

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1209 (Delegate Lehman, *et al.*)
 Environment and Transportation

Environment – Flood Control – Flood Risk Assessment and Model Ordinance
 (Climate Ready Floodplain Act of 2023)

This bill requires the Maryland Department of the Environment (MDE), by July 1, 2024, to (1) publish a statewide flood risk assessment map projected to the year 2050 that meets specified requirements; (2) educate the public about the information in the map; and (3) establish a model floodplain ordinance that meets specified minimum requirements. Among other things, the model ordinance must prohibit certain new construction and impose specified requirements for existing buildings undergoing significant repairs or reconstruction. By July 1, 2025, a unit of local government with planning and zoning authority must submit to MDE for review a proposed floodplain ordinance that incorporates the bill’s requirements for MDE’s model floodplain ordinance. By September 1, 2025, MDE must approve any proposed ordinances or provide written notice of any required revisions.

Fiscal Summary

State Effect: General fund expenditures increase by \$1.0 million in FY 2024; out-years reflect annualization, inflation, and ongoing costs. Potential decrease in special fund revenues beginning in FY 2026. Potential increase in costs for the design and construction of affected State projects (not reflected in the table below), as discussed below.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
SF Revenue	\$0	\$0	(-)	(-)	(-)
GF Expenditure	\$1,032,100	\$310,600	\$323,900	\$337,800	\$355,100
Net Effect	(\$1,032,100)	(\$310,600)	(\$323,900)	(\$337,800)	(\$355,100)

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

Local Effect: Local expenditures may increase, likely beginning in FY 2025, as discussed below. The bill does not directly affect local revenues. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The statewide flood risk assessment map must (1) illustrate any area that has a 0.2% chance of flooding or 1.0% chance of flooding due to the combined effects of sea level rise, storm surges, increased precipitation, increased temperature, overflow from the waters of the State, and extreme weather events related to the anticipated adverse effects of climate change and (2) include projections (in feet) for how high the water level may rise in areas that have a 0.2% chance of flooding or 1.0% chance of flooding by 2050.

MDE must educate the public about the information described above, including publishing the information on its website and participating in outreach efforts to the general public.

The model floodplain ordinance must, at a minimum (1) incorporate the minimum requirements under the National Flood Insurance Program (NFIP), including floodplain management criteria for flood-prone areas and requirements for variances and exceptions; (2) prohibit new construction of any building located within an area that has a 1% chance of flooding by 2050; (3) for an existing building that is undergoing significant repairs or reconstruction and is located within an area that has a 1% chance of flooding by 2050, require that the ground floor of the existing building be elevated at a minimum of two feet above the base flood elevation and that flood damage-resistant materials be used below the elevation of the ground floor; (4) prohibit the disposal of fill (including earthen soils, rock, rubble, construction and woody debris, and trash) within an area that has a 1% chance of flooding by 2025; (5) prohibit the construction of any project that disturbs more than one acre of land if a pre- and post-floodplain analysis indicates that the project will increase the chance of flooding by 2050 for properties, natural areas, or natural features downstream; and (6) apply the Coast Smart siting and design criteria to any building or property located within an area that has a 0.2% chance of flooding by 2050.

By July 1, 2025, a unit of local government with planning and zoning authority must submit to MDE for review a proposed floodplain ordinance that incorporates the minimum requirements under the bill for MDE's model floodplain ordinance. By September 1, 2025, MDE must (1) approve any proposed floodplain ordinances submitted for review or (2) provide written notice to the relevant unit of local government of any revisions that MDE requires.

Current Law:

National Flood Insurance Program and State Flood Insurance Maps

MDE's Water and Science Administration is the State's coordinating office for NFIP. In order to participate in NFIP, local communities must adopt and enforce a floodplain management ordinance containing minimum requirements specified by federal law, which apply in floodplain areas mapped by the Federal Emergency Management Agency (FEMA). In addition, the ordinance should reflect State laws and policies. All Maryland counties and most Maryland municipalities participate in NFIP. The program makes flood insurance available to property owners in participating communities. In return, local governments must adopt ordinances to manage development within 100-year floodplains to prevent increased flooding and minimize future flood damage.

MDE maintains the [Maryland model floodplain management ordinance](#), which is developed through a coordinated effort with local communities. The model floodplain management ordinance, which integrates NFIP and State permit requirements, can be tailored and adopted by communities in order for local communities to be eligible for NFIP.

In conjunction with FEMA, MDE updates regional flood risks that take into account river flow, storm tides, rainfall, and coastal storm surges. This information is used to create flood insurance rate maps that, among other things, are used for floodplain management and insurance purposes. According to MDE, it has FEMA floodplain mapping for Baltimore City and all 23 counties. These 100-year (or areas with a 1% chance of flooding) floodplain maps cover streams and floodplains with drainage areas of 640 acres and greater. This includes the tidal floodplains as well as riverine floodplains. The FEMA floodplain mapping program is intended to inform on flood risk within the FEMA-mapped floodplain, but it does not extend to anywhere outside the FEMA-mapped floodplain. Additionally, MDE advises that it has developed the Climate Ready Action Boundary (CRAB) for both FEMA's tidal floodplains and the riverine floodplains. CRAB delineates a future condition for FEMA's 100-year floodplain boundary assuming the floodplain elevations rise three feet.

