

## ***With The Passage Of Senate Bill 178, Florida Lawmakers Took The First Step In Addressing Sea Level Rise. Here's What You Need To Know Before You Build! (April, 2020)***

---

By: [Gary Brown](#) By 2045, it is predicted that “[m]ore than 300,000 of . . . coastal homes [in the United States], with a collective market value of about \$117.5 billion today, are at risk of chronic inundation.”<sup>[1]</sup> In particular, “[t]he [S]tate [of Florida] estimates [that] \$300 billion in taxable property could be underwater by 2100.”<sup>[2]</sup> However, on March 11, 2020, the Florida Senate, joined other states like Hawaii<sup>[3]</sup>, Massachusetts<sup>[4]</sup>, California,<sup>[5]</sup> and Rhode Island<sup>[6]</sup>, and unanimously passed SB 178<sup>[7]</sup>, which is aimed at countering the impact of sea-level rise.<sup>[8]</sup> Under SB 178, state-financed constructors<sup>[9]</sup> are now required to conduct and submit a 50-year Sea Level Impact Projection Study (“SLIP”) to the State’s Department of Environmental Protection (“DEP”) before accepting public funds to build structures on beaches or in a tropical storm flood zone. In particular, before a state-financed contractor begins construction of a coastal structure<sup>[10]</sup>, he or she must: (a) Conduct a SLIP study<sup>[11]</sup> that meets the requirements established by the department; (b) Submit the study to the department; and (c) Receive notification from the department that the study was received and that it has been published on the department’s website pursuant to paragraph (6)(a) for at least 30 days. SB 178 (2020). Moreover, in conducting the SLIP study, the state-financed contractor must: (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 years, whichever is less.<sup>[12]</sup> (c) Provide alternatives for the coastal structure’s design and siting, and how such alternatives would impact the risks specified in subparagraph (b)5. as well as the risk and cost associated with maintaining, repairing, and constructing the coastal structure. SB 178 (2020). Importantly, if a state-financed constructor fails to comply with the SLIP study requirement, the DEP may: (a) *Seek injunctive relief to cease further construction of the coastal structure* or enforce compliance with this section or with rules adopted by the department pursuant to this section. (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*. SB 178 (2020) (emphasis added). Ultimately, SB 178 attempts to mitigate the foreseeable damages to “communities along Florida’s 1,350-mile, low-lying coastline . . . [that] . . . experienc[e] tidal flooding” by requiring state-financed contractors to conduct an environmental study prior to commencing construction.<sup>[13]</sup> <sup>[1]</sup> Union of Concerned Scientists, *Underwater: Rising Seas, Chronic Floods, and the Implications for US Coastal Real Estate 2* (2018). “The cumulative current value of the properties that will be at risk by 2045 is roughly \$136 billion.” *Id.* <sup>[2]</sup> John Haughey, *Florida House Moves Landmark Environmental Legislation to DeSantis’ Desk*, Wash. Examiner (Mar. 12, 2020), <https://www.washingtonexaminer.com/politics/florida-house-moves-landmark-environmental-legislation-to-desantis-desk>. Compare Daniel Raimi et al., *Here’s How Climate Change Will Affect Florida in the Next 20 Years*, Tampa Bay Times: News (Jan. 29, 2020) (“Sea levels at different points along the [Florida] coast will likely rise by 8 to 12 inches above today’s levels by 2040. As a result, coastal flooding will become more frequent. For example, severe ‘100-year-floods’ will soon hit St. Petersburg once every few years rather than once a century. Statewide, such flooding endangers about 300,000 homes, 2,500 miles of roadways, 30 schools, and 4 hospitals.”), with Tristram Korten, *In Florida, Officials Ban Term ‘Climate Change’*, Miami Herald: Fla. (Mar. 8, 2015, 4:00 AM) <http://www.miamiherald.com/news/state/florida/article12983720.html>. <sup>[3]</sup> Haw. Rev. Stat. Ann. § 225P-3. <sup>[4]</sup> Mass. Gen. Laws Ann. ch. 21N, § 10. <sup>[5]</sup> Cal. Pub. Res. Code § 30964. <sup>[6]</sup> 23 R.I. Gen. Laws Ann. § 23-27.3-100.1.5.5. <sup>[7]</sup> Upon SB 178’s passing, co-introducer, Senator Rodriguez stated: [SB 178] . . . is the most transformative piece of legislation coming out of this Legislature that directly relates to the impact of climate [change]. Through the passage of this bill, the Legislature is taking step one in defending taxpayers by ensuring state funds are only used for coastal infrastructure projects once sea level rise has been accounted for. Community News, *Sen. José Javier Rodríguez and Sends SB 178 to the House for Vote*, Miami’s Community Newspapers (Mar. 6, 2020) <http://www.communitynewspapers.com/featured/florida-senate-passes-climate-bill-by-sen-jose-javier-rodriguez-and-sends-sb-178-to-the-house-for-vote/>. <sup>[8]</sup> It should be noted that SB 178 directly addresses the concerns of people who live near the coastline. Andrew Revkin, *Most Americans Now Worry About Climate Change—and Want to Fix It*, Nat’l Geographic: Env’t, (Jan. 23, 2019) <https://www.nationalgeographic.com/environment/2019/01/climate-change-awareness-polls-show-rising-concern-for-global-warming/#close>. With a substantial surge in recent months, most Americans (outside of a small, but influential fringe, 7 percent, who dismiss the issue outright) have gotten well past the ‘is it happening’ question on human-driven climate change. Nearly half in one survey said they would support a tax based on the amount of carbon in fuels that, when burned, generate the main climate-warming greenhouse gas emission, carbon dioxide. The shift seems driven less by politician’s positions than recent disastrous heat-fueled wildfires, catastrophic hurricane strikes, and widening experience with changing climate conditions across the country. For the first time since it began in 2008, more than 60 percent of respondents said global warming is caused mostly by humans (the conclusion of a host of studies) and less than 25 percent said warming was naturally occurring. Revkin, *supra*. <sup>[9]</sup> “State-financed constructor” means a public entity that commissions or manages a construction project using funds appropriated from the state. <sup>[10]</sup> “Coastal structure” means a major structure or non-habitable major structure within the coastal building zone. <sup>[11]</sup> “SLIP study” means a sea level impact projection study as established by the department pursuant to subsection (3). <sup>[12]</sup> The assessment must: (a) 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; (b) provide scientific and engineering evidence of the risk to the coastal structure and methods used to mitigate, adapt to, or reduce this risk; (c) use and consider available scientific research and generally accepted industry practices; (d) provide the mean average annual chance of substantial flood damage over the expected life of the coastal structure or 50 years, whichever is less; and (e) analyze potential public safety and environmental impacts resulting from damage to the coastal structure, including, but not limited to, leakage of pollutants, floating or flying structural debris. <sup>[13]</sup> Haughey, *supra* note 2.

---



Gary Brown is a Partner and the Head of the firm's Construction Practice Group at Kelley Kronenberg. Gary focuses his practice on [construction defect litigation](#) and [complex commercial litigation](#). Contact Gary Brown at: Phone: 844-632-4357 Email: [gbrown@kklaw.com](mailto:gbrown@kklaw.com) ***DISCLAIMER: This article is provided as a courtesy and is intended for the general information of the matters discussed above and should not be relied upon as legal advice. Neither Kelley Kronenberg, nor its individual attorneys or staff, are responsible for errors, omissions and/or typographical errors – always seek competent legal counsel.***