

SB528 Testimony.pdf

Uploaded by: Elfreth, Sarah

Position: FAV

SENATOR SARAH ELFRETH
Legislative District 30
Anne Arundel County

Budget and Taxation Committee

Subcommittees

Education, Business and Administration

Chair, Pensions

Senate Chair

Joint Committee on Administrative,
Executive, and Legislative Review

Joint Committee on the Chesapeake and
Atlantic Coastal Bays Critical Area



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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

February 10, 2021

Testimony in Favor of SB528
Coast Smart Siting and Design Criteria - Private Construction or Reconstruction Projects and Enforcement

Chairman Pinsky, Vice-Chair Kagan, and members of the Education, Health, and Environmental Affairs Committee:

I respectfully request a favorable report of Senate Bill 528, legislation to extend the Coast Smart Siting and Design Criteria to private construction and reconstruction projects that disturb more than one acre of land are located: in an area designated as a Special Flood Hazard Area by the Federal Emergency Management Agency; within three vertical feet of the 100-year floodplain as mapped and updated; or in an area that, as of 2019, is subject to nuisance flooding.

In 2014 this Committee took action to enact the Coast Smart Council and tasked them with adopting specific siting and design criteria to address impacts associated with sea level rise and coastal flooding. In 2018 this Committee also took action to expand the scope of the Council and added a requirement that projects in which at least 50% of the funding comes from State funds must follow the siting and design criteria established by the Council.

The climate crisis and flooding in our communities has only worsened since the passage of both pieces of legislation. Sea level rise is increasing and coastal flooding events are becoming more extreme - putting our communities and our waterways at increased risk. More specifically, by 2045 there are projected to be 14,000 residential properties at risk of chronic inundation and that number grows to 68,000 residential properties by 2100.

The University of Maryland Center for Environmental Science also concluded that “probabilistic sea-level rise projections can and should be used in planning and regulation, [and] infrastructure siting and design.” **Severe rainstorms and flooding will not distinguish between buildings built with public funding or private funding. Rising seas threaten all.** We have an opportunity to do just as the experts recommend by passing this legislation and better preparing for our future.

Once again I respectfully request a favorable report of Senate Bill 528 to ensure that we are building for the future and protecting our communities and homeowners.

SB 528_CBF_SUPPORT_ErikFisher.pdf

Uploaded by: Fisher, Erik

Position: FAV



CHESAPEAKE BAY FOUNDATION

Environmental Protection and Restoration
Environmental Education

Senate Bill 528

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

Date: February 10, 2021	Position: Support
To: Senate Education, Health and Environmental Affairs Committee	Contact: Erik Fisher, AICP Maryland Assistant Director

Chesapeake Bay Foundation (CBF) **SUPPORTS** SB 528, which would improve safety and environmental standards for development in areas with enhanced flood risk due to climate change.

Maryland's flood-prone areas are under increasing stress from climate change and new development.

Floodplains store floodwaters, moderate peak flows, maintain water quality, recharge groundwater, prevent erosion, provide habitat for wildlife and access points for recreation.¹ Building new structures in these areas inhibits the natural function of a floodplain and can worsen flooding. Climate change is causing freshwater creeks and streams to become 'flashier,' surging more quickly and flowing faster during storms than in the past. Tidewater is rising, pushing flood elevations landward from established shorelines. A 2005 report from the Maryland Department of the Environment found that 44,755 buildings throughout the State would be damaged by a 100-year flood, with \$8.12 billion in direct economic losses.² After another 16 years of sea level rise, land subsidence and erosion, the potential impacts of a 100-year flood occurring today would be almost certainly even greater.

SB 528 provides a timely and uniform response to increased flood impacts from climate change.

Every Maryland jurisdiction faces increased flooding risk due to climate change. At the same time, the strength of local flood protection programs is not uniform. This variability can be seen in FEMA's Community Rating System, where residents and business in only nine Maryland counties qualify for flood insurance discounts. SB 528 provides a consistent response to a common threat by bolstering existing regulatory and administrative reviews at the local level. Impacts to the floodplain must first be avoided, and where that is not possible, the bill establishes a three-foot freeboard requirement for new construction. MDE notes that additional freeboard can protect structures, reduce repair costs, and provide a margin of safety when a flood exceeds the average 100-year storm used for planning purposes.³ The Coast Smart standards applied by SB 528 are well-vetted, reflect observed and expected trends, and will help protect people and our waterways from the compounding effects of development and increased flooding.

CBF urges the Committee's FAVORABLE report on SB 528.

For additional information, contact Robin Jessica Clark, Maryland Staff Attorney at rclark@cbf.org or 443.995.8753

¹ Maryland Department of Environment, [Regulations for Floodplain Development](#), last visited 1.29.2021.

² Maryland Department of Environment, [An Assessment of Maryland's Vulnerability to Flood Damage](#), last visited 1.29.2021.

³ Maryland Department of Environment, [Regulations for Floodplain Development](#), last visited 1.29.2021.

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Informational Memo Regarding SB528.pdf

Uploaded by: Pluta, Matt

Position: FAV

Informational Memo Regarding

SB528 - COAST SMART SITING AND DESIGN CRITERIA – PRIVATE CONSTRUCTION OR RECONSTRUCTION PROJECTS

What is the Coast Smart Council?

