115TH CONGRESS
1ST SESSION

S. 1798

To establish a Federal standard in order to improve the Nation’s resilience to current and future flood risk.

IN THE SENATE OF THE UNITED STATES
SEPTEMBER 12, 2017

Mr. VAN HOLLEN (for himself, Mr. SCHATZ, and Mr. BOOKER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL
To establish a Federal standard in order to improve the Nation’s resilience to current and future flood risk.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the “Federal Flood Management Act of 2017”.

SEC. 2. DEFINITIONS.
In this Act—

(1) the term “Administrator” means the Administrator of the Federal Emergency Management Agency;
(2) the term “agency”—

(A) has the meaning given the term “Executive agency” in section 105 of title 5, United States Code;

(B) includes military departments; and

(C) does not apply to an agency that does not take agency actions in or affecting floodplains;

(3) the term “agency action” means, with respect to an agency—

(A) acquiring, managing, and disposing of Federal lands and facilities;

(B) providing construction and improvements that are undertaken, financed by, or assisted by the Federal Government; and

(C) conducting Federal activities and programs that affect land use, including planning, regulating, and licensing activities relating to water and land resources;

(4) the term “base flood” means a flood that has a not less than 1 percent chance of occurring in a year;

(5) the term “critical action” means any agency action with respect to which the head of the agency
determines a slight chance of flooding would present an unacceptable amount of risk;

(6) the term “Executive Order 11988” means Executive Order 11988 (42 Fed. Reg. 26951; relating to floodplain management);

(7) the term “federally funded project” means an action in which Federal funds are used, with respect to a structure or facility, for new construction, for substantial improvement, or to address substantial damage;

(8) the term “floodplain” means, subject to section 4(b)(2), the lowland and relatively flat area that adjoins inland and coastal waters (including flood-prone areas of offshore islands);

(9) the term “National Flood Insurance Program” means the program established under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.);

Soliciting and Considering Stakeholder Input, published on October 8, 2015; and


SEC. 3. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) it should be the policy of the United States to improve the resiliency of communities and assets of the Federal Government against the impacts of flooding;

(2) the impacts of flooding are anticipated to increase over time due to increased future risk and greater development on floodplains;

(3) losses caused by flooding affect—

(A) the environment;

(B) the economic prosperity of the United States;

(C) public health and safety; and

(D) the national security of the United States;

(4) the Federal Government must take action, informed by the best available and actionable
science, to improve the preparedness and resilience of the United States with respect to flooding;

(5) Executive Order 11988 requires agencies to avoid—

(A) to the maximum extent practicable, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains; and

(B) direct or indirect support of floodplain development whenever a more practicable alternative is available;

(6) to implement Executive Order 11988, the Federal Government has developed processes for evaluating the impacts of Federal actions in or affecting floodplains;

(7) in June 2013, an interagency effort to create a new flood risk reduction standard for federally funded projects was initiated;

(8) in establishing the standard described in paragraph (7), the views of governors, mayors, and interested members of the public were solicited and considered;

(9) the result of the efforts described in paragraphs (7) and (8) is the Standard, a flexible frame-
work to increase resilience against flooding and help preserve the natural values of floodplains; and

(10) enacting the Standard will ensure that agencies expand management from the base flood level in effect as of the date of enactment of this Act to a higher vertical elevation and a corresponding horizontal floodplain in order to—

(A) address current and future flood risk; and

(B) ensure that federally funded projects last as long as intended.

SEC. 4. FLOODPLAIN MANAGEMENT.

(a) IN GENERAL.—The head of each agency shall provide leadership and shall take action, when carrying out an agency action, to—

(1) reduce the risk of losses resulting from floods;

(2) minimize the impact of floods on human safety health, and welfare; and

(3) restore and preserve the natural and beneficial values served by floodplains.

(b) AGENCY RESPONSIBILITIES.—

(1) IN GENERAL.—In carrying out an agency action as described in subsection (a), the head of each agency shall—
(A) evaluate the potential effects of any agency action taken by the agency in a floodplain, as determined under paragraph (2);

(B) ensure that the planning programs and budget requests of the agency reflect consideration of flood hazards and the management of floodplains; and

(C) prescribe procedures to implement the policies and requirements of this Act—

(i) to the extent permitted by law; and

(ii) in accordance with the procedures described in paragraph (3).

