

116TH CONGRESS
2D SESSION

S. 5022

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

DECEMBER 15, 2020

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.

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 2020”.

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-

pendix G to Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input, published on October 8, 2015; and

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

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

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

(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 of 1969 (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

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

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 of 1969 (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.

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-

erty 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

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, and 4128), the
20 head of any agency that guarantees, approves, regulates,
21 or insures any financial transaction relating to an area
22 that is subject to a base flood shall, before completing any
23 action 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 agencies.

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 and 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, decisionmaking,
6 and action under the National Environmental Policy Act
7 of 1969 (42 U.S.C. 4321 et seq.).

○