

SENATE BILL 1006

M1, M3, R1

8lr1306
CF 8lr0463

By: **Senator Pinsky**

Introduced and read first time: February 5, 2018

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Sea Level Rise Inundation and Coastal Flooding – Construction, Adaptation,**
3 **Mitigation, and Disclosure**

4 FOR the purpose of altering the definition of the term “Coast Smart” for purposes of certain
5 provisions of law relating to certain construction practices that address certain
6 impacts associated with sea level rise and coastal flooding to apply to highway
7 facilities; altering the application of certain design and siting criteria established by
8 the Coast Smart Council, in consultation with the Department of Natural Resources,
9 to apply, beginning on a certain date, to certain State and local projects for which a
10 certain level of project costs are funded with State funds; altering certain design and
11 siting criteria that the Coast Smart Council, in consultation with the Department of
12 Natural Resources, is required to adopt; requiring the Department of Planning, in
13 consultation with the Department of Natural Resources, the Department of the
14 Environment, and the Department of Agriculture, to establish a plan to adapt to
15 saltwater intrusion on or before a certain date; requiring a certain plan to adapt to
16 saltwater intrusion to be updated at a certain frequency; requiring the Board of
17 Public Works, in conjunction with the Department of the Environment, to establish
18 certain criteria to evaluate whether State funds may be used to mitigate certain
19 hazards associated with sea level rise inundation and coastal flooding; requiring a
20 certain local jurisdiction to submit to the Department of Planning for approval a
21 certain plan to address nuisance flooding on or before a certain date; requiring a
22 certain local jurisdiction to update a certain plan to address nuisance flooding at a
23 certain frequency; requiring a local jurisdiction to publish certain nuisance flooding
24 plans on the local jurisdiction’s website; requiring a certain vendor of real property
25 located on certain land that may be inundated from a certain sea level rise to, on or
26 before entering into a contract for the sale of property, deliver certain information to
27 each purchaser; repealing certain provisions of law relating to certain design and
28 siting criteria for certain State capital projects; defining certain terms; and generally
29 relating to sea level rise inundation and coastal flooding.

30 BY repealing and reenacting, without amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Transportation
2 Section 3–101(a) and (f) and 8–101(a) and (i)
3 Annotated Code of Maryland
4 (2015 Replacement Volume and 2017 Supplement)

5 BY repealing and reenacting, with amendments,
6 Article – Natural Resources
7 Section 3–1001 to be under the new part “Part I. General Provisions” and the
8 amended subtitle “Subtitle 10. Sea Level Rise Inundation and Coastal
9 Flooding”; and 3–1002 through 3–1004 to be under the new part “Part II.
10 Coast Smart Council”
11 Annotated Code of Maryland
12 (2012 Replacement Volume and 2017 Supplement)

13 BY adding to
14 Article – Natural Resources
15 Section 3–1009 to be under the new part “Part III. Coast Smart Design and Siting
16 Criteria”; 3–1012 to be under the new part “Part IV. Saltwater Intrusion”;
17 3–1015 to be under the new part “Part V. State Mitigation”; and 3–1018 to be
18 under the new part “Part VI. Local Plan for Nuisance Flooding”
19 Annotated Code of Maryland
20 (2012 Replacement Volume and 2017 Supplement)

21 BY adding to
22 Article – Real Property
23 Section 10–711
24 Annotated Code of Maryland
25 (2015 Replacement Volume and 2017 Supplement)

26 BY repealing
27 Article – State Finance and Procurement
28 Section 3–602.3
29 Annotated Code of Maryland
30 (2015 Replacement Volume and 2017 Supplement)

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

33 **Article – Transportation**

34 3–101.

35 (a) In this title the following words have the meanings indicated.

36 (f) (1) In this definition, “highway” and “State highway system” have the
37 meanings stated in § 8–101 of this article.

1 (2) "Highway facility" includes any one or more or combination of projects
2 involving the rehabilitation and reconstruction of highways in the State highway system to
3 meet present and future needs and the development and construction in new locations of
4 new highways necessitated by traffic demands to become parts of the State highway
5 system, including federally aided highway projects partially funded by this State and all
6 incidental property rights, materials, facilities, and structures.

7 8–101.

8 (a) In this title the following words have the meanings indicated.