The Council was established by law in 2014 and is chaired by the Department of Natural Resources and composed of state and local government and private sector membership and functions as a forum for expert collaboration and planning across agencies to increase the state’s long-term resilience to storm-related flooding and sea-level rise.

What authority does the Coast Smart Council have?

The Coast Smart Council was established in the Department of Natural Resources by HB615 in 2014 for the purpose of establishing specific Coast Smart Siting and Design Criteria to address impacts associated with sea level rise and coastal flooding on future capital projects. *The Coast Smart Council is an advisory council.*

What are Coast Smart Siting and Design Guidelines?

COAST SMART CONSTRUCTION PROGRAM	
<i>Siting Guidelines</i>	<i>Design Guidelines</i>
New state structures, the reconstruction of substantially damaged state structures and other new major infrastructure projects shall be avoided within areas likely to be inundated by sea level rise within the next 50 years.	New state structures, the reconstruction of substantially damaged state structures, and new major infrastructure projects shall be designed to avoid or minimize future impacts over the anticipated design life of a project.
New state "critical or essential facilities" shall not be located within SFHA designated under the National Flood Insurance Program (NFIP) and should be protected from damage and loss of access as a result of a 500-year flood.	New state structures and the reconstruction or rehabilitation of substantially damaged state structures located in SFHA shall be constructed with a minimum of two feet of freeboard above the 100-year base flood elevation defined by the NFIP.
Ecological features that may serve to buffer a project from the impacts of future sea level rise, coastal flooding or storm surge or that support general climate adaptation practices shall be identified, protected and maintained	State structures serving transportation purposes that are not water dependent on integral infrastructure shall be constructed with a minimum of two feet of freeboard above the 100-year base flood elevation, as defined by NFIP.
<i>Exceptions to these guidelines may be considered, provided that it can be demonstrated that projects have been designed to increase resiliency to future impacts.</i>	Flooding potential shall be considered when choosing building materials for all structural projects, including minor improvements or maintenance and repair.
	Structures and infrastructure proposed within the Limit of Moderate Wave Action boundary as mapped under the NFIP shall be designed in compliance with construction standards applicable to areas subject to inundation by the one percent annual flood event and storm-induced waves, called V Zones.
	<i>Exceptions to these guidelines may be warranted based on consideration of certain factors established by the council.</i>

Are there exemptions to the siting and design criteria?

Exemptions may be considered and warranted if it can be demonstrated that projects have been designed to increase resiliency to future impacts.

What does SB528 do?

SB528 applies the Coast Smart Siting and Design criteria to all private construction and reconstruction projects that:

- Cost more than \$100,000
- greater than 1 acre of disturbance, and
- located in an area designated by FEMA as SFHA,
- located in an area within 3 vertical above the 100-year floodplain, or
- located in an area subject to nuisance flooding,

SB528 increases the state's long-term resilience to storm-related flooding and sea level rise and ensures that fiscally wise investments are made when building or rebuilding in vulnerable coastal areas.

Why choose projects that cost greater than \$100,000?

SB528 is intended to capture new development and large reconstruction projects. It is not the bill's intention to capture small remodeling projects.

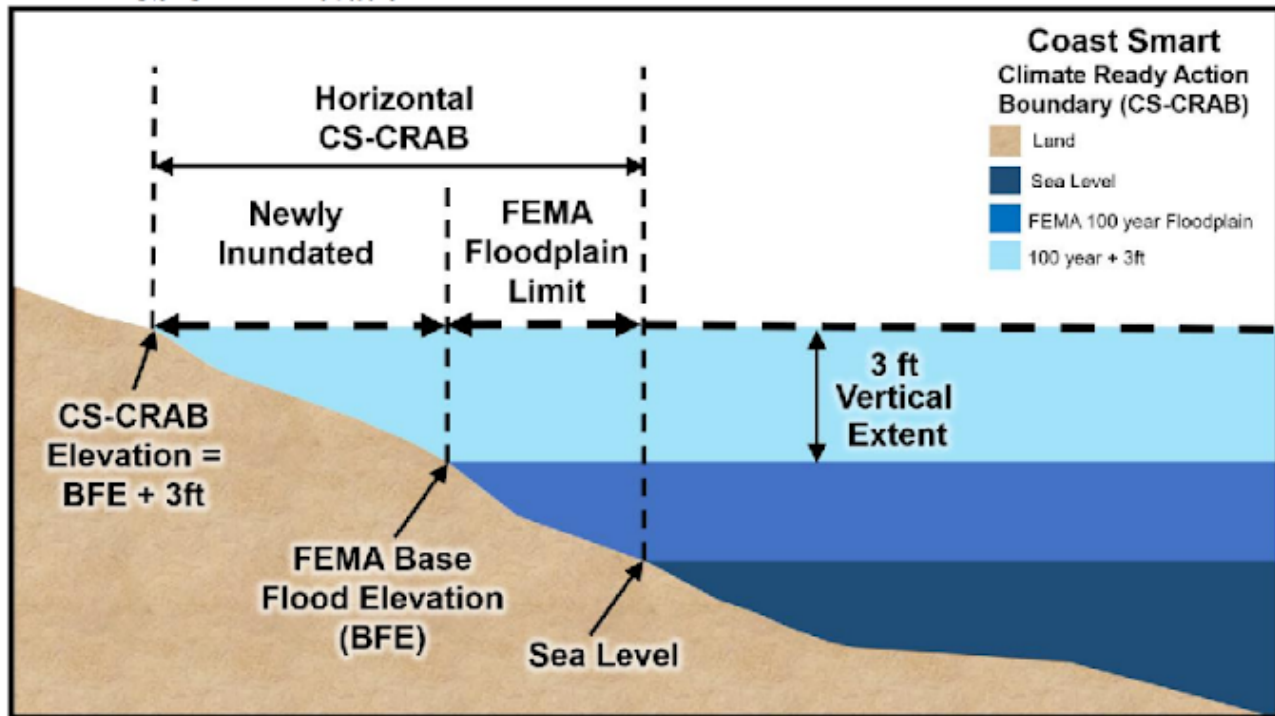
Why choose a disturbance of 1-acre of land or more?

