

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
Third Reader

House Bill 1427

(Delegate Stein)

Environment and Transportation

Education, Health, and Environmental Affairs

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Sea Level Rise Inundation and Coastal Flooding - Construction, Adaptation, and Mitigation

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This bill limits the applicability of provisions established under Chapters 628 and 629 of 2018 – governing compliance of specified State and local projects with Coast Smart siting and design criteria – to specified State and local *capital* projects. The bill also delays the implementation date of the Coast Smart siting and design criteria that are modified and made more broadly applicable pursuant to Chapters 628 and 629, from July 1, 2019, to July 1, 2020. The bill also delays the deadline for specified local jurisdictions to develop a plan to address nuisance flooding pursuant to Chapters 628 and 629, from July 1, 2019, to October 1, 2020, and requires the Maryland Department of Planning (MDP), in consultation with specified agencies, to develop and publish guidelines to assist the local jurisdictions in establishing nuisance flooding baselines. **The bill takes effect July 1, 2019.**

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Fiscal Summary

**State Effect:** State expenditures (multiple fund types) may decrease, potentially significantly, as discussed below. Revenues are not directly affected.

**Local Effect:** Local government expenditures may decrease, potentially significantly, as discussed below. Revenues are not directly affected.

**Small Business Effect:** Minimal or none.

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## Analysis

### Bill Summary:

#### *Coast Smart Siting and Design Criteria*

The bill amends provisions established under Chapters 628 and 629 of 2018 by, among other things, limiting the applicability of provisions requiring that construction or reconstruction under specified State and local projects be in compliance with specified Coast Smart siting and design criteria, to specified State and local *capital* projects. The bill also delays the implementation date for the requirement under Chapters 628 and 629 that construction or reconstruction be in compliance with modified and more broadly applicable Coast Smart siting and design criteria, from July 1, 2019, to July 1, 2020. The bill correspondingly modifies the requirement for the establishment of the Coast Smart siting and design criteria to apply to State and local *capital* projects – specifically, requiring the Coast Smart Council, in consultation with the Department of Natural Resources (DNR) and the Maryland Department of Transportation (MDOT), to establish Coast Smart siting and design criteria to address sea level rise inundation and coastal flood impacts on State and local *capital* projects (instead of State and local projects).

Under Chapters 628 and 629 and under the bill, the provisions apply to projects (but only *capital* projects, under the bill) – for which at least 50% of the project costs are funded with State funds – and which include the construction of a structure or highway facility or the reconstruction of a structure with substantial damage.

The bill modifies an exemption from the provisions for a *public work contract* of less than \$500,000 to instead be for a *capital project* that costs less than \$500,000.

The bill establishes that it is the intent of the General Assembly that, until the Coast Smart Council has adopted revised siting and design criteria in accordance with the bill, (1) units of State government that propose capital projects for a new State structure or the reconstruction of a substantially damaged State structure must comply with the siting and design criteria in the Coast Smart Construction Program adopted by the Coast Smart Council in June 2015, and (2) local capital projects and highway facilities are not subject to the siting and design criteria in the Coast Smart Construction Program adopted by the Coast Smart Council in June 2015.

The bill also requires the Department of Budget and Management (DBM), the Department of General Services (DGS), and DNR to review and incorporate criteria established by the Coast Smart Council under the bill into the appropriate instructions and policies.

### *Local Plans to Address Nuisance Flooding*

The bill delays the deadline established under Chapters 628 and 629 for a local jurisdiction that experiences nuisance flooding to develop a plan to address nuisance flooding, from July 1, 2019, to October 1, 2020. The bill also requires MDP, in consultation with DNR and the Maryland Department of the Environment (MDE), to, by October 1, 2019, develop and publish guidelines to assist local jurisdictions in the collection of data to establish nuisance flooding baselines.

### **Current Law:**

#### *Coast Smart Siting and Design Criteria*

Chapters 628 and 629 of 2018 expand the applicability of the Coast Smart siting and design criteria established by the Coast Smart Council and modify a requirement that must be included in the criteria.

Prior to the enactment of Chapters 628 and 629, the criteria applied to *State capital projects* – planned and built by units of State government that were partially or fully funded with State funds – which included construction of a structure or the reconstruction of a structure with substantial damage. Chapters 628 and 629 repealed those provisions and instead, beginning July 1, 2019, make the criteria applicable to *State and local projects* (not specifically limited to capital projects) – for which at least 50% of the project costs are funded with State funds – which include the construction of a structure *or highway facility* or the reconstruction of a structure with substantial damage. Chapters 628 and 629 also specify that the criteria do not apply to a public work contract of less than \$500,000.

Instead of including a requirement (existing prior to Chapters 628 and 629) that the lowest floor elevation of each structure located within a special flood hazard area be built at an elevation of at least two feet above the base flood elevation, under Chapters 628 and 629, the criteria must include a requirement that a structure 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.

A provision existing prior to Chapters 628 and 629 (and retained by Chapters 628 and 629) requires that the criteria include provisions establishing a process to allow a unit of State government (or local government, under Chapters 628 and 629) to obtain a waiver from complying with the criteria.

Chapters 628 and 629 also clarify the purpose of the Coast Smart siting and design criteria to be “to address sea level rise *inundation* and coastal flood impacts on State and local projects” in place of “to address sea level rise and coastal flood impacts on capital projects.” “Sea level rise inundation” is defined as the inundation of land from a sea level rise of two feet, as determined by the Coast Smart Council.

