

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1080 (Delegate Lehman, *et al.*)
Environment and Transportation

**Coast Smart Siting and Design Criteria - Private Construction or Reconstruction
Projects - Application**

This bill expands existing provisions – that require specified State or local capital projects to be constructed or reconstructed in compliance with Coast Smart siting and design criteria, beginning July 1, 2020 – to also apply to specified private construction or reconstruction projects, beginning July 1, 2021. **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: The bill is not expected to have a direct, material impact on State finances, as discussed below.

Local Effect: The bill is not expected to have a direct, material impact on local government finances, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Beginning July 1, 2021, if a private project includes the construction of a structure or highway facility, or the reconstruction of a structure with substantial damage, the structure or highway facility must be constructed/reconstructed in compliance with Coast Smart siting and design criteria established by the Coast Smart Council.

That requirement applies to private construction or reconstruction projects that:

- disturb one acre or more of land;

- are located in an area designated as a Special Flood Hazard Area by the Federal Emergency Management Agency;
- are located in an area designated as being subject to inundation by a Category 2 hurricane as depicted on the National Oceanic and Atmospheric Administration's (NOAA) National Storm Surge Hazard Maps;
- according to NOAA's Office for Coastal Management's sea level rise inundation data, are subject to inundation by two feet or less of sea level rise; or
- are located in an area (1) that, as of 2019, is subject to recurring high-tide flooding or (2) where, according to NOAA's Sea Level Rise Viewer, high-tide flooding will occur if the sea level rises two feet.

The requirement does not apply to a private construction or reconstruction project that costs less than \$100,000.

The Coast Smart Council, in consultation with the Department of Natural Resources (DNR) and the Maryland Department of Transportation (MDOT), must establish Coast Smart siting and design criteria to address sea level rise inundation and coastal flood impacts on private construction or reconstruction projects. In addition to the requirements that currently only apply to the criteria adopted by the council for State and local capital projects, the criteria must include provisions establishing a process to allow a private developer to obtain a waiver from complying with the requirement that specified private projects be constructed or reconstructed in compliance with the siting and design criteria.

The bill applies only to private construction or reconstruction projects for which a general or individual permit for stormwater associated with construction activity was issued after July 1, 2021, by the Maryland Department of the Environment.

Current Law: Pursuant to changes made under Chapters 628 and 629 of 2018 and Chapter 442 of 2019, beginning July 1, 2020, if a State or local capital project includes the construction of a structure or highway facility, or the reconstruction of a structure with substantial damage, the structure or highway facility must be constructed/reconstructed in compliance with specified Coast Smart siting and design criteria. That requirement applies to State and local capital projects for which at least 50% of the project costs are funded with State funds and does not apply to a capital project that costs less than \$500,000.

The Coast Smart Council, in consultation with DNR and MDOT, must establish Coast Smart siting and design criteria to address sea level rise inundation and coastal flood impacts on State and local capital projects. The criteria must include:

- guidelines and any other directives applicable to the preliminary planning and construction of a proposed capital project;

- 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; and
- provisions establishing a process to allow a unit of State or local government to obtain a waiver from complying with the requirement that specified State or local capital projects be constructed or reconstructed in compliance with the siting and design criteria.

Background: Chapters 628 and 629 of 2018, as amended by Chapter 442 of 2019, expanded the applicability of the Coast Smart siting and design criteria to, beginning July 1, 2020, apply to both State *and local* capital projects for which at least 50% of the project costs are funded with State funds. Chapters 628 and 629 also modified a requirement that must be included in the criteria. Instead of including a requirement 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, the criteria must now include the Category 2 hurricane storm surge requirement mentioned above.

Chapter 442 established the intent of the General Assembly that, until the Coast Smart Council has adopted revised siting and design criteria (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.

DNR indicates that the Coast Smart siting and design criteria are in the process of being updated in order to be in place by July 1, 2020, when State and local capital projects must comply with the revised criteria. In place of the Category 2 hurricane storm surge requirement in statute, the siting and design criteria are being updated using a separate “100-year floodplain, plus 3 feet” standard that is intended to meet the intent of the statutory requirement but be more workable for regulatory purposes.

State/Local Fiscal Effect: The bill’s requirement that the Coast Smart Council establish Coast Smart siting and design criteria to address sea level rise inundation and coastal flood impacts on private construction or reconstruction projects is expected to be handled with existing resources.

The bill is not expected to have a direct, material impact on State or local government finances in part because the bill does not explicitly establish how compliance with the criteria applicable to private projects will be enforced. Depending on how the criteria are

administered and enforced, additional State or local resources presumably may be needed; however, in response to requests for information, DNR and a small number of local governments have not indicated a clear need for additional resources.

Small Business Effect: Depending in part on the specifics of the siting and design criteria that are made applicable to private construction or reconstruction projects, the bill may have a meaningful impact on small business landowners or developers engaging in projects subject to the bill's requirements, to the extent the Coast Smart siting and design criteria create additional costs or barriers for the projects above and beyond those resulting from other applicable standards.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Department of Natural Resources; Department of General Services; Maryland Department of Transportation; Maryland Department of the Environment; Harford, Talbot, and Worcester counties; Maryland Association of Counties; Maryland Municipal League; NAIOP (Maryland Chapter); Department of Legislative Services

Fiscal Note History: First Reader - February 27, 2020
an/lgc

Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510