

VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

CHAPTER 494

An Act to amend and reenact §§ 2.2-222.4, 10.1-602, 10.1-658, and 10.1-659 of the Code of Virginia, relating to flood resiliency and protection.

[H 516]

Approved April 11, 2022

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-222.4, 10.1-602, 10.1-658, and 10.1-659 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-222.4. Chief Resilience Officer.

A. The Governor shall designate a Chief Resilience Officer. The Chief Resilience Officer shall serve as the primary coordinator of resilience and adaptation initiatives in Virginia and as the primary point of contact regarding issues related to resilience and recurrent flooding. The Chief Resilience Officer shall be equally responsible for all urban, suburban, and rural areas of the Commonwealth.

B. The Chief Resilience Officer, in consultation with the Special Assistant to the Governor for Coastal Adaptation and Protection, shall:

1. Identify and monitor those areas of the Commonwealth that are at greatest risk from recurrent flooding and increased future flooding and recommend actions that both the private and public sectors should consider in order to increase the resilience of such areas;

2. Upon the request of any locality in the Commonwealth in which is located a substantial flood defense or catchment area, including a levee, reservoir, dam, catch basin, or wetland or lake improved or constructed for the purpose of flood control, review and comment on plans for the construction or substantial reinforcement of such flood defense or catchment area; and

3. Initiate and assist with the pursuit of funding opportunities for resilience initiatives at both the state and local levels and help to oversee and coordinate funding initiatives of all agencies of the Commonwealth.

4. *Beginning July 1, 2023, and every two years thereafter, report to the Governor and the General Assembly on the status of flood resilience in the Commonwealth. The report shall serve as an evaluation of flood protection for critical infrastructure, including human and natural infrastructure. The report shall identify risks to critical transportation, energy, communication, water and food supply, waste management, health, and emergency services infrastructure. The report shall also include the status of flood resilience planning. In preparing the report, the Chief Resilience Officer shall also coordinate with the Director of Diversity, Equity, and Inclusion and shall be assisted by all relevant Secretariats and agencies.*

§ 10.1-602. Powers and duties of Department.

The Department shall:

1. Develop a ~~flood protection plan~~ *Virginia Flood Protection Master Plan (the Plan)* for the Commonwealth. This ~~plan~~ *Plan* shall be a place-specific plan for mitigating severe and repetitive flooding and shall, at a minimum, (i) base decision making on the best-available science; (ii) identify and address socioeconomic inequities and strive to enhance equity through the adaptation and protection measures by considering all areas of recurrent flooding; (iii) recognize the importance of protecting and enhancing natural infrastructure and nature-based approaches to flood mitigation, when possible; (iv) utilize community and regional scale planning to the maximum extent possible, seeking region-specific approaches tailored to the needs of individual communities; and (v) include an understanding of fiscal realities and focus on cost-effective solutions for the protection and adaptation of communities, businesses, and critical infrastructure. The Plan shall include, at a minimum:

a. An inventory of flood-prone areas;

b. An inventory of flood protection studies;

c. A record of flood damages;

d. Strategies to prevent or mitigate flood damage; and

e. The collection and distribution of information relating to flooding and flood plain management.

The ~~flood protection plan~~ *Plan* shall be reviewed and updated by the Department on a regular basis, but at least once every five years, and for each of the items listed in provisions a through e, the plan shall state when that provision was last updated and when the next update is planned. The plan shall be maintained in an online format so as to be easily accessed by other government entities and by the public. The online plan shall contain links to the most current information available from other federal, state, and local sources. All agencies of the Commonwealth shall provide assistance to the Department upon request.

2. Serve as the coordinator of all flood protection programs and activities in the Commonwealth,

including the coordination of federal flood protection programs administered by the United States Army Corps of Engineers, the United States Department of Agriculture, the Federal Emergency Management Agency, the United States Geological Survey, the Tennessee Valley Authority, other federal agencies and local governments.

