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**Testimony of The Pew Charitable Trusts
Submitted to the Texas House of Representatives
County Affairs Committee**

Flood Disclosure as a Key Element of Flood Preparedness

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The Pew Charitable Trusts (Pew) appreciates this Committee’s invitation to provide testimony regarding flood risk disclosure.

Founded in 1948, The Pew Charitable Trusts is an organization committed to the belief that sound public policy springs from data, science, and facts put to the service of the public good. We work to use the power of knowledge to solve some of the nation’s most challenging problems. Today, our efforts are focused at the federal level and in more than 40 states on a range of issues, with work on topics ranging from children’s dental health and criminal justice reform to protection of our ocean resources and stewardship of our National Parks.

Pew’s Flood-prepared Communities Initiative aims to reduce the impact of flood-related disasters on communities and taxpayers by improving federal and state laws, and programs that can or should serve to protect people and property from the nation’s most frequent and most costly natural disaster. We apply Pew’s trademark analytical approaches to public policy, looking at the nation’s experience with flooding events and identifying research gaps and policy needs– including addressing policies that can stand in the way of flood readiness.

Just last month, we had the privilege of testifying before the Texas House of Representatives Natural Resources Committee on a range of topics related to flooding and preparedness. In doing so, we were pleased to offer support and encouragement to this legislative body as it seeks to develop new policies to protect Texans and the state’s resources from future flooding.

In that testimony, we noted the impressive deliberations and reports that Texans have produced since the devastation of Harvey. We see the report from the General Land Office¹, for example, as one which offers a straight-talking, balanced discussion of the issues underlying flood risk. Similarly, the Water

¹ Texas General Land Office, “Hurricane Harvey: Texas at Risk,” August 24, 2018, <http://www.glo.texas.gov/recovery/files/texas-at-risk-report.pdf>.

Board's report² covers a wide range of needs and issues—from improved understanding of flood risk to regional planning approaches on a watershed basis. In addition, “Eye of the Storm,”³ the report of the Governor's Commission to Rebuild Texas, lays out the devastation that was wrought by Hurricane Harvey and offers solid recommendations for action.

Pew believes that the Chairman's flood disclosure bill, H.B. 993, is in line with recommendations found within those reports and is in the interest of the people of Texas.

As the Texas flood reports and many flood experts around the country have noted, an understanding of flood risk is fundamental to preparedness and protection.⁴ And, as many experts point out, individuals frequently underestimate either their own risk of flooding, the extent of the damage that flooding can cause, or both. For example, some may not realize that the standard homeowner's insurance policy does not cover flooding. Others assume that their chances of significant loss to a flood are remote or believe that federal disaster assistance will allow for full recovery and restoration. Many do not realize that for those living in the 1%-annual-chance or 100-year floodplain, the chances of a flood occurring during the lifetime of a 30-year mortgage are close to 1 in 4, and far greater than the risks for a fire. Others mistakenly believe that if they reside outside of flood hazard area, their chances of experiencing a flood fall to zero.

This lack of understanding can have devastating consequences for families and their property. Buyers and renters need to have all the information necessary to make an informed decision, particularly on what is for many the largest and most important purchase of their lives.

Flooding can wreak havoc on what may have seemed like a sensibly balanced family budget. Flood victims, who may have lost their belongings, their means of livelihood, their cars, their pets, their family mementos, or even loved ones to floodwaters can become trapped financially, unable to sell or to break a lease; they may now be making rent or mortgage payments while flood damages force them to live elsewhere temporarily. They may have foregone flood insurance, simply because they had no means of recognizing their true level of flood risk.

² Texas Water Development Board, “State Flood Assessment: Report to the Legislature,” January 2019, http://www.twdb.texas.gov/publications/reports/special_legislative_reports/doc/State-Flood-Assessment-report-86th-Legislation.pdf?d=11794.835000007879.