### *Local Plans to Address Nuisance Flooding*

By July 1, 2019, Chapters 628 and 629 require a local jurisdiction that experiences nuisance flooding to develop a plan to address nuisance flooding and submit a copy of the plan to MDP. A plan must be updated at least once every five years and must be published on a local jurisdiction’s website. “Nuisance flooding” is defined as high-tide flooding that causes public inconvenience.

### **Background:**

#### *Coast Smart Council*

Chapter 415 of 2014 established the original Coast Smart siting and design criteria requirements in statute and created a Coast Smart Council in DNR to:

- study and provide analysis regarding standards and factors relevant to the establishment of Coast Smart siting criteria and design criteria;
- develop siting and design criteria to establish and implement Coast Smart practices and requirements;
- develop eligibility criteria, standards, and procedures for applying for and obtaining a waiver from compliance with the Coast Smart requirements; and
- establish procedures for evaluating Coast Smart waiver applications that include the consideration of proposed capital projects with regard to (1) 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 (2) the need to prevent danger to life and property and to avoid environmental, socioeconomic, and economic harm.

“Coast Smart” is defined, pursuant to Chapter 415 and amendments under Chapters 628 and 629, as 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, and includes design criteria and siting criteria that are applicable throughout the entire life cycle of a project.

### *Coast Smart Construction Program (Adopted in 2015)*

Pursuant to Chapter 415, the Coast Smart Council adopted a Coast Smart Construction Program in June 2015, that includes the siting and design criteria, for the use of all State agencies that design and build facilities or prepare programs and budgets for the design and construction of facilities. In addition to the criteria, the program creates certain categorical exceptions (for certain types of projects that may be exempt from strict application of the construction criteria provided the project has been designed to increase resiliency to future impacts) and considerations relating to, and the process for, waivers for a project from one or more of the specific siting and/or design criteria. The program also requires that the criteria be incorporated into (1) the Procedural Manual for Professional Services (by DGS); (2) the Facility Program Manual (by DBM and DGS); and (3) the Maryland State Hazard Mitigation Plan and State Disaster Recovery Plan (by the Maryland Emergency Management Agency).

### *Implementation of Chapters 628 and 629*

DNR indicates that more time (beyond July 1, 2019), is expected to be needed to complete the modified Coast Smart siting and design criteria required under Chapters 628 and 629, in order to conduct additional work and resolve uncertainty related to how best to regulate the design and construction of structures so that they withstand the storm surge from a Category 2 hurricane. The Coast Smart Council has also looked at what types of noncapital projects might be subject to the siting and design criteria under Chapters 628 and 629, which may include a broad array of projects, including bay restoration, agricultural cost share, waterway improvement, habitat restoration, and other operating activities.

DNR indicates that local jurisdictions have requested a framework/guidance from the State to assist in the development of nuisance flooding plans and the bill's extension of the deadline for the plans allows for that guidance to be developed and published, and plans to subsequently be developed, ensuring that local jurisdictions are collecting correct information to create their baselines of flooding events.

**State Fiscal Effect:** State expenditures (multiple fund types) may decrease, potentially significantly, as a result of the provisions of the bill that (1) limit the applicability of the Coast Smart siting and design criteria provisions to State and local *capital* projects and (2) delay the implementation date of modified and more broadly applicable Coast Smart siting and design criteria required under Chapters 628 and 629, from July 1, 2019, to July 1, 2020.

The fiscal and policy notes for House Bill 1350 and Senate Bill 1006 of 2018 (enacted as Chapters 628 and 629) indicated that State expenditures were expected to increase, potentially significantly, in future years to comply with the expanded scope (applicability)

of the Coast Smart siting and design criteria and the modified requirement (relating to storm surge from a Category 2 hurricane) the criteria must include. MDOT, the Maryland Transportation Authority, DGS, DNR, and MDE all indicated at the time the potential for cost increases for affected projects in coastal areas, but the magnitude of the impact could not be reliably estimated.

State expenditures decrease, therefore, to the extent (1) any noncapital projects that otherwise are determined to be subject to the Coast Smart siting and design criteria in the absence of the bill are completed at a lower cost as a result of not being subject to the criteria (2) projects that otherwise are subject to the modified and more broadly applicable Coast Smart siting and design criteria in the absence of the bill are no longer subject to the modified criteria because of the delayed implementation date (July 1, 2020), and are completed at a lower cost as a result.

The bill's requirement that MDP, in consultation with DNR and MDE, develop and publish guidelines to assist local jurisdictions in the collection of data to establish nuisance flooding baselines can be handled with existing resources.

**Local Fiscal Effect:** Local government expenditures may decrease, potentially significantly, (similar to the impact on State finances) as a result of the bill's provisions limiting the applicability of the Coast Smart siting and design criteria and delaying the implementation date of the modified and more broadly applicable siting and design criteria.

The bill's delay of the deadline for specified local jurisdictions to develop a plan to address nuisance flooding is not expected to directly affect local government finances.

Local governments benefit from the guidelines published by MDP, in consultation with DNR and MDE, as a result of the bill.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Natural Resources; Maryland Department of Planning; Maryland Department of Transportation; Department of Budget and Management; Department of General Services; Calvert, Howard, and Prince George's counties; cities of Annapolis, Bowie, and Takoma Park; Maryland Municipal League; Department of Legislative Services

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