This is the same criteria that requires a construction project to obtain an Erosion and Sediment Control permit. By using this triggering criteria, local implementors can review a project's compliance with the Coast Smart criteria alongside their review for an ESC permit, eliminating the need for local governments to develop a new process.

Why pick projects within 3 vertical feet above the 100-year floodplain?

100-year floodplain is known as the Base Flood Elevation and identifies areas of possible inundation due to both riverine and coastal flooding. In their 2020 report, the Council found that adding a 3-foot vertical extent above the 100-year FEMA floodplain elevations *would address the footprint of a Category 2 storm surge and would include areas inundated by an at least 2-foot rise in sea level*. This also allows the Council's approach to be tied to existing floodplain regulations. Thus, this area is known by the Council as the Coast Smart Climate Ready Action Boundary.

FIGURE 1: Coast Smart Climate Ready Action Boundary (CS-CRAB) & CS-CRAB Elevation



How is SB528 Implemented?

SB528 will be implemented and enforced in a similar way that the state's Erosion Sediment Control Permits are, in that delegated authority will be granted to local county or municipalities. Implementation will simply include reviewing a proposed project's compliance with a checklist of design and siting criteria. The Council has already designed a *Project Screening Form* which can be found in Appendix A of the [2020 Coast Smart Construction Program](#)

When does SB528 go into effect?

Beginning July 1, 2022 applicable projects shall be sited and designed according to Coast Smart Criteria.

The Criteria are written for State agencies only, aren't they?

The original charge of the Council in 2014 was to adopt specific siting and design criteria to address impacts associated with sea level rise and coastal flooding, and it wasn't until 2018 that the criteria were applied to state projects, showing that the developed criteria are directly applicable to all construction projects in vulnerable areas.

Does SB528 give citizens standing?

SB528 does nothing to change who has standing on construction projects, nor does it change the public participation process for permits associated with construction projects. The review process for HB1080 will be incorporated into the local planning and zoning process.

Why use the Coast Smart criteria and not County Comprehensive Plans or International Building Codes?

The Coast Smart criteria is designed specifically to address impacts associated with sea level rise and coastal flooding on future projects in Maryland. The criteria include practices in which preliminary planning, siting,

design, construction, operations, maintenance, and repair of a structure avoids or minimizes future impacts associated with coastal flooding and sea level rise.

- County Comprehensive Plans are criteria that can certainly incorporate the Coast Smart Council, but there is no current requirement for counties to adopt such requirements and the process of updating County Comprehensive Plans can be extensive and time consuming for counties.
- International Building Codes lack the local knowledge and expertise needed to address an issue like coastal flooding and sea level rise.
- The Coast Smart Council has established citing and design criteria for state-funded projects in Maryland and is therefore familiar with our communities and the processes associated with the Coast Smart Citing and Design Criteria.

Does SB528 apply to every private construction project?

SB528 applies to those projects proposed in areas known to be sensitive and vulnerable to sea level rise and coast flooding. The triggering criteria listed in SB528 includes any project:

- Cost more than \$100,000
- greater than 1 acre of disturbance, and
- located in an area designated by FEMA as SFHA,
- located in an area within 3 vertical above the 100-year floodplain, or
- located in an area subject to nuisance flooding,

How will this impact citizen’s insurance premiums?

SB528 will assist communities in qualifying for discounts on insurance premiums through FEMA’s Community Rating System (CRS). Elements of the Coast Smart design and siting criteria qualifies as a Higher Regulation Standards, therefore increasing a community’s CRS score.

Who is on the Coast Smart Council?