9 (i) "Highway" includes:

10 (1) Rights-of-way, roadway surfaces, roadway subgrades, shoulders,
11 median dividers, drainage facilities and structures, related stormwater management
12 facilities and structures, roadway cuts, roadway fills, guardrails, bridges, highway grade
13 separation structures, railroad grade separations, tunnels, overpasses, underpasses,
14 interchanges, entrance plazas, approaches, and other structures forming an integral part
15 of a street, road, or highway, including bicycle and walking paths; and

16 (2) Any other property acquired for the construction, operation, or use of
17 the highway.

18 Article – Natural Resources

19 Subtitle 10. [Coast Smart Council] SEA LEVEL RISE INUNDATION AND COASTAL 20 FLOODING.

21 PART I. GENERAL PROVISIONS.

22 3–1001.

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

24 (b) (1) "Coast Smart" means a construction practice in which preliminary
25 planning, siting, design, construction, operation, maintenance, and repair of a structure **OR**
26 **HIGHWAY FACILITY** avoids or minimizes future impacts associated with coastal flooding
27 and sea level rise **INUNDATION**.

28 (2) "Coast Smart" includes design criteria and siting criteria that are
29 applicable throughout the entire life cycle of a project.

30 (c) "Council" means the Coast Smart Council.

31 (d) "Design criteria" means standard specifications related to the shape, size, or
32 form of a construction practice.

1 (E) "FRESHWATER" MEANS WATER WITH A TOTAL DISSOLVED-SOLID
2 CONCENTRATION OF LESS THAN 1,000 MG/L.

3 (F) "HIGHWAY FACILITY" HAS THE MEANING STATED IN § 3-101(F) OF THE
4 TRANSPORTATION ARTICLE.

5 (G) "NUISANCE FLOODING" MEANS HIGH-TIDE FLOODING THAT CAUSES
6 PUBLIC INCONVENIENCE.

7 (H) (1) "REPLACEMENT COST" MEANS, AT THE TIME OF
8 RECONSTRUCTION, THE COST OF RECONSTRUCTING A STRUCTURE OR HIGHWAY
9 FACILITY AND ITS SURROUNDING PROPERTY TO FULL USE WITH MATERIALS OF THE
10 SAME KIND AND QUALITY AS THE ORIGINAL MATERIALS.

11 (2) "REPLACEMENT COST" DOES NOT INCLUDE:

12 (I) THE VALUE OF THE LAND ON WHICH A STRUCTURE OR
13 HIGHWAY FACILITY IS LOCATED; OR

14 (II) FOR TAX PURPOSES, A DEDUCTION FOR DEPRECIATION.

15 (I) "SALTWATER INTRUSION" MEANS THE MOVEMENT OF WATER WITH A
16 TOTAL DISSOLVED-SOLID CONCENTRATION GREATER THAN OR EQUAL TO 1,000
17 MG/L TO FRESHWATER.

18 (J) "SEA LEVEL RISE INUNDATION" MEANS THE INUNDATION OF LAND
19 FROM A SEA LEVEL RISE OF 2 FEET, AS SHOWN ON THE SEA LEVEL RISE
20 VULNERABILITY LAYER OF THE DEPARTMENT'S MARYLAND COASTAL ATLAS.

21 [(e)] (K) "Siting criteria" means specifications related to the location or use of a
22 structure OR HIGHWAY FACILITY.

23 (L) "STRUCTURE" MEANS:

24 (1) A WALLED OR ROOFED BUILDING;

25 (2) A MANUFACTURED HOME; OR

26 (3) A GAS OR LIQUID STORAGE TANK THAT IS PRINCIPALLY ABOVE
27 GROUND.

28 (M) "SUBSTANTIAL DAMAGE" MEANS DAMAGE CAUSED BY ANY SOURCE

1 THAT IS SUSTAINED BY A STRUCTURE OR HIGHWAY FACILITY SUCH THAT THE COST
2 OF RECONSTRUCTION TO ITS BEFORE-DAMAGED CONDITION IS AT LEAST HALF OF
3 THE STRUCTURE'S OR HIGHWAY FACILITY'S REPLACEMENT COST BEFORE THE
4 DAMAGE OCCURRED.

5 **3-1002. RESERVED.**

6 **3-1003. RESERVED.**

7 **PART II. COAST SMART COUNCIL.**

8 **[3-1002.] 3-1004.**

9 (a) There is a Coast Smart Council in the Department.

10 (b) The Department shall provide staff support for the Council.