3. Make available flood and flood damage reduction data to localities for planning purposes, in order to assure necessary local participation in the planning process and in the selection of desirable alternatives which will fulfill the intent of this article. This shall include the development of a data base to include (i) all flood protection projects implemented by federal agencies and (ii) the estimated value of property damaged by major floods.

4. Assist localities in their management of flood plain activities in cooperation with the Department of Housing and Community Development.

5. Carry out the provisions of this article in a manner which will ensure that the management of flood plains will preserve the capacity of the flood plain to carry and discharge a hundred year flood.

6. Make, in cooperation with localities, periodic inspections to determine the effectiveness of local flood plain management programs, including an evaluation of the enforcement of and compliance with local flood plain management ordinances, rules and regulations.

7. Coordinate with the United States Federal Emergency Management Agency to ensure current knowledge of the identification of flood-prone communities and of the status of applications made by localities to participate in the National Flood Insurance Program.

8. Establish guidelines which will meet minimum requirements of the National Flood Insurance Program in furtherance of the policy of the Commonwealth to assure that all citizens living in flood-prone areas may have the opportunity to indemnify themselves from flood losses through the purchase of flood insurance under the regular flood insurance program of the National Flood Insurance Act of 1968 as amended.

9. Subject to the provisions of the Appropriations Act, provide financial and technical assistance to localities in an amount not to exceed fifty percent of the nonfederal costs of flood protection projects.

10. *Serve as the lead administrator for the Virginia Coastal Resilience Master Plan and the Virginia Flood Protection Master Plan.*

11. *Implement the Virginia Coastal Resilience Master Plan and the Virginia Flood Protection Master Plan.*

12. *Ensure that the Virginia Coastal Resilience Master Plan and the Virginia Flood Protection Master Plan are integrated.*

§ 10.1-658. State interest in resilience and flood control.

A. The General Assembly declares that storm events and rising tidal waters cause recurrent flooding of Virginia's land resources and result in the loss of life, damage to property, unsafe and unsanitary conditions and the disruption of commerce and government services, placing at risk the health, safety and welfare of those citizens living in flood-prone areas of the Commonwealth. Flood waters disregard jurisdictional boundaries, and the public interest requires the management of flood-prone areas in a manner which prevents injuries to persons, damage to property and pollution of state waters.

B. The General Assembly, ~~therefore,~~ supports and encourages those measures which prevent, mitigate, and alleviate the effects of sea level rise, stormwater surges, and *all causes of recurrent flooding,* and declares that the expenditure of public funds and any obligations incurred in the development of flood control and other civil works projects, the benefits of which may accrue to any county, municipality, or region in the Commonwealth, are necessary expenses of local and state government. *The General Assembly shall prioritize measures that use community-scale and regional-scale planning, protect and enhance natural and nature-based approaches, address socioeconomic inequities, and enhance equity through flood resilience and preparedness.*

C. *The General Assembly supports and encourages flood resilience through implementation of the Virginia Coastal Resilience Master Plan and implementation of the Virginia Flood Protection Master Plan developed pursuant to § 10.1-602.*

D. *The Department shall be responsible for the implementation of the Virginia Coastal Resilience Master Plan and Virginia Flood Protection Master Plan and shall serve as the lead administrator.*

E. *The Virginia Coastal Resilience Master Plan shall be updated at least every five years; shall, at a minimum, be a place-specific plan for mitigating severe and repetitive flooding; and shall, at a minimum, (i) base decision making on the best-available science; (ii) identify and address socioeconomic inequities and strive to enhance equity through the adaptation and protection measures by considering all areas of recurrent flooding; (iii) recognize the importance of protecting and enhancing natural infrastructure and nature-based approaches to flood mitigation, when possible; (iv) utilize community and regional scale planning to the maximum extent possible, seeking region-specific approaches tailored to the needs of individual communities; and (v) include an understanding of fiscal realities and focus on cost-effective solutions for the protection and adaptation of communities, businesses, and critical infrastructure.*

§ 10.1-659. Flood protection programs; coordination.

