

117TH CONGRESS  
1ST SESSION

# S. 1688

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

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IN THE SENATE OF THE UNITED STATES

MAY 18, 2021

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

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## A BILL

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

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Flood Risk  
5 Management Act of 2021”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

8 (1) the term “Administrator” means the Ad-  
9 ministrator of the Federal Emergency Management  
10 Agency;

1 (2) the term “agency”—

2 (A) has the meaning given the term “Exec-  
3 utive agency” in section 105 of title 5, United  
4 States Code; and

5 (B) does not apply to an agency that does  
6 not take agency actions in or affecting  
7 floodplains;

8 (3) the term “agency action”—

9 (A) means, with respect to an agency—

10 (i) acquiring, managing, and disposing  
11 of Federal lands and facilities;

12 (ii) providing construction and im-  
13 provements that are undertaken, financed  
14 by, or assisted by the Federal Government;  
15 and

16 (iii) conducting Federal activities and  
17 programs that affect land use, including  
18 planning, regulating, and licensing activi-  
19 ties relating to water and land resources;  
20 and

21 (B) does not include a military construc-  
22 tion project described in section 2802 of title  
23 10, United States Code;

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

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

8           (6) the term “Executive Order 11988” means  
9 Executive Order 11988 (42 Fed. Reg. 26951; relat-  
10 ing to floodplain management);

11           (7) the term “federally funded project” means  
12 an action in which Federal funds are used, with re-  
13 spect to a structure or facility, for new construction,  
14 for substantial improvement, or to address substan-  
15 tial damage;

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

20           (9) the term “National Flood Insurance Pro-  
21 gram” means the program established under the Na-  
22 tional Flood Insurance Act of 1968 (42 U.S.C. 4001  
23 et seq.);

24           (10) the term “Standard” means the Federal  
25 Flood Risk Management Standard set forth in Ap-

1       pendix G to Guidelines for Implementing Executive  
2       Order 11988, Floodplain Management, and Execu-  
3       tive Order 13690, Establishing a Federal Flood Risk  
4       Management Standard and a Process for Further  
5       Soliciting and Considering Stakeholder Input, pub-  
6       lished on October 8, 2015; and

7               (11) the term “Water Resources Council”  
8       means the Council established under section 101 of  
9       the Water Resources Planning Act (42 U.S.C.  
10      1962a).

11 **SEC. 3. SENSE OF CONGRESS.**

12       It is the sense of Congress that—

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

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

20               (3) losses caused by flooding affect—

21                       (A) the environment;

22                       (B) the economic prosperity of the United  
23       States;

24                       (C) public health and safety; and

1 (D) the national security of the United  
2 States;

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

7 (5) Executive Order 11988 requires agencies to  
8 avoid—

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

13 (B) direct or indirect support of floodplain  
14 development whenever a more practicable alter-  
15 native is available;

16 (6) to implement Executive Order 11988, the  
17 Federal Government has developed processes for  
18 evaluating the impacts of Federal actions in or af-  
19 fecting floodplains;

20 (7) in June 2013, an interagency effort to cre-  
21 ate a new flood risk reduction standard for federally  
22 funded projects was initiated;

23 (8) in establishing the standard described in  
24 paragraph (7), the views of governors, mayors, and

1 interested members of the public were solicited and  
2 considered;

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

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

12 (A) address current and future flood risk;

13 and

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

16 **SEC. 4. FLOODPLAIN MANAGEMENT.**

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

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

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

24 (3) restore and preserve the natural and bene-  
25 ficial values served by floodplains.

1 (b) AGENCY RESPONSIBILITIES.—

2 (1) IN GENERAL.—In carrying out an agency  
3 action, as described in subsection (a), the head of  
4 each agency shall—

5 (A) evaluate the potential effects of any  
6 agency action taken by the agency in a flood-  
7 plain, as determined under paragraph (2);

8 (B) ensure that the planning programs and  
9 budget requests of the agency reflect consider-  
10 ation of flood hazards and the management of  
11 floodplains; and

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

14 (i) to the extent permitted by law; and

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

17 (2) DETERMINATION OF FLOODPLAINS.—The  
18 head of an agency shall, when determining whether  
19 an agency action will take place in a floodplain—

20 (A) use—

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

23 (I) a climate-informed science ap-  
24 proach that—

1 (aa) uses the best available  
2 actionable hydrologic and hydrau-  
3 lic data and methods;

4 (bb) integrates current and  
5 future changes in flooding based  
6 on climate science;

7 (cc) includes an emphasis on  
8 whether the agency action is a  
9 critical action; and

10 (dd) takes into consideration  
11 changes over the lifetime of the  
12 project that is the subject of the  
13 agency action;

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

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

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

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



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

3 (B) rely on—

4 (i) the best available information; and

5 (ii) the Flood Insurance Rate Map  
6 published by the Administrator for the  
7 community in which the agency action  
8 shall take place.