Coast Smart Siting

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 the Department of Natural Resources and the Maryland Department of Transportation, 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.

Approvals Generally Required for Projects in Wetlands

Wetlands in the State are protected, and the Wetlands and Waterways Program within MDE administers a statewide program for the management, conservation, and protection of Maryland's tidal wetlands and nontidal wetlands and waterways. Generally, a person must obtain a permit or license before working in wetlands in the State.

Application fees for wetlands and waterways authorizations range from \$250 to \$7,500 (multiplied by the impact area in acres). However, there are several fee exemptions, including with respect to applications for (1) stream restoration, vegetative shoreline stabilization, wetland creation, or another project in which the primary effect is to enhance the State's wetland or water resources; (2) performance of agricultural best management practices contained in an approved soil conservation and water quality plan; and (3) performance of forestry best management practices contained in an approved erosion and sediment control plan, as specified. Application fees are paid into the Wetlands and Waterways Program Fund.

State Expenditures: General fund expenditures for MDE increase by \$1.0 million in fiscal 2024, which accounts for the bill's October 1, 2023 effective date. This estimate reflects the cost of hiring two regulatory and compliance engineers and one natural resources planner to (1) publish the new statewide flood risk assessment map; (2) conduct outreach to educate the public; (3) establish a new model floodplain ordinance; (4) accept and review local proposed floodplain ordinances; and (5) update regulations. It includes salaries, fringe benefits, one-time start-up costs (including the purchase of three vehicles and software development and equipment costs), and ongoing operating expenses. The

information and assumptions used in calculating the estimate are stated below:

- there are 147 communities in the State that participate in NFIP, so MDE needs to review at least that many new or updated local floodplain ordinances by September 1, 2025, and it is assumed that MDE needs to review updated local ordinances on an ongoing basis;
- the new map requires substantial additional modeling and mapping work, and is significantly more detailed than the map that is currently maintained; and
- to build and maintain the statewide flood risk assessment map in-house, MDE must invest in new software, equipment, and program development.

Positions	3.0
Salaries and Fringe Benefits	\$226,814
Vehicles Purchase	73,779
Software Development Costs	700,000
Other Operating Expenses	<u>31,497</u>
Total FY 2024 MDE Admin Costs	\$1,032,090

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

For a discussion of the potential impacts to State agencies as part of the regulated community, please see the Additional Comments section below.

State Revenues: Because the bill likely results in a decrease in development and redevelopment within the 100-year floodplain, MDE anticipates, and the Department of Legislative Services concurs, that special fund revenues for the Wetlands and Waterways Program Fund within MDE may decrease, likely beginning in fiscal 2026, due to a reduction in project application fees. The impact on special fund revenues depends on the number and size of affected projects. (Application fees for wetlands and waterways projects are calculated based on acres of impact.)

Local Expenditures: Local expenditures may increase, likely beginning in fiscal 2025, to update or develop new floodplain ordinances for a much larger floodplain area than is currently required through FEMA’s NFIP program. For example, the City of Laurel anticipates that it needs to hire a consultant to update its code and to conduct outreach to residents and businesses. Local expenditures may also increase to conduct additional permit review and inspection activities.

For a discussion of the potential impacts to local agencies as part of the regulated community, please see the Additional Comments section below.

Small Business Effect: For a discussion of the potential impacts to small businesses as part of the regulated community, please see the Additional Comments section below.

Additional Comments: The bill likely results in a decrease in development and redevelopment within areas with a 1% chance of flooding by 2050, or the 100-year floodplain. More specifically, for a project that is located within an area that has a 1% chance of flooding by 2050, the bill prohibits new construction and requires new flood mitigation measures to be implemented for an existing building that is undergoing significant repairs or reconstruction. Further, the bill prohibits the disposal of fill within an area that has a 1% chance of flooding by 2025. These changes likely prevent some projects moving forward and likely increase design and construction costs for others. These impacts, which could be significant, could affect State agencies, local governments, and small businesses. Further, the bill's expanded application of the Coast Smart siting and design criteria may affect capital projects for State agencies and local governments. The actual impacts on any given project will depend, among other things, on the statewide flood risk assessment map developed by MDE under the bill, where a potential project is located in relation to flood zones identified in the map, and the scope of the project.

With respect to State projects, the bill has no effect on total capital budget expenditures as total funding is established annually by the Governor and General Assembly through the capital budget process, subject to capital affordability limits. To the extent the costs of individual projects increase, fewer projects receive funding, and some may be delayed.

This analysis does not reflect any potential effects on local property tax revenues or other indirect effects on State or local finances that may result from a decrease in development.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Charles and Garrett counties; Maryland Association of Counties; Maryland-National Capital Park and Planning Commission; Maryland Department of Emergency Management; City of Laurel; Maryland Municipal League; Public School Construction Program; Maryland Department of the Environment; Department of General Services; Department of Natural Resources; Department of Legislative Services

Fiscal Note History: First Reader - March 7, 2023
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