A. The provisions of this chapter shall be coordinated with the Virginia Coastal Resilience Master

Plan, *the Virginia Flood Protection Master Plan*, and federal, state, and local flood prevention and water quality programs to minimize loss of life, property damage, and negative impacts on the environment. This program coordination shall include but not be limited to the following: flood prevention, flood plain management, small watershed protection, dam safety, shoreline erosion and public beach preservation, and soil conservation programs of the Department of Conservation and Recreation; the construction activities of the Department of Transportation, including projects that result in hydrologic modification of rivers, streams, and flood plains; the nontidal wetlands, water quality, Chesapeake Bay Preservation Area criteria, stormwater management, erosion and sediment control, and other water management programs of the State Water Control Board; the Virginia Coastal Zone Management Program at the Department of Environmental Quality; forested watershed management programs of the Department of Forestry; the agricultural stewardship, farmland preservation, and disaster assistance programs of the Department of Agriculture and Consumer Services; the statewide building code and other land use control programs of the Department of Housing and Community Development; the habitat management programs of the Virginia Marine Resources Commission; the hazard mitigation planning and disaster response programs of the Department of Emergency Management; the fish and wildlife habitat protection programs of the Department of Wildlife Resources; the mineral extraction regulatory program of the Department of Energy; the flood plain restrictions of the Virginia Waste Management Board; flooding-related research programs of the state universities; local government assistance programs of the Virginia Soil and Water Conservation Board; the Virginia Antiquities Act program of the Department of Historic Resources; *the public health and preparedness programs of the Virginia Department of Health; the State Council of Higher Education for Virginia; the State Corporation Commission;* and any other state agency programs deemed necessary by the Director, the Chief Resilience Officer of the Commonwealth, and the Special Assistant to the Governor for Coastal Adaptation and Protection. The Department shall also coordinate with soil and water conservation districts, Virginia Cooperative Extension agents, and planning district commissions, and shall coordinate and cooperate with localities in rendering assistance to such localities in their efforts to comply with the planning, subdivision of land, and zoning provisions of Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

B. The Director ~~and either~~, *in coordination with the Special Assistant to the Governor for Coastal Adaptation and Protection* ~~or~~ *and the Chief Resilience Officer*, shall ~~jointly~~ hold meetings of representatives of ~~these~~ *the* programs, entities, and localities *described in subsection A at least annually* in order to determine, coordinate, and prioritize the Commonwealth's efforts and expenditures to increase flooding resilience *and flood preparedness and to implement the Virginia Coastal Resilience Master Plan and the Virginia Flood Protection Master Plan. The Department shall review any revisions to the Virginia Flood Protection Master Plan and provide an update on the progress of the implementation of the Virginia Coastal Resilience Master Plan at any such meetings.* The Department shall cooperate with other public and private agencies having flood plain management programs and shall coordinate its responsibilities under this article and any other law. These activities shall constitute the Commonwealth's flood *resilience, preparedness, prevention, and protection* program.

C. 1. *The Chief Resilience Officer, in coordination with the Special Assistant to the Governor for Coastal Adaptation and Protection and the Director, shall establish the Virginia Coastal Resilience Technical Advisory Committee (the Committee) to assist with developing, updating, and implementing the Virginia Coastal Resilience Master Plan.*

