

Will New Florida Public Building Sea-Level Rise Law Point The Way For Private Developers?

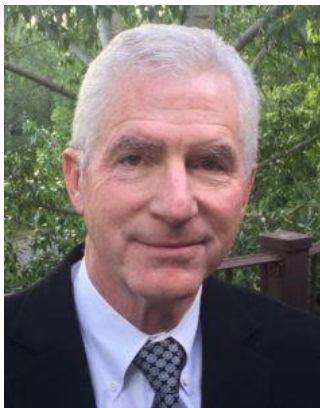
July 2, 2020 | By Albert J. Slap, Coastal Risk Consulting

Passed on June 30 and effective on July 1, 2021, the Florida Legislature enacted a new law that prohibits state-financed construction of certain structures in coastal areas after a specified date, without first taking certain steps regarding a sea-level impact projection study.

According to the new law, Florida DEP would not be able to issue the new rule on sea-level rise studies until after July 1, 2021, and, the new law delays required compliance for one year after that. So, while laudatory in its scope and purpose, any compliance will be delayed until well after July 2022.

During this time, however, the DEP's professionals will do their best to develop a rule to implement the law's requirements.

To me, the real question is not so much the law's impact on state-funded, coastal buildings several years from now, but what salutary effects this law may have on the development of commercial and multi-family buildings in the coastal areas of Florida over the next two plus years.



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Most of what is built in the coastal areas of Florida are private, not public, buildings. So, looking at the new law, we can examine its contents and its implicit direction to private real estate developers, public and private investors, lenders and tenants.

The new law creates a new term, the "SLIP study." A SLIP study means a sea-level impact projection study. While the Florida DEP will, no doubt, do an excellent job

creating the contents of the SLIP study and the final rule, what is notable is that DEP already funds sea-level rise vulnerability and adaptation studies for local governments.

There is no “one rule” for these DEP-funded studies, but, as a company that performs [these studies](#) for local governments and has studied what Florida local governments have done in the past, I can report unequivocally that Florida DEP is doing a great job helping local governments study their vulnerabilities and potential adaptation solutions.

According to this new law, beginning one year after the date the rule developed by the Department, a state-financed constructor may not commence construction of a coastal structure without:

- (a) Conducting a SLIP study that meets the requirements established by the Department;
- (b) Submitting the study to the department;
- (c) Receiving notification from the department that the study was received and that it has been published on the department’s website for at least 30 days.

The Slip Study rule must be effective one year after the date it is finalized and applies only to projects not yet commenced as of the date the rule is finalized. The rule may not apply retroactively to projects that commenced before the date the rule is finalized.

The new SLIP study will require the constructor using state funds to:

- (a) Use a systematic, interdisciplinary, and scientifically accepted approach in the natural sciences and construction design in conducting the study;
- (b) Assess the flooding, inundation, and wave action damage risks relating to the coastal structure over its expected life or 50 years, whichever is less.

The use of the 50-year study period is very important, not only for public buildings, but for privately owned buildings, as well. While a private developer may be flipping the building to a condo HOA, a REIT, or Private Equity fund, the building will likely still be around in 30 to 50 years and will be subject to all of the climate changes present at that time.

Furthermore, the SLIP assessment must take into account potential relative local sea-level rise and increased storm risk during the expected life of the coastal structure or 50 years, whichever is less, and, to the extent possible, account for the contribution of sea-

level rise versus land subsidence to the relative local sea-level rise. The assessment must also:

1. Provide scientific and engineering evidence of the risk to the coastal structure and methods used to mitigate, adapt to, or reduce this risk;
2. Consider available scientific research and generally accepted industry practices;
3. Provide the mean average annual chance of substantial flood damage over the expected life of the coastal structure or 50 years, whichever is less;
4. Analyze potential public safety and environmental impacts resulting from damage to the coastal structure, including, but not limited to, leakage of pollutants, electrocution and explosion hazards, and hazards resulting from floating or flying structural debris.
5. Provide alternatives for the structure's design and siting, and how such alternatives would impact the risks specified in the law, as well as the risk and cost associated with maintaining, repairing, and constructing the coastal structure.

Finally, the new Florida law admonishes that, if a state-financed constructor commences construction of a coastal structure but has not complied with the SLIP study requirement, the department may institute a civil action to:

- (a) Seek injunctive relief to cease further construction of the coastal structure or enforce compliance;
- (b) If the coastal structure has been completed or has been substantially completed, seek recovery of all or a portion of state funds expended on the coastal structure.

To summarize, while this new law will someday begin to make public buildings safer and more resilient, its most valuable, near-term effect may be to accelerate these same studies and practices with commercial and multi-family real estate developments in the fast-paced, Florida coastal markets.

Prior to launching Coastal Risk, Mr. Slap was a nationally recognized, environmental trial attorney and law professor. Mr. Slap also was a Board Member and General Counsel of Friends of the Everglades. Mr. Slap was the recipient in 2014 of the prestigious Marjory Stoneman Douglas "Defender of the Everglades Award".