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TESTIMONY BEFORE THE JOINT STANDING COMMITTEE ON
JUDICIARY

IN SUPPORT OF LD 2035

An Act Regarding Disclosure of Flood Risk by Sellers of Real Estate

January 3, 2024

Senator Carney, Representative Moonen, and Joint Standing Committee on Judiciary members, my name is Judy East. I am the Director of the Bureau of Resource Information and Land Use Planning (BRILUP) in the Department of Agriculture, Conservation and Forestry (DACF). I am speaking in support of LD 2035 "*An Act Regarding Disclosure of Flood Risk by Sellers of Real Estate.*"

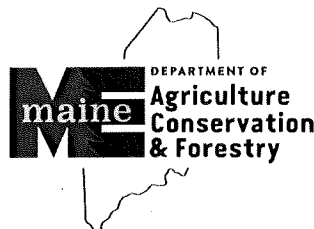
This bill adds language to 33 M.R.S.A. §§173 and 193 and proposes a new section (§194) prescribing flood hazard disclosure obligations when offering residential and nonresidential property for sale.

Floods are among the most common and costliest natural disasters in the United States¹. Homes and other structures within floodplains and mapped flood hazard areas are at significant risk of flood damage. Homeowners insurance and similar policies typically do not cover flood damage; a separate flood insurance policy must be purchased. The process for determining whether a property is located within a Special Flood Hazard Area (SFHA) mapped by the Federal Emergency Management Agency (FEMA) is not immediately clear to many buyers, and often, they are unaware that it is prudent to review flood risk before purchasing a property.

Additionally, buyers may be unaware that flood insurance is mandatory as a condition of federally backed financing for homes in SFHAs or homes that have received federal disaster assistance for flooding. Finally, as flood frequency increases with climate change outside of SFHAs, it would be helpful to discover whether and when there have been previous flood damages to existing buildings on a property. Flood insurance coverage adds to the overall cost of a monthly mortgage and can be an unexpected and cost-prohibitive expense for the buyer, or in some cases, ultimately unavailable.

¹ National Oceanic and Atmospheric Administration (NOAA), 2023. Billion-Dollar Weather and Climate Disasters: Summary Stats. Accessed on May 30, 2023 from: <https://www.ncei.noaa.gov/access/billions/summary-stats>

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Some real estate agents regularly contact the Floodplain Management Program regarding flood risk as part of their due diligence on behalf of their clients. However, Maine currently has no laws requiring flood hazard disclosure for real estate, placing us behind roughly 34 other states that have adopted such laws.² Mandated disclosures of flood insurance requirements alone are imperfect because Flood Insurance Rate Maps (FIRMs) do not capture all flood risk. Homes outside of mapped floodplains may still be at some level of risk, and this would be addressed in part by requiring prospective buyers to disclose past flood damage while they have owned the property, which is another provision included in the proposed legislation.

This legislation would not directly fix any map inaccuracies nor change the process for making or amending flood hazard determinations. Older flood maps, which are not available as digital map layers but are still in effect for portions of the state, are sometimes difficult to read and interpret accurately. Because of this issue, the SFHA disclosure portion of this legislation would not apply to areas of the state covered by older maps without digital layers (i.e., those adopted before March 4, 2002). Much of the state is currently covered by the newer digital maps, with more areas expected to be added in the near future.

If this bill passes, it would implement a resilience strategy consistent with the policy direction of *Maine Won't Wait* and the significant state investments of the Community Resilience Partnership of the past two years. The Maine Real Estate Commission (MREC) would revise its rules to include licensees' obligations regarding flood risk disclosure. The Office of Professional and Occupational Regulation (OPOR) staff would draft the rule revisions, which MREC would adopt. The staff in the Floodplain Management Program within BRILUP is happy to provide assistance and supporting documentation to facilitate a timely rulemaking process. It is not anticipated that OPOR would require additional staff or funding to implement the proposed statute.

Thank you for your time. I would be happy to answer any questions now or at the work session.

² Federal Emergency Management Agency (FEMA). 2022. Flood Risk Disclosure: Model State Requirements for Disclosing Flood Risk During Real Estate Transactions. Last updated July 11, 2022. Accessed on November 15, 2023 from: https://www.fema.gov/sites/default/files/documents/fema_state-flood-risk-disclosure-best-practices_07142022.pdf