, FEMA will require that the higher standard be enforced or the community risks suspension from the NFIP.

Contact: Gabrielle Leach, Deputy Director of the Legislation and Intergovernmental Affairs
410-260-6302 (Annapolis Office), 410-453-3235 (cell), Gabrielle.Leach@maryland.gov

MDE already has a model floodplain ordinance written for communities to adopt to qualify for the NFIP. The current ordinance incorporates the minimum requirements under the NFIP, including floodplain management criteria for flood-prone areas and requirements for variances and exceptions. This bill appears to replace that ordinance with one that must meet both differing and more stringent requirements from the NFIP ones.

The bill requires certain local governments of the State to submit to MDE a proposed floodplain ordinance meeting the requirements of the bill but does not require the local government to adopt the proposed ordinance or any revisions that MDE may require. The bill does not include any authority to enforce these requirements, so there is no apparent consequence for the local government if it does not submit the ordinance.

The bill requires MDE to update and extend Maryland's flood risk maps by 2025. This effort, while an important part of fully understanding current and future flood risk, will require extensive financial and personnel resources and is likely not achievable.

Currently, not all local governments have a FEMA mapped floodplain within their jurisdiction. The bill will impact these jurisdictions significantly as they would currently have no staff or processes in place to review permits for this purpose. There are potentially many local governments that would be required to submit a proposed ordinance, but the bill only gives MDE two months to review and approve or require revisions on all of them.

Amendments

The Department has worked with the sponsor and advocates on amendments that would strike the current bill provisions and instead require MDE to:

- Review and consider updates to the model floodplain ordinance every five years;
- Review available flood assistance maps that incorporate climate change and weather data beyond the FEMA maps;
- Consult with specified stakeholders as part of the review process
- Consider specified provisions for inclusion in the model floodplain ordinance; and
- Review and consider updates to MDE's outreach and education process.

For the reasons detailed above, MDE urges a **FAVORABLE WITH AMENDMENTS** report for HB 1209.