2. *The Committee shall be comprised of representatives of state agencies, coastal planning district commissions, regional commissions, academic advisors, and any other representatives as needed. Members shall serve at the pleasure of the Governor and shall include the following individuals or their designees: the executive directors of coastal planning district commissions and regional commissions; the Special Assistant to the Governor for Coastal Adaptation and Protection; the Director; the Director of the Virginia Department of Emergency Management; the Director of the Virginia Department of Housing and Community Development; the Executive Director of the Virginia Resources Authority; the Director of the Department of Environmental Quality; the Commissioner of the Virginia Department of Transportation; the Director of the Virginia Transportation Research Council; the Commissioner of the Virginia Marine Resources Commission; the Director of the Institute for Coastal Adaptation and Resilience; the Associate Dean for Research and Advisory Services at the Virginia Institute of Marine Science; the Director of the William and Mary School of Law Coastal Policy Center; the Director of the Virginia Tech Center for Coastal Studies; the Director of the Environmental Resilience Institute at the University of Virginia; the Director of Virginia Sea Grant; the Director of Diversity, Equity, and Inclusion; and the Chief Data Officer of the Commonwealth. The Chief Resilience Officer shall serve as chairman of the Committee.*

3. *The Chief Resilience Officer shall invite participation by the Commander of the U.S. Army Corps of Engineers, Norfolk District; the Commander of the Navy Region Mid-Atlantic; and representatives of the seven federally recognized Tribal Nations indigenous to the Commonwealth of Virginia.*

4. *Appointed members shall serve in an advisory role without compensation.*

5. *The Committee shall meet at least quarterly.*

6. *The Department, the Special Assistant to the Governor for Coastal Adaptation and Protection, and*

the Coastal Zone Management Program shall provide staff support to the Committee.

7. The Committee shall ensure that (i) risk evaluations and project prioritization protocols are regularly updated and are informed by the best applicable scientific and technical data; (ii) statewide and regional needs are addressed using the best applicable science and long-term resilience approaches; and (iii) the Virginia Coastal Resilience Master Planning Framework is adhered to in the development and updating of the Virginia Coastal Resilience Master Plan. The Committee shall also review updates to the Virginia Coastal Resilience Master Plan and receive updates about the progress of the Virginia Flood Protection Master Plan at each meeting. Additionally, the Committee may be called upon to assist the Department with the development and updating of the Virginia Flood Protection Master Plan.

2. That the Special Assistant to the Governor for Coastal Adaptation and Protection, in coordination with the Director of the Department of Conservation and Recreation, shall update the Virginia Coastal Resilience Master Plan in accordance with § 10.1-658 of the Code of Virginia, as amended by this act, no later than December 31, 2024, to incorporate all major flood hazards, including precipitation-driven flooding; a list of all projects considered and an update of the status of all projects previously implemented; and a comprehensive risk assessment of critical human and natural infrastructure.

3. That the Director of the Department of Conservation and Recreation (the Department), jointly with the Director of Diversity, Equity, and Inclusion, and in coordination with the Chief Resilience Officer and the Special Assistant to the Governor for Coastal Adaptation and Protection, shall prepare a Community Outreach and Engagement Plan for updates to the Virginia Coastal Resilience Master Plan and for development and updates to the Virginia Flood Protection Master Plan (the Plans) no later than December 31, 2022. The outreach and engagement plan shall strive for meaningful involvement by ensuring that (i) affected and vulnerable community residents have access and opportunity to participate in the full cycle of the decision-making process about the development of and updates to the Plans, and (ii) decision-makers shall seek out and consider such participation, allowing the views and perspectives of community residents to shape and influence decisions. The Department shall seek input to the Community Outreach and Engagement Plan from representatives of Virginia Indian tribes, community-based organizations, the public health sector, nongovernmental organizations, civil rights organizations, communities impacted by recurring flooding, and the Emergency Management Equity Working Group established pursuant to subdivision B 19 of § 44-146.18 of the Code of Virginia.

4. That the Director of the Department of Conservation and Recreation is authorized to use funds from the Community Flood Preparedness Fund, established pursuant to § 10.1-603.25 of the Code of Virginia, for studies of statewide or regional significance, including the development of or updates to the Virginia Coastal Resilience Master Plan, the Virginia Flood Protection Master Plan, and the Community Outreach and Engagement Plan described in the third enactment of this act.

5. That the Director of the Department of Conservation and Recreation shall prepare the Virginia Flood Protection Master Plan using a watershed-based approach no later than December 31, 2026.