

HOUSE BILL 1350

M1, M3, R1

8lr0463
CF SB 1006

By: **Delegates Stein, Barve, Fraser-Hidalgo, Frush, Gilchrist, Healey, Morhaim,
~~and Robinson~~ **Robinson, and Holmes****

Introduced and read first time: February 9, 2018

Assigned to: Environment and Transportation

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 14, 2018

CHAPTER _____

1 AN ACT concerning

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

4 FOR the purpose of altering the definition of the term “Coast Smart” for purposes of certain
5 provisions of law relating to certain construction practices that address certain
6 impacts associated with sea level rise and coastal flooding to apply to highway
7 facilities; altering the application of certain design and siting criteria established by
8 the Coast Smart Council, in consultation with the Department of Natural Resources
9 and the Department of Transportation, to apply, beginning on a certain date, to
10 certain State and local projects for which a certain level of project costs are funded
11 with State funds; altering certain design and siting criteria that the Coast Smart
12 Council, in consultation with the Department of Natural Resources, is required to
13 adopt; requiring the Department of Planning, in consultation with the Department
14 of Natural Resources, the Department of the Environment, and the Department of
15 Agriculture, to establish a plan to adapt to saltwater intrusion on or before a certain
16 date; requiring a certain plan to adapt to saltwater intrusion to be updated at a
17 certain frequency; requiring the Board of Public Works, in conjunction with the
18 Department of Natural Resources, the Department of the Environment, and the
19 Maryland Emergency Management Agency, to establish certain criteria to evaluate
20 whether State funds may be used to mitigate certain hazards associated with sea
21 level rise inundation and coastal flooding; requiring a certain local jurisdiction to
22 ~~submit to the Department of Planning for approval~~ develop a certain plan to address
23 nuisance flooding on or before a certain date; requiring a certain local jurisdiction to
24 update a certain plan to address nuisance flooding at a certain frequency; requiring

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 a local jurisdiction to publish certain nuisance flooding plans on the local
 2 jurisdiction's website; ~~requiring a certain vendor of real property located on certain~~
 3 ~~land that may be inundated from a certain sea level rise to, on or before entering into~~
 4 ~~a contract for the sale of property, deliver certain information to each purchaser~~
 5 requiring a local jurisdiction that develops a certain plan to submit a copy of the plan
 6 to the Department of Planning; repealing certain provisions of law relating to certain
 7 design and siting criteria for certain State capital projects; providing for the
 8 application of certain provisions of this Act; defining certain terms; and generally
 9 relating to sea level rise inundation and coastal flooding.

10 BY repealing and reenacting, without amendments,

11 Article – Transportation

12 Section 3–101(a) and (f) and 8–101(a) and (i)

13 Annotated Code of Maryland

14 (2015 Replacement Volume and 2017 Supplement)

15 BY repealing and reenacting, with amendments,

16 Article – Natural Resources

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

21 Annotated Code of Maryland

22 (2012 Replacement Volume and 2017 Supplement)

23 BY adding to

24 Article – Natural Resources

25 Section 3–1009 to be under the new part “Part III. Coast Smart Design and Siting
 26 Criteria”; 3–1012 to be under the new part “Part IV. Saltwater Intrusion”;
 27 3–1015 to be under the new part “Part V. State Mitigation”; and 3–1018 to be
 28 under the new part “Part VI. ~~Local Plan for~~ Nuisance Flooding”

29 Annotated Code of Maryland

30 (2012 Replacement Volume and 2017 Supplement)

31 ~~BY adding to~~

32 ~~Article – Real Property~~

33 ~~Section 10–711~~

34 ~~Annotated Code of Maryland~~

35 ~~(2015 Replacement Volume and 2017 Supplement)~~

36 BY repealing

37 Article – State Finance and Procurement

38 Section 3–602.3

39 Annotated Code of Maryland

40 (2015 Replacement Volume and 2017 Supplement)

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

3 **Article – Transportation**

4 3–101.

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

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

8 (2) “Highway facility” includes any one or more or combination of projects
9 involving the rehabilitation and reconstruction of highways in the State highway system to
10 meet present and future needs and the development and construction in new locations of
11 new highways necessitated by traffic demands to become parts of the State highway
12 system, including federally aided highway projects partially funded by this State and all
13 incidental property rights, materials, facilities, and structures.

14 8–101.

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

16 (i) “Highway” includes:

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

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

25 **Article – Natural Resources**

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

28 **PART I. GENERAL PROVISIONS.**

29 3–1001.

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

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

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

7 (c) "Council" means the Coast Smart Council.

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

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

12 (F) "HIGHWAY FACILITY" HAS THE MEANING STATED IN § 3-101(F) OF THE
13 TRANSPORTATION ARTICLE.