11 **[3-1003.] 3-1005.**

12 (a) The Coast Smart Council shall include:

13 (1) The Secretary of Natural Resources, or the Secretary's designee;

14 (2) The Secretary of Budget and Management, or the Secretary's designee;

15 (3) The Secretary of the Environment, or the Secretary's designee;

16 (4) The Secretary of General Services, or the Secretary's designee;

17 (5) The Secretary of Planning, or the Secretary's designee;

18 (6) The Secretary of Transportation, or the Secretary's designee;

19 (7) The Secretary of Commerce, or the Secretary's designee;

20 (8) The Chair of the Critical Area Commission for the Chesapeake and
21 Atlantic Coastal Bays, or the Chair's designee;

22 (9) The Director of the Maryland Emergency Management Agency, or the
23 Director's designee;

24 (10) The Chancellor of the University System of Maryland, or the
25 Chancellor's designee; and

26 (11) Five members appointed by the Governor to represent local
27 government, environmental, and business interests.

1 (b) The Secretary of Natural Resources or the Secretary's designee shall chair the
2 Council.

3 (c) (1) Subject to paragraph (2) of this subsection, the term of a member
4 appointed by the Governor is 2 years.

5 (2) The Governor shall stagger the terms of the initial appointed members.

6 (3) At the end of a term, a member continues to serve until a successor is
7 appointed and qualifies.

8 (4) A member who is appointed after a term has begun serves only for the
9 remainder of that term and until a successor is appointed and qualifies.

10 (5) The Governor may remove an appointed member for incompetence,
11 misconduct, or failure to perform the duties of the position.

12 (d) A member appointed by the Governor may not receive compensation but is
13 entitled to reimbursement for expenses under the Standard State Travel Regulations, as
14 provided in the State budget.

15 **[3-1004.] 3-1006.**

16 (a) The Council shall:

17 (1) Study and provide analysis regarding standards and factors relevant to
18 the establishment of Coast Smart siting criteria and design criteria;

19 (2) Develop siting and design criteria to establish and implement Coast
20 Smart practices and requirements;

21 (3) Develop eligibility criteria, standards, and procedures for applying for
22 and obtaining a waiver from compliance with the Coast Smart requirements; and

23 (4) Establish procedures for evaluating Coast Smart waiver applications
24 that include the consideration of proposed [capital] projects with regard to:

25 (i) The anticipated need to prepare for, respond to, and recover from
26 extreme weather events, sea level rise inundation, coastal flooding, storm surges, and
27 shoreline erosion; and

28 (ii) The need to prevent danger to life and property and to avoid
29 environmental, socio-economic, and economic harm.

30 (b) The chair of the Council may establish subcommittees consisting of members
31 of the Council, experts in fields related to climate change and sea level rise, and interested

1 parties to address or study specific issues.

2 **3-1007. RESERVED.**

3 **3-1008. RESERVED.**

4 **PART III. COAST SMART DESIGN AND SITING CRITERIA.**

5 **3-1009.**

6 (A) THIS SECTION APPLIES TO STATE AND LOCAL PROJECTS FOR WHICH AT
7 LEAST 30% OF THE PROJECT COSTS ARE FUNDED WITH STATE FUNDS.

8 (B) BEGINNING JULY 1, 2019, IF A STATE OR LOCAL PROJECT INCLUDES
9 THE CONSTRUCTION OF A STRUCTURE OR HIGHWAY FACILITY OR THE
10 RECONSTRUCTION OF A STRUCTURE OR HIGHWAY FACILITY WITH SUBSTANTIAL
11 DAMAGE, THE STRUCTURE OR HIGHWAY FACILITY SHALL BE CONSTRUCTED OR
12 RECONSTRUCTED IN COMPLIANCE WITH SITING AND DESIGN CRITERIA
13 ESTABLISHED UNDER SUBSECTION (C) OF THIS SECTION.

14 (C) (1) THE COUNCIL, IN CONSULTATION WITH THE DEPARTMENT,
15 SHALL ESTABLISH COAST SMART SITING AND DESIGN CRITERIA TO ADDRESS SEA
16 LEVEL RISE INUNDATION AND COASTAL FLOOD IMPACTS ON STATE AND LOCAL
17 PROJECTS.