(2) Determination of floodplains.—The head of an agency shall, when determining whether an agency action will take place in a floodplain—

(A) use—

(i) the elevation and flood hazard area, as determined by—

(I) a climate-informed science approach that—

(aa) uses the best available actionable hydrologic and hydraulic data and methods;
(bb) integrates current and future changes in flooding based on climate science; and

(cc) includes an emphasis on whether the agency action is a critical action;

(II) the freeboard value, reached by adding an additional—

(aa) 2 feet to the base flood elevation for an agency action that is not a critical action; and

(bb) 3 feet to the base flood elevation for an agency action that is a critical action; or

(III) any other method that is identified in any amendment made to this Act; or

(ii) an area that has a 0.2 percent chance of flooding in a year; and

(B) rely on—

(i) the best available information; and

(ii) the Flood Insurance Rate Map published by the Administrator for the community in which the agency action shall take place.
(3) **Procedures.**—The procedures described in this paragraph are as follows:

(A) Before an agency takes an agency action, the head of the agency shall determine under paragraph (2) whether the proposed agency action will take place in a floodplain.

(B) If an agency action described in subparagraph (A) may have a significant effect on the quality of the human environment, the evaluation required under paragraph (5) shall be included in any statement prepared under section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

(C) If the head of an agency has determined to, or proposes to, conduct, support, or allow an agency action that will take place in a floodplain, as determined under paragraph (2), the head of the agency shall—

(i) consider alternatives in order to avoid adverse effects and incompatible development in the floodplain;

(ii) when possible, rely on natural systems, ecosystem processes, and nature-based approaches when considering alternatives under clause (i);
(iii) if the head of the agency determines that the only practicable alternative consistent under law, including the requirements of this Act, requires taking an agency action in a floodplain, before taking the agency action—

(I) design or modify the agency action to minimize potential harm to or within the floodplain consistent with regulations issued under paragraph (6); and

(II) prepare and distribute a notice that contains an explanation with respect to why the agency action shall take place in the floodplain;

(iv) with respect to an agency action relating to a program that is subject to Circular A–95 of the Office of Management and Budget, send a notice to the State and area-wide clearinghouses for the geographic areas that are affected by the agency action that—

(I) is not more than 3 pages long;

(II) includes—
(aa) a location map;

(bb) the reasons why the agency action shall occur in a floodplain;

(cc) a statement indicating whether the agency action conforms to applicable State or local floodplain protection standards;

and

(dd) a list of the alternatives to the agency action that the head of the agency considered;

and

(III) allows for a brief comment period before the head of the agency may take the agency action; and

(v) provide the opportunity for early public review of any plan or proposal for the agency action, including the development of procedures for any Federal action the impact of which is not significant enough to require the preparation of a statement under section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).
(4) REQUESTS FOR AUTHORIZATIONS AND APPROPRIATIONS.—The head of an agency, when making any request to the Director of the Office of Management and Budget for a new authorization or for appropriations, shall indicate, if an agency action to be proposed shall take place in a floodplain, as determined under paragraph (2), whether the agency action complies with this Act.

(5) WATER AND LAND USE PLANS.—

(A) IN GENERAL.—The head of an agency, when formulating or evaluating any water and land use plan, shall—

(i) take floodplain management into account; and

(ii) require the use of land and water resources that are appropriate when compared with the degree of hazard that is involved.

(B) CONSIDERATIONS.—The head of each agency shall—

(i) provide for the adequate evaluation and consideration of flood hazards with respect to the regulations and operating procedures for the licenses, permits, and loan
or grant programs administered by the agency; and

(ii) with respect to an applicant for a license, permit, loan, or grant that is issued or administered by the agency, encourage, and provide appropriate guidance to, the applicant to evaluate, before submitting the application, the effects that the application, if granted, would have on floodplains.

(6) REGULATIONS AND PROCEDURES.—To the extent permitted by law, the head of each agency shall, in consultation with the Water Resources Council, the Federal Interagency Floodplain Management Task Force, the Administrator, and the Council on Environmental Quality—

(A) issue regulations, or amend regulations that are in effect as of the date of enactment of this Act, to comply with the requirements of this Act; and

(B) amend the regulations described in subparagraph (A) as warranted.

(e) ANNUAL REASSESSMENT.—The Mitigation Framework Leadership Group, in consultation with the
Federal Interagency Floodplain Management Task Force, shall—

(1) annually reassess the implementation of the requirements imposed under this section; and

(2) provide recommendations to the Water Resources Council for updates to the requirements imposed under this section that are warranted based on accurate and actionable science that takes into account changes to climate and other changes in flood risk.

SEC. 5. FEDERAL FLOOD RISK MANAGEMENT STANDARD.