³ The Governor's Commission to Rebuild Texas, John Sharp, Commissioner, “Eye of the Storm,” November 2018, https://gov.texas.gov/uploads/files/press/RebuildTexasHurricaneHarveyEyeOfTheStorm_12132018.pdf

⁴ See, for example, Wouter Botzen, W.J., et al, “Divergence between individual perceptions and objective indicators of tail risks: Evidence from floodplain residents in New York City, *Judgment and Decision Making*, vol. 10, no. 4, July 2015, Champ, Patricia Ann, et al, “Homebuyers and Wildfire Risk: A Colorado Springs Case Study,” *Society and Natural Resources*, vol. 23, 2010, https://www.fs.fed.us/rm/pubs_other/rmrs_2010_champ_p001.pdf, and Ludy, Jessica and G. Matt Kondolf, “Flood risk perception in lands ‘protected’ by 100-year levees, *Natural Hazards*, vol. 61, issue 2, May 2012, <https://link.springer.com/article/10.1007/s11069-011-0072-6>

Across the country, and no doubt here in Texas, there are too many stories like the Texan who has flooded a staggering 20 times in 13 years and finds herself with a property she cannot sell.⁵

In St. Louis, Missouri press reports describe the couple that bought their home in 2005 and thought they would never see the so-called 100-year flood but have since experienced a half a dozen flood events in seven years. This couple eventually tore down the structure but continued to pay taxes on an empty lot that sits in the floodway, that portion of a floodplain where flood waters will flow fast and strong.⁶

A South Carolina resident says, “Had I known prior to purchasing the house, the history that it had, of course I would not have bought it.”⁷ Another from South Carolina, unknowingly bought a home that had previously flooded four times. She endured another three floods before moving out, but reportedly continues to pay both a mortgage and flood insurance on the structure that the bank has warned her not to demolish.⁸

The experience of flooding, of course, does not affect only those with mortgages. On this point, there is no more striking example than a rental property in Salem, Virginia. The modestly priced, flood-plagued garden apartments sit far from Virginia’s coastline on the Roanoke River in the central part of the State. Over a decade ago, the Roanoke paper ran a timeline of flood problems with this property, documenting flooded apartments, emergency evacuations, boat rescues, power outages, and condemnations on part of the property from 1977 through 2006.⁹ But the story didn’t end there. The property that had recouped over \$10 million in claims payments from the National Flood Insurance Program (none of which paid to replace the lost belongings of renters) has flooded since. In 2018, renters who had sewage-laden floodwaters entering their apartments were apparently unaware of the property’s history and had little time to evacuate or salvage their belongings.¹⁰

These stories and more illustrate why Pew supports the fullest flood risk disclosure possible up-front—before a prospective purchaser or renter takes on a binding financial obligation. Upfront disclosure of

⁵ Talbert, Sara, News Channel 25, “Flooding Remains Problem for Harker Heights Residents,” July 3, 2007, previous link inaccessible

⁶ Kusisto, Laura, “A Home Buyer’s Nightmare: Moving to a Flood Zone Without Knowing It,” The Wall Street Journal, <https://www.wsj.com/articles/a-home-buyers-nightmare-moving-to-a-flood-zone-without-knowing-it-1513512000>

⁷ Kummerer, Samantha, WMBF News, “WMBF Investigates: Did poor planning lead to flooding in a Longs community?,” November 29, 2018, <http://www.wmbfnews.com/2018/11/29/wmbf-investigates-did-poor-planning-lead-flooding-longs-community/>

⁸ Darlington, Abigail, “Little-known federal law keeps buyers from finding out if a home routinely floods,” The Post and Courier, August 9, 2018, https://www.postandcourier.com/news/little-known-federal-law-keeps-buyers-from-finding-out-if/article_9e348564-9b13-11e8-934c-6ffa499e136b.html

⁹ Hammack, Laurence, “Federal insurance rebuilds Salem apartments despite floods,” The Roanoke Times, May 20, 2006, https://www.roanoke.com/webmin/news/federal-insurance-rebuilds-salem-apartments-despite-floods/article_41d52605-fadd-5cc3-a424-0f2fabb8dfef.html

¹⁰ Carson, Ford, “Week after flooding, residents air grievances against Salem apartment complex”, VirginiaFirst.com, October 19, 2018, <https://www.virginiafirst.com/news/local-news/week-after-flooding-residents-air-grievances-against-salem-apartment-complex/1534388877>

potential flood risk can allow the prospective purchaser or renter to weigh the costs and the value of options that protect from future flooding.