18 (2) THE CRITERIA ADOPTED UNDER THIS SUBSECTION SHALL
19 INCLUDE:

20 (I) GUIDELINES AND ANY OTHER DIRECTIVES APPLICABLE TO
21 THE PRELIMINARY PLANNING AND CONSTRUCTION OF A PROPOSED PROJECT;

22 (II) A REQUIREMENT THAT A STRUCTURE OR HIGHWAY
23 FACILITY BE DESIGNED AND CONSTRUCTED OR RECONSTRUCTED IN A MANNER TO
24 WITHSTAND THE STORM SURGE FROM A STORM THAT REGISTERS AS A CATEGORY 2
25 ON THE SAFFIR-SIMPSON HURRICANE WIND SCALE, INCLUDING A REQUIREMENT
26 FOR STRUCTURES TO BE CONSTRUCTED OR RECONSTRUCTED AT A MINIMUM
27 ELEVATION ABOVE THE PROJECTED STORM SURGE; AND

28 (III) PROVISIONS ESTABLISHING A PROCESS TO ALLOW A UNIT
29 OF STATE OR LOCAL GOVERNMENT TO OBTAIN A WAIVER FROM COMPLYING WITH
30 THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION.

31 **3-1010. RESERVED.**

1 **3-1011. RESERVED.**

2 **PART IV. SALTWATER INTRUSION.**

3 **3-1012.**

4 (A) ON OR BEFORE DECEMBER 15, 2019, THE DEPARTMENT OF PLANNING,
5 IN CONSULTATION WITH THE DEPARTMENT, THE DEPARTMENT OF THE
6 ENVIRONMENT, AND THE DEPARTMENT OF AGRICULTURE, SHALL ESTABLISH A
7 PLAN TO ADAPT TO SALTWATER INTRUSION.

8 (B) THE PLAN ESTABLISHED UNDER SUBSECTION (A) OF THIS SECTION
9 SHALL BE UPDATED AT LEAST ONCE EVERY 5 YEARS.

10 **3-1013. RESERVED.**

11 **3-1014. RESERVED.**

12 **PART V. STATE MITIGATION.**

13 **3-1015.**

14 (A) THE BOARD OF PUBLIC WORKS, IN CONJUNCTION WITH THE
15 DEPARTMENT AND THE DEPARTMENT OF THE ENVIRONMENT, SHALL ESTABLISH
16 CRITERIA TO EVALUATE WHETHER STATE FUNDS MAY BE USED TO MITIGATE
17 HAZARDS ASSOCIATED WITH SEA LEVEL RISE INUNDATION AND COASTAL FLOODING.

18 (B) THE CRITERIA ESTABLISHED UNDER SUBSECTION (A) OF THIS SECTION
19 SHALL INCORPORATE TOOLS TO ASSESS THE VULNERABILITY OF AN AREA OR A
20 STRUCTURE TO HAZARDS ASSOCIATED WITH SEA LEVEL RISE INUNDATION AND
21 COASTAL FLOODING, INCLUDING TOOLS TO MEASURE:

22 (1) THE LEVEL OF EXPOSURE OF AN AREA OR A STRUCTURE TO
23 HAZARDS; AND

24 (2) THE DEGREE TO WHICH AN AREA OR A STRUCTURE IS LIKELY TO
25 BE AFFECTED BY THE EXPOSURE TO HAZARDS.

26 **3-1016. RESERVED.**

27 **3-1017. RESERVED.**

28 **PART VI. LOCAL PLAN FOR NUISANCE FLOODING.**

1 **3-1018.**

2 (A) (1) ON OR BEFORE JULY 1, 2019, A LOCAL JURISDICTION THAT
3 EXPERIENCES NUISANCE FLOODING SHALL SUBMIT TO THE DEPARTMENT OF
4 PLANNING FOR APPROVAL A PLAN TO ADDRESS NUISANCE FLOODING.

5 (2) A LOCAL JURISDICTION SHALL UPDATE THE PLAN REQUIRED
6 UNDER PARAGRAPH (1) OF THIS SUBSECTION AT LEAST ONCE EVERY 5 YEARS.

7 (3) A LOCAL JURISDICTION SHALL PUBLISH THE PLANS REQUIRED
8 UNDER THIS SUBSECTION ON THE LOCAL JURISDICTION'S WEBSITE.

9 (B) THE DEPARTMENT OF PLANNING SHALL CONSULT WITH THE COUNCIL
10 BEFORE APPROVING OR DISAPPROVING A PLAN SUBMITTED UNDER SUBSECTION (A)
11 OF THIS SECTION.