Chair: Jeannie Haddaway-Riccio, Secretary, Maryland Department of Natural Resources

Members (as of 8/27/19):

Nancy Kopp , Treasurer State of Maryland	Dr. Lewis E. “Ed” Link , Professor, Department of Civil and Environmental Engineering University of Maryland, College Park
Michael Bayer , AICP, Manager, Infrastructure Planning, Maryland Department of Planning	Sandy Hertz , Assistant Director Office of Environment, Maryland Department of Transportation
Sepehr Baharlou , P.E., Principal BayLand Consultants & Designers, Inc.	Tim La Valle , Director Office of General Services Maryland Department of Commerce
Dr. Peter Goodwin , President University of Maryland, Center for Environmental Science	Spyros Papadimas , P.E., Senior Capital Projects Manager Facilities Planning, Design & Construction, Maryland Department of General Services
Susan Gore , Budget Analyst Office of Capital Budgeting, Maryland Department of Budget and Management	Jaleesa Tate , Disaster Risk Reduction, State Hazard Mitigation Officer, Maryland Emergency Management Agency
Gary Setzer , Advisor for Office of the Secretary Maryland Department of the Environment	Kate Charbonneau , Executive Director Maryland Critical Area Commission

Chris Elcock , Associate Principal GWWO Inc., Architects	Mary Phillips , Zoning Specialist Planning and Zoning, Somerset County
William Neville , Director of Planning and Community Development Town of Ocean City	

SB528 Testimony_Support_Final.pdf

Uploaded by: Pluta, Matt

Position: FAV

Senate Bill 528 Coast Smart Siting and Design Criteria – Private Construction or Reconstruction

**Education, Health, and Environmental Affairs Committee
February 10, 2021**

Position: Favorable

Chairman Pinsky and Members of the Committee,

Maryland is the third most prone area in the Country to sea level rise, behind only Florida and Louisiana. Sea level rise, severe storms, flood events, and the damage that they bring are laying bare how necessary it is for us to have more responsible and more resilient planning of future developments. Our state has seen a total of 394 floods between 2005-2014, and about 81,000 people are at risk of coastal flooding, a number projected to rise by an additional 38,000 people by 2050¹. Many of Maryland's coastal communities are socially vulnerable and disproportionately bear the tremendous costs in property damage and disruption of life caused by sea level rise and climate change. **SB528 strengthens Maryland's resilience to the impacts of climate change by expanding the existing Coast Smart Siting and Design Criteria requirements to certain private construction projects.**

Specifically, SB528 will require any private construction or reconstruction that:

- Costs greater than \$100,000,
- Disturbs 1 acre of land or more, and
- Are located in an area designated as a Special Flood Hazard Area by the Federal Emergency Management Agency (FEMA),
- Are located in or within 3 vertical feet of the 100-year floodplain, or
- Are located in an area that as of 2019, is subject to nuisance flooding

to be constructed in compliance with Maryland's Coast Smart siting and design criteria *in order to protect against the impacts of sea level rise inundation and coastal storm surge*. This legislation will not impact any private construction or reconstruction projects costing less than \$100,000. Enforcement of this bill will be similar to other permit structures where the State will delegate the permitting authority to local governments.

SB528 requires developers to consider sea level rise and coastal flooding in the planning and development of construction projects. 23,000 properties in Maryland are at risk from tidal flooding and according to experts, sea level rise in Maryland is speeding up. Since 1950, water levels have increased 10 inches, whereas predictions out to year 2050 estimate an additional 1.6 feet of rise. This bill will protect developments in vulnerable areas by ensuring that sea level rise and coastal flooding impacts were factored into the development of a structure.

¹ States at Risk: Maryland. <https://statesatrisk.org/maryland/coastal-flooding>

SB528 encourages responsible development in areas sensitive to sea level rise. According to the National Institute of Building Science, every \$1 spent on mitigation efforts saves \$6 in future disaster costs. Investing in proper design and siting criteria upfront is a smart approach to reducing future risks while also protecting local governments from the liability of inadequately built structures impacted by sea level rise. This bill will save tax-payers and the state money in damage relief costs for damage associated with severe storms and rising sea levels.

SB528 builds upon and complements existing laws. In 2014 the Maryland legislature passed a law to establish the Coast Smart Council for the purpose of developing specific siting and design criteria to address impacts associated with sea level rise and coastal flooding on future projects. In 2018 the legislature passed another law to expand the scope of the Coast Smart Council to apply the criteria to any state and local project for which at least 50% of the project costs are funded with state funds. In 2019, the legislature passed a third law requiring counties impacted by nuisance flooding to develop a nuisance flooding plan. **SB528 builds on this pathway towards resilience planning by requiring certain development within an area subject to sea level rise or tidal flooding to incorporate the Coast Smart Siting and Design criteria.**

Measures like these depicted in SB528 are critical to minimize impacts and optimize resilience of structures to future sea level rise and coastal flooding. *Development in these sensitive areas need to be done responsibly, need to be sustainable, and need to consider the impacts of sea level rise.* Incorporating Coast Smart Design and Criteria to private development will better protect homeowners, community infrastructure, vulnerable citizens, and waterways.

This issue impacts all of Maryland, which has 3,100 miles of tidal shoreline from the Chesapeake Bay and its tributaries. The projected range of expected sea level rise within the state between 2000 and 2050 is up to 1.6 feet or higher. A 2019 report from the Eastern Shore Land Conservancy found sea level rise on the **Eastern Shore** is double the global average of a half foot in the past century². **Annapolis** experienced nuisance flooding a few days a year in the 1950s but now experiences 40 or more days per year. **Solomons, Maryland** is expected to see over a 2.5ft rise in sea level by 2100 compared to levels in 2000. Not only are our waters expected to rise, but the frequency of tropical and severe storm events are also likely to increase, resulting in higher storm surges, more frequent flooding and more potential damage to built structures. Projections estimate that a Category 2 storm following the same path as Hurricane Isabel in 2100 would result in water levels at 10.6 feet above mean sea level, compared to the measured 7.3 feet during Hurricane Isabel in 2003 in **Baltimore City**.