9 (3) PROCEDURES.—The procedures described  
10 in this paragraph are as follows:

11 (A) Before an agency takes an agency ac-  
12 tion, the head of the agency shall determine  
13 under paragraph (2) whether the proposed  
14 agency action will take place in a floodplain.

15 (B) If an agency action described in sub-  
16 paragraph (A) may have a significant effect on  
17 the quality of the human environment, the eval-  
18 uation required under paragraph (5) shall be  
19 included in any statement prepared under sec-  
20 tion 102(2)(C) of the National Environmental  
21 Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

22 (C) If the head of an agency has deter-  
23 mined to, or proposes to, conduct, support, or  
24 allow an agency action that will take place in a

1 floodplain, as determined under paragraph (2),  
2 the head of the agency shall—

3 (i) consider alternatives in order to  
4 avoid adverse effects and incompatible de-  
5 velopment in the floodplain;

6 (ii) when possible, rely on natural sys-  
7 tems, ecosystem processes, and nature-  
8 based approaches when considering alter-  
9 natives under clause (i);

10 (iii) if the head of the agency deter-  
11 mines that the only practicable alternative  
12 consistent under law, including the require-  
13 ments of this Act, requires taking an agen-  
14 cy action in a floodplain, before taking the  
15 agency action—

16 (I) design or modify the agency  
17 action to minimize potential harm to  
18 or within the floodplain consistent  
19 with regulations issued under para-  
20 graph (6); and

21 (II) prepare and distribute a no-  
22 tice that contains an explanation with  
23 respect to why the agency action shall  
24 take place in the floodplain;

1 (iv) send a notice to all State, local,  
2 and Tribal governments with respect to the  
3 geographic areas that are affected by the  
4 agency action that—

5 (I) is not more than 3 pages  
6 long;

7 (II) includes—

8 (aa) a location map;

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

12 (cc) a statement indicating  
13 whether the agency action con-  
14 forms to applicable State or local  
15 floodplain protection standards;  
16 and

17 (dd) a list of the alternatives  
18 to the agency action that the  
19 head of the agency considered;  
20 and

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

24 (v) provide the opportunity for early  
25 public review of any plan or proposal for

1 the agency action, including the develop-  
2 ment of procedures for any Federal action  
3 the impact of which is not significant  
4 enough to require the preparation of a  
5 statement under section 102(2)(C) of the  
6 National Environmental Policy Act of  
7 1969 (42 U.S.C. 4332(2)(C)).

8 (4) REQUESTS FOR AUTHORIZATIONS AND AP-  
9 PROPRIATIONS.—The head of an agency, when mak-  
10 ing any request to the Director of the Office of Man-  
11 agement and Budget for a new authorization or for  
12 appropriations, shall indicate, if an agency action to  
13 be proposed shall take place in a floodplain, as de-  
14 termined under paragraph (2), whether the agency  
15 action complies with this Act.

16 (5) WATER AND LAND USE PLANS.—

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

20 (i) take floodplain management into  
21 account; and

22 (ii) require the use of land and water  
23 resources that are appropriate when com-  
24 pared with the degree of hazard that is in-  
25 volved.

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

3 (i) provide for the adequate evaluation  
4 and consideration of flood hazards with re-  
5 spect to the regulations and operating pro-  
6 cedures for the licenses, permits, and loan  
7 or grant programs administered by the  
8 agency; and

9 (ii) with respect to an applicant for a  
10 license, permit, loan, or grant that is  
11 issued or administered by the agency, en-  
12 courage, and provide appropriate guidance  
13 to, the applicant to evaluate, before sub-  
14 mitting the application, the effects that the  
15 application, if granted, would have on  
16 floodplains.