(a) IN GENERAL.—The head of an agency shall—

(1) except as provided in subsection (b), with respect to a federally funded project undertaken by the agency, ensure that the agency complies with the Standard; and

(2) if the agency has responsibility for the administration or management of Federal real property and facilities, in addition to the requirements under section 4 and paragraph (1)—

(A) require the construction of Federal structures and facilities to comply with—

(i) the regulations and procedures issued under section 4(b)(6); and
(ii) any regulations issued under the National Flood Insurance Program unless those regulations are demonstrably inappropriate for a structure or facility;

(B) apply accepted floodproofing and other flood protection measures to the construction or rehabilitation of a structure or facility that is located in a floodplain;

(C) when practicable, elevate a structure above the floodplain instead of filling in land;

(D) provide on structures and, where appropriate, other pieces of property a conspicuous delineation of past and probable flood height—

(i) if the structure or other property—

(I) is used by the general public;

and

(II)(aa) has suffered flood damage; or

(bb) is in an identified flood hazard area; and

(ii) in order to enhance public awareness of, and knowledge about, flood hazards; and
(E) when Federal property in a floodplain is proposed for lease, easement, right-of-way, or disposal to a non-Federal public or private party—

(i) reference in the conveyance those uses that are restricted under Federal, State, or local regulations relating to floodplains; and

(ii)(I) except where prohibited by law, attach any other appropriate restrictions to the uses of the property by the grantee or purchaser, as applicable, and any successors; or

(II) withhold the property from conveyance.

(b) EXEMPTION.—The head of an agency may exempt a federally funded project from the requirement under subsection (a)(1) if—

(1) the exemption is in the interest of national security;

(2) the undertaking of the federally funded project is—

(A) because of an emergency; or
(B) a mission-critical requirement relating
to a national security interest or an emergency;
or
(3) applying the Standard to a federally funded
project is demonstrably inappropriate.

(e) Updates.—Not less frequently than once every
5 years, the Water Resources Council shall update the
Standard, as determined appropriate by the Water Re-
sources Council.

SEC. 6. FINANCIAL TRANSACTIONS IN AREAS SUBJECT TO
FLOODING.

In addition to any responsibilities under this Act and
sections 102, 202, and 205 of the Flood Disaster Protec-
tion Act of 1973 (42 U.S.C. 4012a, 4106, and 4128), the
head of any agency that guarantees, approves, regulates,
or insures any financial transaction relating to an area
that is subject to a base flood shall, before completing any
action relating to that transaction, inform any private par-
ties that are participating in the transaction about the
hazards of locating a structure in that area.

SEC. 7. REPORTS.

(a) In General.—Not later than 1 year after the
date of enactment of this Act, the head of each agency
shall submit to the Council on Environmental Quality a
report regarding how the requirements of this Act impact
the procedures and operations of the agency.

(b) Analysis of Standard.—Each report submit-
ted under subsection (a) shall contain a separate anal-
ysis regarding how the requirement under section 5(a)(1)
has impacted agencies.

(c) Evaluation.—Not less frequently than once
every 2 years, the Water Resources Council shall—

(1) evaluate the procedures, including the effec-
tiveness of the procedures, of each agency relating to
the requirements of this Act, taking into account
each report submitted under subsection (a); and

(2) submit to the appropriate committees of
Congress a report that contains the result of the
evaluation required under paragraph (1).

SEC. 8. GENERAL PROVISIONS.

(a) Rules of Construction.—Nothing in this Act
may be construed—

(1) as applying to assistance that is provided
for emergency work that is—

(A) performed under sections 403 and 502
of the Robert T. Stafford Disaster Relief and
Emergency Assistance Act (42 U.S.C. 5170b
and 5192); and

(B) essential to—
(i) save human life; and

(ii) protect—

(I) property; and

(II) public health and safety; or

(2) to impair or otherwise affect—

(A) the authority granted by law to an
agency or the head of an agency; or

(B) the functions of the Director of the Of-
office of Management and Budget relating to
budgetary, administrative, or legislative pro-
posals.

(b) IMPLEMENTATION.—This Act shall be imple-
mented consistent with applicable law and subject to the
availability of appropriations.

(c) RESPONSIBILITIES OF WATER RESOURCES
COUNCIL.—Except as otherwise expressly provided, the
Water Resources Council shall carry out the responsibil-
ities of the Council under this Act in consultation with
the Mitigation Framework Leadership Group.

SEC. 9. ASSUMPTION OF RESPONSIBILITIES.

If subparagraphs (A), (B), and (C) of section 4(b)(3)
apply to a project to which section 104(h) of the Housing
and Community Development Act of 1974 (42 U.S.C.
5304(h)) applies, an appropriate applicant may assume
the responsibilities under those subparagraphs if the appli-
cant has also assumed, with respect to the project, all re-
sponsibilities for environmental review, decisionmaking,
and action under the National Environmental Policy Act
of 1969 (42 U.S.C. 4321 et seq.).