The latest Sea Level Rise Projections for Maryland study, completed by the University of Maryland Center for Environmental Science, notes that “**these probabilistic sea-level rise projections can and should be used in planning and regulation, infrastructure siting and**

² James Bass; Brandy Espinola and Kristel Sheesley; Jessica Grannis; and Michael Scott (2018). Mainstreaming Sea Level Rise Preparedness in Local Planning and Policy on Maryland's Eastern Shore. A report prepared for the Eastern Shore Climate Adaptation Partnership by Eastern Shore Land Conservancy. https://arch.umd.edu/sites/default/files/docs/regional-sea-level-rise-study-2019_0.pdf

design, estimation of changes in tidal range and storm surge, developing inundation mapping tools, and adaptation strategies for high-tide flooding and saltwater intrusion.³

For these reasons, the undersigned organizations urge the Committee to adopt a **FAVORABLE** report on **SB528**. Thank you for your leadership on this important matter.

Sincerely,

Jesse Iliff, South, West & Rhode
Riverkeeper
Arundel Rivers Federation

Kathy Phillips, Executive
Director/Assateague Coastkeeper
Assateague Coastal Trust

Katlyn Schmitt, JD, Policy Analyst
Center for Progressive Reform

Angela Haren, Senior Attorney
Chesapeake Legal Alliance

Emily Ranson
Clean Water Action

David D. Quillian, AIA, LEED BD&C
**David D. Quillian Architecture in Berlin,
MD**

Richard Deutschmann
Indivisible Howard County

Rabbi Nina Beth Cardin
**Maryland Environmental Human Rights
Campaign**

Ben Alexandro, Water Program Director
Maryland League of Conservation Voters

Cecilia Plante
Maryland Legislative Coalition

Mark Posner
Maryland Sierra Club

Mark Southerland
Safe Skies Maryland

Matt Pluta, Choptank Riverkeeper
ShoreRivers

Phil Webster, Chair, Climate Change Task
Force
**Unitarian Universalist Legislative
Ministry of Maryland**

Betsy Nicholas, Executive Director
Waterkeepers Chesapeake

Monica O'Connor
**Women Indivisible Strong Effective
(WISE)**

³ Boesch, D.F., W.C. Boicourt, R.I. Cullather, T. Ezer, G.E. Galloway, Jr., Z.P. Johnson, K.H. Kilbourne, M.L. Kirwan, R.E. Kopp, S. Land, M. Li, W. Nardin, C.K. Sommerfield, W.V. Sweet. 2018. Sea-level Rise: Projections for Maryland 2018, 27 pp. University of Maryland Center for Environmental Science, Cambridge, MD.
https://www.umces.edu/sites/default/files/Sea-Level%20Rise%20Projections%20for%20Maryland%202018_1.pdf

SB0528 - Coast Smart Citing and Design - NAIOP - E

Uploaded by: Ballentine, Tom

Position: UNF



February 8, 2021

The Honorable Paul G. Pinsky, Chair
Senate Education, Health and Environmental Affairs
2 West, Miller Senate Office Building
Annapolis, MD 21401

Oppose: SB 528 – Coast Smart Siting and Design

Dear Chair, Pinsky and Committee Members:

The NAIOP Maryland Chapters represent 700 companies that develop and own of commercial, mixed-use, and light industrial real estate, including some of the largest property owners in the state. NAIOP's membership is comprised of a mix of local firms and publicly traded real estate investment trusts that are invested in the future of Maryland but also have experience in national and international markets. Climate resiliency and mitigation are built into the everyday operation and future investment decisions of commercial real estate companies. Ensuring that construction and reconstruction in and adjacent to flood hazard areas adapts to changing conditions is a critical component of protecting public and private assets.

SB 528 would establish state-wide minimum freeboard [building elevation] requirements and require that private construction projects follow construction guidelines and administrative procedures for project applications, review, exemptions, waivers that were developed by the Coast Smart Council for use in state and local infrastructure projects. Decisions about changes to construction in and adjacent to flood prone areas are best within the existing federal, state, and local floodplain management structure and implemented by local code administrators using the framework of national construction standards developed by the International Building Code Council and American Society of Civil Engineers and FEMA. NAIOP is extremely concerned that differences between the Coast Smart guidelines and existing local requirements will create bureaucratic inconsistency, and confusion resulting in major problems for property owners.

