

Department of Legislative Services
 Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 528 (Senator Elfreth)
 Education, Health, and Environmental Affairs

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

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, 2022. The bill also establishes that the Department of Natural Resources (DNR) has sole responsibility to enforce compliance with the provisions, unless DNR has delegated enforcement authority to a county or municipality under specified criteria and limitations. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: General fund expenditures increase by at least \$174,100 in FY 2023, with ongoing costs in future years. Revenues are not directly affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	174,100	168,900	174,900	181,100
Net Effect	\$0	(\$174,100)	(\$168,900)	(\$174,900)	(\$181,100)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local government expenditures may increase, as discussed below. Revenues are not directly affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Application of Criteria to Private Construction or Reconstruction

Beginning July 1, 2022, 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 and:

- are located in an area designated as a Special Flood Hazard Area by the Federal Emergency Management Agency;
- are located in or within three feet of the 100-year floodplain as mapped and updated; or
- are located in an area that, as of 2019, is subject to nuisance flooding.

The requirement does not apply to a private construction or reconstruction project that costs less than \$100,000. “Nuisance flooding” means high-tide flooding that causes public inconvenience.

The Coast Smart Council, in consultation with DNR and the Maryland Department of Transportation (MDOT), must establish Coast Smart siting and design criteria to address sea level rise inundation and coastal food 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, 2022, by the Maryland Department of the Environment.

Enforcement of Compliance with Criteria

The bill establishes that DNR has sole responsibility to enforce the requirements that projects be constructed/reconstructed in compliance with Coast Smart siting and design

criteria, both with respect to State and local capital projects and private construction or reconstruction projects, unless enforcement authority has been delegated to a county or municipality. The Secretary of Natural Resources must delegate enforcement authority to any county or municipality that the Secretary determines is capable of enforcing compliance and has enforcement capability that is comparable to DNR's capability in terms of laws, procedures, manpower, equipment, and overall effectiveness. The bill establishes additional authority, procedures, and limitations relating to DNR's delegation of enforcement authority and the ability of a county or municipality to request delegation of enforcement authority, including (1) limitation of the duration of a delegation to two years, unless renewed by DNR and (2) the ability of the Secretary to delegate a specific portion of the enforcement authority to a county or municipality.

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.

State Fiscal Effect: General fund expenditures increase by at least \$174,083 in fiscal 2023 that accounts for the date when private construction/reconstruction projects are first required to comply with the Coast Smart siting and design criteria (July 1, 2022). This estimate reflects the cost of hiring two natural resources planners within DNR to (1) enforce compliance with the requirement that specified private projects comply with the Coast Smart siting and design criteria; (2) provide any technical assistance needed to

counties or municipalities to whom enforcement authority is delegated; and (3) to manage any requests for guidance from the Coast Smart Council from private developers regarding compliance with the Coast Smart siting and design criteria. Existing DNR staff cannot handle this additional work. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. This estimate assumes the following:

- counties and municipalities have discretion under the bill regarding whether or not they seek delegation of enforcement authority, and there may be limited delegation of enforcement authority;
- while the level of enforcement work is uncertain, two natural resources planners is the minimum amount of additional staff needed if there is limited delegation of enforcement authority to counties and municipalities (with enough delegation of enforcement authority, the need for additional DNR staff may decrease to one natural resources planner);
- the additional enforcement work will be limited to private projects, since DNR indicates that there are existing review procedures applicable to State and local capital projects to sufficiently ensure compliance with the Coast Smart siting and design criteria; and
- the bill’s requirement that the Coast Smart Council establish Coast Smart siting and design criteria applicable to private construction/reconstruction projects can be handled with existing resources.

Positions	2
Salaries and Fringe Benefits	\$162,593
Operating Expenses	<u>11,490</u>
Total FY 2023 State Expenditures	\$174,083

Future year expenditures reflect salaries with annual increases and employee turnover and ongoing operating expenses.

To the extent a portion of the work that the natural resources planners will handle arises in the months leading up to July 1, 2022, and that work cannot be temporarily handled by existing staff, increased expenditures may begin earlier.

Local Fiscal Effect: To the extent enforcement authority is delegated by DNR to counties and municipalities, county and municipality expenditures increase in certain jurisdictions. Of a small number of jurisdictions contacted, some have indicated a need for additional resources if delegated enforcement authority. The City of Havre de Grace, for example, expects to incur costs of approximately \$85,000 annually for a salary, fringe benefits, and associated operating costs of an additional code enforcement inspector, based in part on the size of floodplain areas within the city. Baltimore and Somerset counties have also

indicated a potential need for additional resources if they take on enforcement authority. Anne Arundel County anticipates handling enforcement, if delegated, with existing staff. The Maryland Association of Counties and Maryland Municipal League have both indicated the potential for counties and municipalities to incur increased costs to take on enforcement authority.

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. Those small businesses are affected to the extent the Coast Smart siting and design criteria create additional costs or barriers (including any potential delays resulting from the siting and design criteria compliance process) for the projects, above and beyond those resulting from other applicable standards.

Additional Information

Prior Introductions: HB 1080 of 2020 received a hearing in the House Environment and Transportation Committee, but no further action was taken.

Designated Cross File: HB 512 (Delegate Lehman) - Environment and Transportation.

Information Source(s): Department of Natural Resources; Maryland Department of Transportation; Maryland Department of the Environment; Anne Arundel, Baltimore, Charles, Frederick, Montgomery, and Somerset counties; Maryland Association of Counties; City of Havre de Grace; Maryland Municipal League; NAIOP (Maryland Chapter); Department of Legislative Services

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rh/lgc

Analysis by: Scott D. Kennedy

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