Homebuyers, for example, can consider alternative neighborhoods, purchase flood insurance, and/or investigate mitigation options, such as landscaping improvements, building elevation, flood vents, or special placement of electrical equipment. An informed buyer who has not yet finalized financing may be able to roll the costs of flood-resiliency improvements into a long-term loan that will protect the structure and result in lowered insurance rates.

For renters, full flood knowledge can allow for the same sort of informed decision-making. The individual with mobility issues may choose a safer location, for example. A renter with expensive computer equipment might opt for the second floor rather than the basement apartment. And more individuals may decide that an insurance policy to cover loss of their belongings in a sensible and affordable safeguard.

H.B. 993 makes an important contribution to Texas flood preparedness. It creates a binding requirement for a written flood risk disclosure for renters before making a financial commitment, and it provides recourse if there is non-compliance and the tenant is harmed by flooding. Combined with a requirement for flood disclosure to homebuyers and new support for flood risk assessment data and education, this legislation will help Texans guard against flood damages.

As drafted, the bill calls for disclosure about previous flood damage and about the location of the property in relation to flood zones. These are useful items for disclosure, but you may incorporate additional information that an owner or manager of a property might be expected to know and should share. In addition to past damages or flood claims, an individual selling or leasing a property might also know of past evacuation order related to flooding. They may also know whether the structure's first floor elevations have been determined, and they may possess the results of such an assessment in the form of an elevation certificate. Property owners who have previously accessed federal disaster assistance may be aware of an obligation to carry flood insurance that will run with that property in perpetuity; others may know that they have been designated as a "repetitive loss" or "severe repetitive loss" property. We believe that duties imposed on sellers and lessors could reasonably cover all these additional points of information.

Information regarding location within a flood zone or a flood pool may present more difficulties, but those difficulties are not insurmountable. Some property owners will be aware of a structure's location within the 100-year or 1%-annual-chance floodplain, because that location triggers a requirement for flood insurance to protect federally-backed mortgages. On the other hand, if no mortgage is involved, they may not be aware of their position on a flood map or their proximity in relation to a dam's flood pool or flood inundation zone. Those sorts of determinations can be difficult to make, and that is why we would also support additional measures that will improve the quality and availability of information on

the range of flood risks across Texas. As recommended in the Rebuild Texas report, the State should invest in developing “web-based analytical and visualization tools to communicate flood risk.”

One approach cited in the Governor’s Commission report comes from California, which has required certain hazard disclosures for decades and in 2017 expanded those requirements to cover landlords.¹¹ That State’s Department of Emergency Services has generated the necessary data on flood inundation zones, and multiple private companies now offer services that property owners use to assure that they are providing accurate information in a standard format called a Natural Hazard Disclosure Statement.

With new authorities and investments in flood risk assessment in the appropriate state agencies, Texas could develop and deploy its own tools, such as Texas A&M’s Buyers B-Where map, to build flood risk awareness and engage the public in flood protection and preparedness.

More stringent flood disclosure laws enjoy support across the political spectrum. A survey conducted for Pew found 86 percent of voters—Republicans, Democrats and Independents--across Texas and the six other states impacted by 2017 storms support a single, national standard for property sellers to disclose past flooding during a sale.¹²

The Pew Charitable Trusts is happy to support H.B. 993 as one important step to building a more informed and flood-savvy public and helping the people of Texas protect themselves from flood damages and flood losses.

¹¹ Ruzicka, Wallace and Coughlin, LLP, “New California Law Requires Flood Disclosure in Every Residential Lease or Rental Agreement,” 2018, <http://www.rwclegal.com/blog/new-california-law-requires-flood-disclosure-every-residential-lease-rental-agreement/>

¹² The Pew Charitable Trusts, “Poll Shows Nationwide Support for Feds to Boost Rebuilding Standards”, February 1, 2018. <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/01/poll-shows-nationwide-support-for-feds-to-boost-rebuilding-standards>