

SENATE BILL 528

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1lr1650
CF HB 512

By: **Senator Elfreth**

Introduced and read first time: January 22, 2021

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Coast Smart Siting and Design Criteria – Private Construction or**
3 **Reconstruction Projects and Enforcement**

4 FOR the purpose of applying Coast Smart siting and design criteria to certain private
5 construction or reconstruction projects beginning on a certain date; exempting
6 certain private construction or reconstruction projects from the application of this
7 Act; establishing that the Department of Natural Resources has sole responsibility
8 for enforcement of this Act, subject to a certain delegation of enforcement authority;
9 requiring the Secretary of Natural Resources to delegate certain enforcement
10 authority to a certain county or municipality; providing for the duration of the
11 delegated enforcement authority; authorizing the Secretary to suspend the delegated
12 enforcement authority under certain circumstances; requiring the Department to
13 enforce compliance of this Act during a period of suspension of delegated enforcement
14 authority; requiring a county or municipality requesting delegation of enforcement
15 authority or renewal of delegation to submit the request on or before a certain date;
16 requiring the Secretary to take certain actions on a request for delegation of
17 enforcement authority on or before a certain date; providing for the application of
18 this Act; making conforming changes; and generally relating to Coast Smart siting
19 and design criteria.

20 BY repealing and reenacting, without amendments,
21 Article – Natural Resources
22 Section 3–1001(a) and (g)
23 Annotated Code of Maryland
24 (2018 Replacement Volume and 2020 Supplement)

25 BY repealing and reenacting, with amendments,
26 Article – Natural Resources
27 Section 3–1009
28 Annotated Code of Maryland
29 (2018 Replacement Volume and 2020 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Natural Resources**

4 3–1001.

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

6 (g) “Nuisance flooding” means high–tide flooding that causes public
7 inconvenience.

8 3–1009.

9 (a) (1) This section applies to:

10 (I) State and local capital projects for which at least 50% of the
11 project costs are funded with State funds; AND

12 (II) **PRIVATE CONSTRUCTION OR RECONSTRUCTION PROJECTS**
13 **THAT DISTURB 1 ACRE OR MORE OF LAND AND:**

14 1. **ARE LOCATED IN AN AREA DESIGNATED AS A SPECIAL**
15 **FLOOD HAZARD AREA BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY;**

16 2. **ARE LOCATED IN OR WITHIN 3 FEET OF THE 100–YEAR**
17 **FLOODPLAIN AS MAPPED AND UPDATED; OR**

18 3. **ARE LOCATED IN AN AREA THAT, AS OF 2019, IS**
19 **SUBJECT TO NUISANCE FLOODING.**

20 (2) This section does not apply to [a]:

21 (I) **A capital project that costs less than \$500,000; OR**

22 (II) **A PRIVATE CONSTRUCTION OR RECONSTRUCTION PROJECT**
23 **THAT COSTS LESS THAN \$100,000.**

24 (b) (1) (I) Beginning July 1, 2020, if a State or local capital project includes
25 the construction of a structure or highway facility, the structure or highway facility shall
26 be constructed in compliance with siting and design criteria established under subsection
27 (c) of this section.

28 (II) **BEGINNING JULY 1, 2022, IF A PRIVATE PROJECT INCLUDES**

1 **THE CONSTRUCTION OF A STRUCTURE OR HIGHWAY FACILITY, THE STRUCTURE OR**
2 **HIGHWAY FACILITY SHALL BE CONSTRUCTED IN COMPLIANCE WITH SITING AND**
3 **DESIGN CRITERIA ESTABLISHED UNDER SUBSECTION (C) OF THIS SECTION.**

4 (2) (I) Beginning July 1, 2020, if a State or local capital project includes
5 the reconstruction of a structure with substantial damage, the structure shall be
6 reconstructed in compliance with siting and design criteria established under subsection
7 (c) of this section.

8 (II) **BEGINNING JULY 1, 2022, IF A PRIVATE PROJECT INCLUDES**
9 **THE RECONSTRUCTION OF A STRUCTURE WITH SUBSTANTIAL DAMAGE, THE**
10 **STRUCTURE SHALL BE RECONSTRUCTED IN COMPLIANCE WITH SITING AND DESIGN**
11 **CRITERIA ESTABLISHED UNDER SUBSECTION (C) OF THIS SECTION.**

12 (c) (1) The Council, in consultation with the Department and the Department
13 of Transportation, shall establish Coast Smart siting and design criteria to address sea
14 level rise inundation and coastal flood impacts on State and local capital projects **AND**
15 **PRIVATE CONSTRUCTION OR RECONSTRUCTION PROJECTS.**

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

17 (i) Guidelines and any other directives applicable to the preliminary
18 planning and construction of a proposed [capital] project;

19 (ii) A requirement that a structure be designed and constructed or
20 reconstructed in a manner to withstand the storm surge from a storm that registers as a
21 category 2 on the Saffir–Simpson hurricane wind scale, including a requirement for
22 structures to be constructed or reconstructed at a minimum elevation above the projected
23 storm surge; and

24 (iii) Provisions establishing a process to allow a unit of State or local
25 government **OR A PRIVATE DEVELOPER** to obtain a waiver from complying with the
26 requirements of subsection (b) of this section.