12 **Article – Real Property**

13 **10-711.**

14 A VENDOR OF REAL PROPERTY LOCATED ON LAND THAT MAY BE INUNDATED
15 FROM A SEA LEVEL RISE OF 2 FEET, AS SHOWN ON THE SEA LEVEL RISE
16 VULNERABILITY LAYER OF THE DEPARTMENT OF NATURAL RESOURCES'
17 MARYLAND COASTAL ATLAS, SHALL, ON OR BEFORE ENTERING INTO A CONTRACT
18 FOR THE SALE OF PROPERTY, DELIVER TO EACH PURCHASER:

19 (1) NOTICE THAT ALL OR A PORTION OF THE PROPERTY IS LOCATED
20 ON LAND THAT MAY BE INUNDATED FROM A SEA LEVEL RISE OF 2 FEET, AS SHOWN
21 ON THE SEA LEVEL RISE VULNERABILITY LAYER OF THE DEPARTMENT OF NATURAL
22 RESOURCES' MARYLAND COASTAL ATLAS; AND

23 (2) A COPY OF THE DEPARTMENT OF NATURAL RESOURCES'
24 MARYLAND COASTAL ATLAS THAT SHOWS THE PROPERTY WITH THE APPLICABLE
25 SEA LEVEL RISE VULNERABILITY LAYER.

26 **Article – State Finance and Procurement**

27 **[3-602.3.**

28 (a) (1) In this section the following words have the meanings indicated.

29 (2) "100-year base flood" means a flood having a 1% chance of being
30 equaled or exceeded in any given year.

1 (3) “Base flood elevation” means:

2 (i) the water surface elevation of the 100–year base flood as
3 specified on Federal Emergency Management Agency flood insurance rate maps; or

4 (ii) in an area of shallow flooding:

5 1. the highest adjacent natural grade added to the depth
6 number specified in feet on the flood insurance rate map; or

7 2. if the depth number is not specified on the flood insurance
8 rate map, 4 feet.

9 (4) (i) “Coast Smart” means a construction practice in which
10 preliminary planning, siting, design, construction, operation, maintenance, and repair of a
11 structure avoids or minimizes future impacts associated with coastal flooding and sea level
12 rise.

13 (ii) “Coast Smart” includes design criteria and siting criteria that are
14 applicable throughout the entire life cycle of a project.

15 (5) “Design criteria” means standard specifications related to the shape,
16 size, or form of a construction practice.

17 (6) (i) “Replacement cost” means, at the time of reconstruction, the cost
18 of reconstructing a structure and its surrounding property to full use with materials of the
19 same kind and quality as the original materials.

20 (ii) “Replacement cost” does not include:

21 1. the value of the land on which a structure is located; or

22 2. for tax purposes, a deduction for depreciation.

23 (7) “Siting criteria” means specifications related to the location or use of a
24 structure.

25 (8) “Special flood hazard area” means land in a tidally influenced floodplain
26 that is:

27 (i) subject to at least a 1% chance of flooding in any given year; and

28 (ii) designated by the Federal Emergency Management Agency in
29 flood insurance studies and on flood insurance rate maps as Zone A, AE, AH, AO, A1–30,
30 A99, VE, or V1–30.

31 (9) “Structure” means:

- 1 (i) a walled or roofed building;
- 2 (ii) a manufactured home; or
- 3 (iii) a gas or liquid storage tank that is principally above ground.

4 (10) "Substantial damage" means damage caused by any source that is
5 sustained by a structure such that the cost of reconstruction to its before-damaged
6 condition is at least half of the structure's replacement cost before the damage occurred.

7 (b) (1) This subsection applies to State capital projects planned and built by
8 units of State government that are partially or fully funded with State funds.

9 (2) Beginning July 1, 2015, if a State capital project includes the
10 construction of a structure or the reconstruction of a structure with substantial damage,
11 the structure shall be constructed or reconstructed in compliance with siting and design
12 criteria established under subsection (c) of this section.

13 (c) (1) In consultation with the Department of Natural Resources, the Coast
14 Smart Council established under § 3-1002 of the Natural Resources Article shall establish
15 Coast Smart siting and design criteria to address sea level rise and coastal flood impacts
16 on capital projects.

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

18 (i) guidelines, and any other directives applicable to the preliminary
19 planning and construction of a proposed capital project;

20 (ii) a requirement that the lowest floor elevation of each structure
21 located within a special flood hazard area is built at an elevation of at least 2 feet above the
22 base flood elevation; and

23 (iii) provisions establishing a process to allow a unit of State
24 government to obtain a waiver from complying with the requirements of subsection (b) of
25 this section.]

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
27 1, 2018.