The Maryland Building Performance Standards are the state-wide building codes. Provisions of the *International Building Code Appendix G Flood-Resistant Construction* and the design standards of American Society of Civil Engineers *24 Flood-Resistant Design and Construction* set out specific requirements for siting and design of buildings and private development. These tools are written to coordinate with FEMA flood plain maps and MDE's model floodplain ordinances. Local floodplain managers, building officials and designers follow as they make decision about permits in and adjacent to flood prone areas. Management of Maryland's floodplain and building codes are delegated to local governments with specific requirements about the administrative duties and powers of the floodplain administrator and building code official. Among those local functions are:

- Adopting floodplain maps, identifying flood hazard areas and design flood elevations
- Determination of substantial improvement and substantial damage
- Evaluating and approving the content of site plans, construction documents and conducting site inspections

SB 528 would require private construction projects adhere to the Coast Smart Council's Construction Program which is administered by the Coast Smart Council and the Smart Growth Subcabinet. Neither the Coast Smart Council nor the Smart Growth Subcabinet have the regulatory authority or administrative capacity to scale up and regulate private construction. Applicants are directed to meet with the Council for pre-construction meetings where questions of scoping and necessary compliance options would ordinarily be discussed. The Categorical Exemptions [pg. 12 of the Program Criteria] are self-activating by the applicant. Waivers [pg. 13 of the Program Criteria] are reviewed by the Governor's Smart Growth Subcabinet using a standard of review [pg. 21 of the Program Criteria] developed for state infrastructure projects that differs from local floodplain ordinances.

The bill contains provisions for delegation of authority to local governments which we find lacking for several reasons. First, the language does not require local governments to manage the program. It is essentially providing the opportunity for the willing to

opt-in. In locations where delegation does not take place property owners will have no local support when trying to understand what is required of them and how to design a compliant structure. Second, even under delegated authority the Coast Smart Council construction criteria would displace local code-based standards with the Coast Smart Criteria which was written for state infrastructure projects and is not well suited to private development and construction.

The new provisions would be applied under the footprint of the Climate Ready Action Boundary map. [CRAB Map] The methodology used to create the CRAB Map differs from existing floodplain mapping resulting in new, generally higher, flood elevations and a significant upland expansion beyond existing floodplain boundaries. In the slide below the solid-colored areas are locations outside of the floodplain that fall under the footprint of the CRAB Map. A preliminary GIS analysis conducted for NAIOP calculated that the CRAB Map contains 246,153 acres that are outside of the current FEMA floodplain maps.



The CRAB Map represents major changes to flood elevations and minimum building elevations. If you decide current requirements are insufficient to ensure long term resiliency and it is necessary to increase freeboard, we ask that you implement those changes locally through the codes process so they can be effectively administered and integrated into local floodplain management ordinances and the state building code.

This way flood hazard and upland areas in the same project can be reviewed and regulated efficiently. The administrative capacity of the local code official can be available to make determinations of substantial improvements, identify flood hazard areas, design elevations and evaluate variance requests.

Sincerely,

Tom Ballentine, Vice President for Policy
 NAIOP Maryland Chapters -The Association for Commercial Real Estate

cc: Senate EHEA Committee Members
 Nick Manis – Manis, Canning Assoc.

NAIOP's review of the Coast Smart Criteria raised numerous concerns and questions. Some are objections to individual requirements; some are related to our concern that the Council has no regulatory or administrative capacity to scale up to cover private construction. For example:

1. Project Certification – Current criteria require a pre-construction certification that is signed by the applicant. How will that apply to private construction projects?
2. Avoidance – *“Construction and reconstruction shall be avoided, to the fullest extent practicable, within areas likely to be inundated by sea level rise within the next 50 years.”* How can an accurate 50-year assessment be made?
3. Waiver Criteria – Coast Smart waiver criteria differ significantly from the criteria in MDE's model floodplain management ordinance as well as National Flood Insurance Program guidance on granting a variance from flood plain regulations. These differences are related to both the legal standard review and the factors considered, some of which do not apply to private construction.
4. Waiver Process – Coast Smart waivers are reviewed and decided by the Governor's Smart Growth Subcabinet. Applicants are instructed to write, a no more than, two-page letter explaining the request for waiver. Applicants are advised to allow up to 8 weeks for a response.
5. Self-Determined Exemptions – The criteria allow agencies to determine and approve their own exemption for seven categorical exceptions. We question the appropriateness of this provision.
6. Consultation & Advice – “Using Agencies” may request a pre-construction meeting with the Coast Smart Council to review a project. The council meets only 4 times per year.
7. Application “wherever practicable” – *“Projects not subject to comply with the Program requirements..shall employ Coast Smart principles and practices, wherever practicable.”*
8. Natural Features – *“Natural and nature-based features that may serve to buffer the project from the impacts of future sea level rise, coastal flooding or storm surge or that support general climate adaptation shall be identified and should be protected and maintained to the maximum extent practicable.”* This element may be met through forest conservation requirements, but it confuses the jurisdictional review.
9. Critical Area Commission Compliance – *“All projects shall be in compliance with Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.”*
10. Determination of Freeboard – *“Non-critical”* Structures in Flood Hazard Areas shall be constructed with “a minimum” 2-feet above 100yr flood. *“Critical and essential”* projects require 3-feet of freeboard. What uses are critical and non-critical, who makes this determination?
11. Applies to Project Life Cycle – *“Coast Smart” includes both siting and design guidelines that are applicable throughout the entire life cycle of a project.”*

SB0528-EHE_MACo_OPP.pdf

Uploaded by: Butler, Alex

Position: UNF



Senate Bill 528

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

MACo Position: **OPPOSE**

To: Education, Health and Environmental
Affairs Committee

Date: February 10, 2021

From: Alex Butler

The Maryland Association of Counties (MACo) **OPPOSES** SB 528. Counties are generally supportive of coastal resiliency, planning, and mitigation efforts. However, SB 528 would impose potentially costly and unnecessary mandates on county governments relating to sea level rise and coastal flooding.

