

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.

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## 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

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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 Manage-  
5 ment Act of 2017”.

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;

5 (B) includes military departments; and

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

9 (3) the term “agency action” means, with re-  
10 spect to an agency—

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

13 (B) providing construction and improve-  
14 ments that are undertaken, financed by, or as-  
15 sisted by the Federal Government; and

16 (C) conducting Federal activities and pro-  
17 grams that affect land use, including planning,  
18 regulating, and licensing activities relating to  
19 water and land resources;

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

23 (5) the term “critical action” means any agency  
24 action with respect to which the head of the agency

1 determines a slight chance of flooding would present  
2 an unacceptable amount of risk;

3 (6) the term “Executive Order 11988” means  
4 Executive Order 11988 (42 Fed. Reg. 26951; relat-  
5 ing to floodplain management);

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

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

15 (9) the term “National Flood Insurance Pro-  
16 gram” means the program established under the Na-  
17 tional Flood Insurance Act of 1968 (42 U.S.C. 4001  
18 et seq.);

19 (10) the term “Standard” means the Federal  
20 Flood Risk Management Standard set forth in Ap-  
21 pendix G to Guidelines for Implementing Executive  
22 Order 11988, Floodplain Management, and Execu-  
23 tive Order 13690, Establishing a Federal Flood Risk  
24 Management Standard and a Process for Further

1 Soliciting and Considering Stakeholder Input, pub-  
2 lished on October 8, 2015; and

3 (11) the term “Water Resources Council”  
4 means the Council established under section 101 of  
5 the Water Resources Planning Act (42 U.S.C.  
6 1962a).

7 **SEC. 3. SENSE OF CONGRESS.**

8 It is the sense of Congress that—

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

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

16 (3) losses caused by flooding affect—

17 (A) the environment;

18 (B) the economic prosperity of the United  
19 States;

20 (C) public health and safety; and

21 (D) the national security of the United  
22 States;

23 (4) the Federal Government must take action,  
24 informed by the best available and actionable

1 science, to improve the preparedness and resilience  
2 of the United States with respect to flooding;

3 (5) Executive Order 11988 requires agencies to  
4 avoid—

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

9 (B) direct or indirect support of floodplain  
10 development whenever a more practicable alter-  
11 native is available;

12 (6) to implement Executive Order 11988, the  
13 Federal Government has developed processes for  
14 evaluating the impacts of Federal actions in or af-  
15 fecting floodplains;

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

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

23 (9) the result of the efforts described in para-  
24 graphs (7) and (8) is the Standard, a flexible frame-

1 work to increase resilience against flooding and help  
 2 preserve the natural values of floodplains; and

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

8 (A) address current and future flood risk;  
 9 and

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

12 **SEC. 4. FLOODPLAIN MANAGEMENT.**

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

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

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

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

22 (b) AGENCY RESPONSIBILITIES.—

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

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

4 (B) ensure that the planning programs and  
 5 budget requests of the agency reflect consider-  
 6 ation of flood hazards and the management of  
 7 floodplains; and

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

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

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

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

16 (A) use—

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

19 (I) a climate-informed science ap-  
 20 proach that—

21 (aa) uses the best available  
 22 actionable hydrologic and hydrau-  
 23 lic data and methods;

1 (bb) integrates current and  
2 future changes in flooding based  
3 on climate science; and

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

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

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

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

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

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

20 (B) rely on—

21 (i) the best available information; and

22 (ii) the Flood Insurance Rate Map  
23 published by the Administrator for the  
24 community in which the agency action  
25 shall take place.

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

3           (A) Before an agency takes an agency ac-  
4       tion, the head of the agency shall determine  
5       under paragraph (2) whether the proposed  
6       agency action will take place in a floodplain.

7           (B) If an agency action described in sub-  
8       paragraph (A) may have a significant effect on  
9       the quality of the human environment, the eval-  
10      uation required under paragraph (5) shall be  
11      included in any statement prepared under sec-  
12      tion 102(2)(C) of the National Environmental  
13      Policy Act (42 U.S.C. 4332(2)(C)).

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

19           (i) consider alternatives in order to  
20           avoid adverse effects and incompatible de-  
21           velopment in the floodplain;

22           (ii) when possible, rely on natural sys-  
23           tems, ecosystem processes, and nature-  
24           based approaches when considering alter-  
25           natives under clause (i);

1 (iii) if the head of the agency deter-  
2 mines that the only practicable alternative  
3 consistent under law, including the require-  
4 ments of this Act, requires taking an agen-  
5 cy action in a floodplain, before taking the  
6 agency action—

7 (I) design or modify the agency  
8 action to minimize potential harm to  
9 or within the floodplain consistent  
10 with regulations issued under para-  
11 graph (6); and

12 (II) prepare and distribute a no-  
13 tice that contains an explanation with  
14 respect to why the agency action shall  
15 take place in the floodplain;

16 (iv) with respect to an agency action  
17 relating to a program that is subject to  
18 Circular A-95 of the Office of Manage-  
19 ment and Budget, send a notice to the  
20 State and area-wide clearinghouses for the  
21 geographic areas that are affected by the  
22 agency action that—

23 (I) is not more than 3 pages  
24 long;

25 (II) includes—

1 (aa) a location map;

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

5 (cc) a statement indicating  
6 whether the agency action con-  
7 forms to applicable State or local  
8 floodplain protection standards;  
9 and

10 (dd) a list of the alternatives  
11 to the agency action that the  
12 head of the agency considered;  
13 and

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

17 (v) provide the opportunity for early  
18 public review of any plan or proposal for  
19 the agency action, including the develop-  
20 ment of procedures for any Federal action  
21 the impact of which is not significant  
22 enough to require the preparation of a  
23 statement under section 102(2)(C) of the  
24 National Environmental Policy Act (42  
25 U.S.C. 4332(2)(C)).