27 (D) (1) **UNLESS ENFORCEMENT AUTHORITY HAS BEEN DELEGATED**
28 **UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE DEPARTMENT SHALL HAVE SOLE**
29 **RESPONSIBILITY TO ENFORCE COMPLIANCE WITH THIS SECTION.**

30 (2) (I) 1. **THE SECRETARY SHALL DELEGATE ENFORCEMENT**
31 **AUTHORITY UNDER THIS SECTION TO ANY COUNTY OR MUNICIPALITY THAT THE**
32 **SECRETARY DETERMINES:**

33 **A. IS CAPABLE OF ENFORCING COMPLIANCE WITH THE**
34 **PROVISIONS OF THIS SECTION; OR**

1 **B. HAS ENFORCEMENT CAPABILITY THAT IS**
2 **COMPARABLE TO THAT OF THE DEPARTMENT IN TERMS OF LAWS, PROCEDURES,**
3 **MANPOWER, EQUIPMENT, AND OVERALL EFFECTIVENESS.**

4 **2. THE SECRETARY MAY DELEGATE A SPECIFIC**
5 **PORTION OF THE ENFORCEMENT AUTHORITY UNDER THIS SECTION TO A COUNTY OR**
6 **MUNICIPALITY.**

7 **3. THE SECRETARY MAY NOT DENY A COUNTY'S OR**
8 **MUNICIPALITY'S REQUEST FOR DELEGATION UNLESS THE COUNTY OR**
9 **MUNICIPALITY IS GIVEN THE OPPORTUNITY TO PRESENT ARGUMENTS BEFORE THE**
10 **SECRETARY.**

11 **(II) UNLESS RENEWED BY THE SECRETARY, A DELEGATION**
12 **UNDER THIS PARAGRAPH SHALL BE EFFECTIVE FOR NOT MORE THAN 2 YEARS FROM**
13 **THE DATE OF DELEGATION.**

14 **(III) 1. A DELEGATION TO A COUNTY OR MUNICIPALITY**
15 **UNDER THIS PARAGRAPH IS SUBJECT TO SUSPENSION BY THE SECRETARY IF:**

16 **A. BEFORE THE SUSPENSION, THE COUNTY OR**
17 **MUNICIPALITY IS GIVEN THE OPPORTUNITY FOR A HEARING; AND**

18 **B. THE DEPARTMENT FINDS THAT THE COUNTY'S OR**
19 **MUNICIPALITY'S ENFORCEMENT OF THIS SECTION HAS FALLEN BELOW THE**
20 **STANDARD OF COMPARABLE EFFECTIVENESS.**

21 **2. THE DEPARTMENT SHALL ENFORCE COMPLIANCE OF**
22 **THIS SECTION DURING A PERIOD OF SUSPENSION.**

23 **(IV) A COUNTY OR MUNICIPALITY REQUESTING DELEGATION OF**
24 **ENFORCEMENT AUTHORITY OR RENEWAL OF DELEGATION UNDER THIS SECTION**
25 **MUST SUBMIT THE REQUEST TO THE SECRETARY ON OR BEFORE OCTOBER 1 OF THE**
26 **YEAR IMMEDIATELY PRECEDING THE FISCAL YEAR FOR WHICH DELEGATION OR**
27 **RENEWAL OF DELEGATION IS SOUGHT.**

28 **(V) ON OR BEFORE JANUARY 1 OF THE YEAR DURING WHICH**
29 **DELEGATION IS REQUESTED BY A COUNTY OR MUNICIPALITY, THE SECRETARY**
30 **SHALL:**

31 **1. GRANT THE REQUEST;**

32 **2. DENY THE REQUEST; OR**

1 **3. DELEGATE A SPECIFIC PORTION OF THE**
2 **ENFORCEMENT AUTHORITY UNDER THIS SECTION.**

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply only to
4 private construction or reconstruction projects for which, in accordance with Title 9,
5 Subtitle 3 of the Environment Article, a general or individual permit for stormwater
6 associated with a construction activity was issued after July 1, 2022, by the Department of
7 the Environment.

8 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
9 1, 2021.