SB 528 would (1) subject private construction projects to the Coast Smart criteria if the development disturbs more than one acre and costs more than \$100,000; and (2) require the Department of Natural Resources (DNR) to delegate enforcement authority to local governments. This enforcement under SB 528 would likely require more staff, training, and resources than counties currently possess – the administrative costs of developing this oversight regime are very substantial.

Local governments should have the ability to address nuisance flooding through whatever mechanism fits their community circumstances, regardless of whether it is a plan, ordinance, rule, or policy. This is evidenced by strong Floodplain Management Programs in many jurisdictions. SB 528 would likely require local governments to re-write their floodplain ordinances to accommodate a new statewide standard for application to a significant number of private projects. These standards and criteria are designed for public infrastructure projects in an effort to protect the State's investment. Imposing these requirements on private development will result in additional project reviews and would create unnecessary confusion.

Additionally, a county government that fails to address flooding issues risks incurring the ire of its residents; such an unresponsive government would likely be voted out of office during the next election cycle. County governments are very cognizant about incorporating best practices into both project design standards and long-term floodplain planning.

The bill's mandate is unnecessary and burdensome for local governments. Accordingly, MACo urges the Committee to provide a report of **UNFAVORABLE** for SB 528.

SB 528.pdf

Uploaded by: Castelli, William

Position: UNF



Senate Bill 528 – Coast Smart Siting and Design Criteria – Private Construction or Reconstruction Projects and Enforcement

Position: Oppose

Maryland REALTORS® opposes SB 528 which requires Coast Smart Certification to some private construction projects.

Under the bill, private construction and reconstruction projects that disturb more than an acre of land would be subject to the requirements of the bill. These projects, which can include large residential construction projects, would be subject to certification by the Coast Smart Council or delegated to another enforcement body.

The Maryland REALTORS® believes that because these project designs are already subject to local building codes and permits, that any requirements affecting the granting of those permits should be included within those local codes or occur simultaneous to those reviews. As drafted it appears that the process required by SB 528 would be separate to existing permit approval.

For these reasons, the Maryland REALTORS® recommend an unfavorable report.

For more information contact bill.castelli@mdrealtor.org or susan.mitchell@mdrealtor.org or lisa.may@mdrealtor.org

MBIA Testimony SB 528.pdf

Uploaded by: Graf, Lori

Position: UNF

February 10, 2021

The Honorable Paul G. Pinsky
Senate Education, Health & Environmental Affairs Committee
Miller Senate Office Building,
2 West Wing 11 Bladen St.,
Annapolis, MD, 21401

RE: Opposition of Senate Bill 528 Coast Smart Siting and Design Criteria – Private Construction or Reconstruction Projects and Enforcement

Dear Chairman Pinsky:

The Maryland Building Industry Association (MBIA), representing 100,000 employees of the building industry across the State of Maryland, opposes Senate Bill 512 (Coast Smart Siting and Design Criteria - Private Construction or Reconstruction Projects - Application).

This bill requires private construction and reconstruction projects to be constructed in compliance with Coast Smart siting and design criteria. Currently only State and local capital projects must be constructed in compliance with Coast Smart criteria.

While we appreciate the intent to address sea level rise inundation and coastal flood impacts on new construction, this measure will only add confusion. The guidelines were developed by the Coast Smart Council, a policy advisory group. No regulatory review or enactment of these standards has taken place because they were to be applied to state projects. Because the guidelines were written for state agency use, the administrative procedures are not aligned; for example, waivers for map errors or hardship are granted through an application to the State Smart Growth Subcabinet. Imposing these requirements on private projects without further study will add complication and inconsistency.

This measure will also add significant expense to private construction projects. Coast Smart design requirements are technical and expensive, and will create additional cost barriers for projects above and beyond the costs resulting from other environmental design standards. That cost will be passed on to the buyer, increasing the cost of homes throughout the State. This legislation could also make redevelopment and infill development more difficult and more expensive.

For these reasons, MBIA respectfully requests the Committee give this measure an unfavorable report. Thank you for your consideration.

For more information about this position, please contact Lori Graf at 410-800-7327 or lgraf@marylandbuilders.org.

cc: Senate Education, Health & Environmental Affairs Committee

SB528_MDE_LOI.pdf

Uploaded by: abbott, tyler

Position: INFO



February 10, 2021

The Honorable Paul G. Pinsky, Chair
Education, Health, and Environmental Affairs Committee
2 West, Miller Senate Office Building
Annapolis, Maryland 21401

Re: Senate Bill 528 – Coast Smart Siting and Design Criteria - Private Construction or Reconstruction Projects and Enforcement

Dear Chairman Pinsky and Members of the Committee:

The Maryland Department of the Environment (MDE) has reviewed Senate Bill 528, entitled Coast Smart and Siting and Design Criteria - Private Construction or Reconstruction Projects and Enforcement and would like to offer a letter of information regarding this legislation.