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

9           (5) WATER AND LAND USE PLANS.—

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

13                   (i) take floodplain management into  
 14                   account; and

15                   (ii) require the use of land and water  
 16                   resources that are appropriate when com-  
 17                   pared with the degree of hazard that is in-  
 18                   volved.

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

21                   (i) provide for the adequate evaluation  
 22                   and consideration of flood hazards with re-  
 23                   spect to the regulations and operating pro-  
 24                   cedures for the licenses, permits, and loan

1 or grant programs administered by the  
2 agency; and

3 (ii) with respect to an applicant for a  
4 license, permit, loan, or grant that is  
5 issued or administered by the agency, en-  
6 courage, and provide appropriate guidance  
7 to, the applicant to evaluate, before sub-  
8 mitting the application, the effects that the  
9 application, if granted, would have on  
10 floodplains.

11 (6) REGULATIONS AND PROCEDURES.—To the  
12 extent permitted by law, the head of each agency  
13 shall, in consultation with the Water Resources  
14 Council, the Federal Interagency Floodplain Man-  
15 agement Task Force, the Administrator, and the  
16 Council on Environmental Quality—

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

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

23 (c) ANNUAL REASSESSMENT.—The Mitigation  
24 Framework Leadership Group, in consultation with the

1 Federal Interagency Floodplain Management Task Force,  
2 shall—

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

5 (2) provide recommendations to the Water Re-  
6 sources Council for updates to the requirements im-  
7 posed under this section that are warranted based  
8 on accurate and actionable science that takes into  
9 account changes to climate and other changes in  
10 flood risk.

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

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

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

17 (2) if the agency has responsibility for the ad-  
18 ministration or management of Federal real prop-  
19 erty and facilities, in addition to the requirements  
20 under section 4 and paragraph (1)—

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

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

1 (ii) any regulations issued under the  
2 National Flood Insurance Program unless  
3 those regulations are demonstrably inap-  
4 propriate for a structure or facility;

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

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

11 (D) provide on structures and, where ap-  
12 propriate, other pieces of property a con-  
13 spicuous delineation of past and probable flood  
14 height—

15 (i) if the structure or other prop-  
16 erty—

17 (I) is used by the general public;

18 and

19 (II)(aa) has suffered flood dam-  
20 age; or

21 (bb) is in an identified flood haz-  
22 ard area; and

23 (ii) in order to enhance public aware-  
24 ness of, and knowledge about, flood haz-  
25 ards; and

1 (E) when Federal property in a floodplain  
 2 is proposed for lease, easement, right-of-way, or  
 3 disposal to a non-Federal public or private  
 4 party—

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

9 (ii)(I) except where prohibited by law,  
 10 attach any other appropriate restrictions to  
 11 the uses of the property by the grantee or  
 12 purchaser, as applicable, and any succes-  
 13 sors; or

14 (II) withhold the property from con-  
 15 veyance.

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

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

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

23 (A) because of an emergency; or

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

6 (c) UPDATES.—Not less frequently than once every  
7 5 years, the Water Resources Council shall update the  
8 Standard, as determined appropriate by the Water Re-  
9 sources Council.

10 **SEC. 6. FINANCIAL TRANSACTIONS IN AREAS SUBJECT TO**  
11 **FLOODING.**

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

21 **SEC. 7. REPORTS.**

22 (a) IN GENERAL.—Not later than 1 year after the  
23 date of enactment of this Act, the head of each agency  
24 shall submit to the Council on Environmental Quality a

1 report regarding how the requirements of this Act impact  
 2 the procedures and operations of the agency.

3 (b) ANALYSIS OF STANDARD.—Each report sub-  
 4 mitted under subsection (a) shall contain a separate anal-  
 5 ysis regarding how the requirement under section 5(a)(1)  
 6 has impacted agencies.

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

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

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

16 **SEC. 8. GENERAL PROVISIONS.**

17 (a) RULES OF CONSTRUCTION.—Nothing in this Act  
 18 may be construed—

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

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

25 (B) essential to—

1 (i) save human life; and

2 (ii) protect—

3 (I) property; and

4 (II) public health and safety; or

5 (2) to impair or otherwise affect—

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

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

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

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

20 **SEC. 9. ASSUMPTION OF RESPONSIBILITIES.**

21 If subparagraphs (A), (B), and (C) of section 4(b)(3)  
22 apply to a project to which section 104(h) of the Housing  
23 and Community Development Act of 1974 (42 U.S.C.  
24 5304(h)) applies, an appropriate applicant may assume  
25 the responsibilities under those subparagraphs if the appli-

1 cant has also assumed, with respect to the project, all re-  
2 sponsibilities for environmental review, decisionmaking,  
3 and action under the National Environmental Policy Act  
4 of 1969 (42 U.S.C. 4321 et seq.).

○