14 (G) "NUISANCE FLOODING" MEANS HIGH-TIDE FLOODING THAT CAUSES
15 PUBLIC INCONVENIENCE.

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

20 (2) "REPLACEMENT COST" DOES NOT INCLUDE:

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

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

24 (I) (1) "SALTWATER INTRUSION" MEANS THE MOVEMENT OF WATER
25 WITH A TOTAL DISSOLVED-SOLID CONCENTRATION GREATER THAN OR EQUAL TO
26 1,000 MG/L TO FRESHWATER.

27 (2) "SALTWATER INTRUSION" INCLUDES SALTWATER INTRUSION
28 INTO SURFACE WATER, AQUIFERS, AND SOILS.

29 (J) "SEA LEVEL RISE INUNDATION" MEANS THE INUNDATION OF LAND
30 FROM A SEA LEVEL RISE OF 2 FEET, AS ~~SHOWN ON THE SEA LEVEL RISE~~
31 ~~VULNERABILITY LAYER OF THE DEPARTMENT'S MARYLAND COASTAL ATLAS~~
32 DETERMINED BY THE COUNCIL.

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

3 (L) "STRUCTURE" MEANS:

4 (1) A WALLED OR ROOFED BUILDING;

5 (2) A MANUFACTURED HOME; OR

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

8 (M) "SUBSTANTIAL DAMAGE" MEANS DAMAGE CAUSED BY ANY SOURCE
9 THAT IS SUSTAINED BY A STRUCTURE ~~OR HIGHWAY FACILITY~~ SUCH THAT THE COST
10 OF RECONSTRUCTION TO ITS BEFORE-DAMAGED CONDITION IS AT LEAST HALF OF
11 THE STRUCTURE'S ~~OR HIGHWAY FACILITY'S~~ REPLACEMENT COST BEFORE THE
12 DAMAGE OCCURRED.

13 **3-1002. RESERVED.**

14 **3-1003. RESERVED.**

15 **PART II. COAST SMART COUNCIL.**

16 **[3-1002.] 3-1004.**

17 (a) There is a Coast Smart Council in the Department.

18 (b) The Department shall provide staff support for the Council.

19 **[3-1003.] 3-1005.**

20 (a) The Coast Smart Council shall include:

21 (1) The Secretary of Natural Resources, or the Secretary's designee;

22 (2) The Secretary of Budget and Management, or the Secretary's designee;

23 (3) The Secretary of the Environment, or the Secretary's designee;

24 (4) The Secretary of General Services, or the Secretary's designee;

25 (5) The Secretary of Planning, or the Secretary's designee;

26 (6) The Secretary of Transportation, or the Secretary's designee;

1 (7) The Secretary of Commerce, or the Secretary's designee;

2 (8) The Chair of the Critical Area Commission for the Chesapeake and
3 Atlantic Coastal Bays, or the Chair's designee;

4 (9) The Director of the Maryland Emergency Management Agency, or the
5 Director's designee;

6 (10) The Chancellor of the University System of Maryland, or the
7 Chancellor's designee; and

8 (11) Five members appointed by the Governor to represent local
9 government, environmental, and business interests.

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

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

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

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

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

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

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

24 **[3-1004.] 3-1006.**

25 (a) The Council shall:

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

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

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

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

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

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

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

13 **3-1007. RESERVED.**

14 **3-1008. RESERVED.**

15 **PART III. COAST SMART DESIGN AND SITING CRITERIA.**

16 **3-1009.**

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

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

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

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

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

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

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

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

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

18 3-1010. RESERVED.

19 3-1011. RESERVED.

20 PART IV. SALTWATER INTRUSION.

21 3-1012.

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

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

28 3-1013. RESERVED.

29 3-1014. RESERVED.

30 PART V. STATE MITIGATION.

1 3-1015.

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

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

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

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

15 3-1016. RESERVED.

16 3-1017. RESERVED.

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

18 3-1018.

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

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

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

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

31 ~~Article Real Property~~

1 ~~10-711.~~

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

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

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

14 Article – State Finance and Procurement

15 [3-602.3.

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

17 (2) “100-year base flood” means a flood having a 1% chance of being
 18 equaled or exceeded in any given year.

19 (3) “Base flood elevation” means:

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

22 (ii) in an area of shallow flooding:

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

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

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

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

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

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

8 (ii) “Replacement cost” does not include:

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

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

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

15 (i) subject to at least a 1% chance of flooding in any given year; and

16 (ii) designated by the Federal Emergency Management Agency in
17 flood insurance studies and on flood insurance rate maps as Zone A, AE, AH, AO, A1–30,
18 A99, VE, or V1–30.

19 (9) “Structure” means:

20 (i) a walled or roofed building;

21 (ii) a manufactured home; or

22 (iii) a gas or liquid storage tank that is principally above ground.

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

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

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

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

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

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

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

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

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
 15 1, 2018.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.