17 (6) REGULATIONS AND PROCEDURES.—To the  
18 extent permitted by law, the head of each agency  
19 shall, in consultation with the Water Resources  
20 Council, the Federal Interagency Floodplain Man-  
21 agement Task Force, the Administrator, and the  
22 Council on Environmental Quality—

23 (A) issue regulations, or amend regulations  
24 that are in effect as of the date of enactment

1 of this Act, to comply with the requirements of  
2 this Act; and

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

5 (c) ANNUAL REASSESSMENT.—The Mitigation  
6 Framework Leadership Group, in consultation with the  
7 Federal Interagency Floodplain Management Task Force,  
8 shall—

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

11 (2) provide recommendations to the Water Re-  
12 sources Council for updates to the requirements im-  
13 posed under this section that are warranted based  
14 on accurate and actionable science that takes into  
15 account changes to climate and other changes in  
16 flood risk.

17 **SEC. 5. FEDERAL FLOOD RISK MANAGEMENT STANDARD.**

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

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

23 (2) if the agency has responsibility for the ad-  
24 ministration or management of Federal real prop-

1 erty and facilities, in addition to the requirements  
2 under section 4 and paragraph (1)—

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

5 (i) the regulations and procedures  
6 issued under section 4(b)(6); and

7 (ii) any regulations issued under the  
8 National Flood Insurance Program unless  
9 those regulations are demonstrably inap-  
10 propriate for a structure or facility;

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

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

17 (D) provide on structures and, where ap-  
18 propriate, other pieces of property a con-  
19 spicuous delineation of past and probable flood  
20 height—

21 (i) if the structure or other prop-  
22 erty—

23 (I) is used by the general public;

24 and

1 (II)(aa) has suffered flood dam-  
2 age; or

3 (bb) is in an identified flood haz-  
4 ard area; and

5 (ii) in order to enhance public aware-  
6 ness of, and knowledge about, flood haz-  
7 ards; and

8 (E) when Federal property in a floodplain  
9 is proposed for lease, easement, right-of-way, or  
10 disposal to a non-Federal public or private  
11 party—

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

16 (ii)(I) except where prohibited by law,  
17 attach any other appropriate restrictions to  
18 the uses of the property by the grantee or  
19 purchaser, as applicable, and any succes-  
20 sors; or

21 (II) withhold the property from con-  
22 veyance.

23 (b) EXEMPTION.—The head of an agency may ex-  
24 empt a federally funded project from the requirement  
25 under subsection (a)(1) if—



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

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

5                 (A) because of an emergency; or

6                 (B) a mission-critical requirement relating  
7 to a national security interest or an emergency;  
8 or

9           (3) applying the Standard to a federally funded  
10 project is demonstrably inappropriate.

11         (c) UPDATES.—Not less frequently than once every  
12 5 years, the Water Resources Council shall update the  
13 Standard, as determined appropriate by the Water Re-  
14 sources Council.

15 **SEC. 6. FINANCIAL TRANSACTIONS IN AREAS SUBJECT TO**  
16 **FLOODING.**

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

1 **SEC. 7. REPORTS.**

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

7 (b) ANALYSIS OF STANDARD.—Each report sub-  
8 mitted under subsection (a) shall contain a separate anal-  
9 ysis regarding how the requirement under section 5(a)(1)  
10 has impacted the agency.

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

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

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

20 **SEC. 8. GENERAL PROVISIONS.**

21 (a) RULES OF CONSTRUCTION.—Nothing in this Act  
22 may be construed—

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

25 (A) performed under sections 403 and 502  
26 of the Robert T. Stafford Disaster Relief and

1           Emergency Assistance Act (42 U.S.C. 5170b,  
2           5192); and

3                   (B) essential to—

4                           (i) save human life; and

5                           (ii) protect—

6                                   (I) property; and

7                                   (II) public health and safety; or

8           (2) to impair or otherwise affect—

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

11                           (B) the functions of the Director of the Of-  
12                           fice of Management and Budget relating to  
13                           budgetary, administrative, or legislative pro-  
14                           posals.

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

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

23   **SEC. 9. ASSUMPTION OF RESPONSIBILITIES.**

24           If subparagraphs (A), (B), and (C) of section 4(b)(3)  
25           apply to a project to which section 104(h) of the Housing

1 and Community Development Act of 1974 (42 U.S.C.  
2 5304(h)) applies, an appropriate applicant may assume  
3 the responsibilities under those subparagraphs if the appli-  
4 cant has also assumed, with respect to the project, all re-  
5 sponsibilities for environmental review, decision making,  
6 and action under the National Environmental Policy Act  
7 of 1969 (42 U.S.C. 4321 et seq.).

○