Senate Bill 512 requires the Maryland Coast Smart Council to establish siting and design criteria and apply it to some private construction or reconstruction projects. Currently, the statute only applies to certain State and local capital projects. The amendment to the statute would apply to the following construction and reconstruction projects;

1. Located in a flood hazard area as designated by the Federal Emergency Management Agency (FEMA)
2. Located in or within 3 vertical feet of the 100 year floodplain as mapped
3. Located in area that, as of 2019, is subject to nuisance flooding

MDE is the State Coordinating Office for the National Flood Insurance Program (NFIP). In that capacity, we provide technical assistance on a variety of topics related to the NFIP to federal and State agencies, other stakeholders, and most importantly, to local governments who participate in the NFIP and administer floodplain management regulations in their community. MDE is also a Cooperating Technical Partner with the FEMA on updating floodplain mapping throughout the state that creates the Special Flood Hazard Areas identified in the bill.

MDE staff are also technical advisors to the Coast Smart Council and have assisted with the development of Siting and Design Criteria, the Coast Smart Project Screening Form and most recently, the Coast Smart - Climate Ready Action Boundary (CS-CRAB) that adds three feet to the FEMA Base Flood Elevation vertically and also extends it out horizontally. Therefore, MDE would most likely be asked to provide technical assistance to the Department of Natural Resources, who has sole responsibility in enforcement of this Act. In addition, MDE would also provide guidance and assistance to local governments and private contractors engaging in any projects that would fit the criteria for Coast Smart. This may have an impact on MDE's workload for the existing staff. The bill as constituted does not include funding for additional staff members.

Thank you for your consideration. The Department will continue to monitor Senate Bill 528 during the Committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6301 or by e-mail at tyler.abbott@maryland.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Abbott", written over a horizontal line.

Tyler Abbott

cc: The Honorable Sarah K. Elfreth

SB528_DNR_LOI Bill report -2.pdf

Uploaded by: McKitrick, James

Position: INFO



Larry Hogan, Governor
Boyd Rutherford, Lt. Governor
Jeannie Haddaway-Riccio, Secretary

February 10, 2021

The Honorable Paul G. Pinsky
Chair, Education, Health and Environmental Affairs Committee
2 West Miller Senate Office Building
Annapolis, MD 21401

The Honorable Cheryl C. Kagan
Vice Chair, Education, Health and Environmental Affairs Committee
2 West Miller Senate Office Building
Annapolis, MD 21401

Re: Letter of Information – Senate Bill 528 – Coast Smart Siting and Design Criteria – Private Construction or Reconstruction Projects and Enforcement

Dear Chair, Vice Chair, and Committee Members:

The Maryland Department of Natural Resources respectfully provides the following information on Senate Bill 528, which would require private construction and reconstruction to adhere to the Coast Smart siting and design criteria as well as require enforcement of the criteria through the department or a local delegated authority.

Since the inception of the Coast Smart siting and design criteria, the Coast Smart Council and the department has continually assessed the impact of the criteria on resiliency in Maryland. This assessment has included collaborative work meetings with other workgroups of the State like the Adaptation and Resiliency Working Group of the Maryland Commission on Climate Change. This continual assessment of hazards and how well the siting and design criteria address those hazards has allowed for the successful and efficient roll out of expanded siting and design criteria over the past few years. Most recently, in 2019 and 2020, the Council revised the siting and design criteria to accommodate an expanded scope and updated the program documents to improve the efficiency of the criteria application.

The department's fundamental issue to SB 528 is its attempt to fit a round peg in a square hole. While it is important to have the conversation of responsible decision-making regarding private development in the face of climate change, mandating responsibility for such a significant undertaking with a body specifically encompassing government agencies with expertise only in State-owned infrastructure is just not appropriate. The accomplishments of the Coast Smart Council to date speak for themselves, but going beyond their intended mission to make wise investments with taxpayer dollars is a prelude to failure.

Beyond the structural errors of SB 528, the bill creates different locational requirements for private projects that are not applicable to State and local projects. Using the FEMA Special Flood Hazard Area versus updated boundaries that include areas outside the Special Flood

Hazard Area is confusing. It would therefore prove difficult to enforce if criteria applied to projects in certain areas for state or local construction but not for private construction.

Finally, and most importantly, SB 528 creates an enforcement authority for private construction projects within the department. Currently, the Coast Smart program is self-certifying. Each agency incorporates the Coast Smart siting and design criteria into their own appropriate policies and procedures. This bill totally changes that structure. The Coast Smart Council and the department do not have any enforcement authority to review or approve projects or the expertise on staff. It is unclear how the department would enforce these requirements or delegate its authority to local jurisdictions. It could also potentially require regulations to be put in place where none currently exist. There would also be a measurable burden on local governments, assuming the department would try to delegate to local municipalities as much as possible, which would likely translate to more staff and training needed at the local level.

Thank you for allowing the department to provide the above information on SB 528 for the committee's careful consideration.

Respectfully submitted,

James W. McKitrick
Director, Legislative and Constituent Services

cc: The Honorable Mary Lehman