

SUBJECT: Landlord notice requirements for a leased dwelling located in a floodplain

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 8 ayes — C. Turner, Hefner, Cain, Lambert, Ordaz Perez, Patterson,
Shine, S. Thompson

0 nays

1 absent — Crockett

WITNESSES: For — David Mintz, Texas Apartment Association; Christina Rosales, Texas Housers; (*Registered, but did not testify*: Tammy Embrey, City of Corpus Christi; TJ Patterson, City of Fort Worth; Lillian Painter, Dallas County Commissioners Court; Thamara Narvaez, Harris County Commissioners Court; Cyrus Reed, Sierra Club Lone Star Chapter; Amanda List, Texas Appleseed; Jennifer Allmon, The Texas Catholic Conference of Bishops; Georgia Keysor; Tom Nobis)

Against — None

DIGEST: HB 531 would require a landlord to provide certain written notice to a tenant detailing whether the leased dwelling was located in a 100-year floodplain and other information about flood hazards and insurance.

The bill would define a "100-year floodplain" to mean any area of land designated as a flood hazard area with a one percent or greater chance of flooding each year as determined by the Federal Emergency Management Agency under federal law. "Flooding" would be defined as a general or temporary condition of partial or complete inundation of a dwelling caused by:

- the overflow of inland or tidal waters;
- the rapid or unusual accumulation of runoff or surface water from an established body of water such as a river, stream, or drainage ditch; or

- a ponding of water at or near a place where heavy or excessive rain fell.

A landlord would not be required to disclose on the notice that the landlord was aware that a dwelling was located in a 100-year floodplain if the elevation of the dwelling were above the flood levels in accordance with federal regulations.

If a landlord knew that flooding had damaged any portion of a dwelling at least once in the five years preceding the effective date of a lease, the landlord would be required to provide a written notice to the tenant.

The required notices would have to be included in a separate document given to the tenant before execution of the lease.

If a landlord violated these requirements and the tenant suffered a substantial loss or damage to personal property from flooding, a tenant would be authorized to terminate the lease by giving written notice. The notice would have to be given within 30 days of the date the damage occurred and the termination would be effective when the tenant surrendered possession of the dwelling.

If a lease was terminated under these provisions, the landlord would be required within 30 days to refund to the tenant all rent or other amounts paid in advance for any period after the effective date of the termination. A tenant's liability for delinquent, unpaid rent or other sums would not be affected.

The bill would take effect January 1, 2022, and would apply only to a lease agreement entered into or renewed on or after the effective date of the bill.

**SUPPORTERS
SAY:**

HB 531 would help Texans to be informed about the flood risks at a prospective dwelling by requiring that landlords provide written notice describing the flood risk before a tenant signed a lease. The bill also would create lease termination procedures for tenants who suffered

damages when a landlord failed to notify and would provide additional information to tenants about applicable insurance policies.

The risks of living in an area prone to flooding became obvious in the aftermath of Hurricane Harvey. Notification requirements for home sellers were quickly put into law, and this bill would extend those requirements to landlords. The bill would align flooding notification requirements for landlords with those for home sellers.

The bill also would address the unique situation of a tenant whose dwelling suffered flood damage when the tenant did not receive proper notification from a landlord. This process would not place onerous burdens on a tenant that might exist when pursuing other legal remedies. The tenant would have to suffer substantial loss or damage in order to terminate a lease. This would prevent a tenant from terminating a lease based on meritless claims, while avoiding such requirements for the tenant as providing receipts or other information that might not be readily available or within the capabilities of the average renter. The bill's precise language, and that of the notifications it would require, would establish that damage cited for termination purposes had to be a result of flooding and would prevent burst pipes or another form of water damage from serving as a basis for lease termination.

Many renters are concentrated in areas that are low-lying or contain older housing units that are more susceptible to flooding. This bill would not fix systemic issues of inadequate infrastructure, but it would ensure that renters had the information they needed to make informed decisions. This is in line with other consumer protections, including those for home buyers. As the law currently stands, a landlord could receive a floodplain notice when buying a property and then rent it out without providing the same notice to the tenant. That is inherently unfair.

While the bill would not require that a tenant in a flood-prone area obtain flood insurance, the required notification from landlords clearly states its importance for renters. This would complement other ongoing efforts to encourage flood insurance for renters and could help to mitigate serious

consequences for renters caused by flooding.

Although resources such as federal flood maps are available to renters, expecting them to be aware of, access, and correctly interpret this information is not realistic. Many renters trust landlords to perform due diligence before renting out a property.

The bill would simply establish a requirement that landlords provide notice to tenants in certain circumstances. Even in instances of a violation of the bill, a terminated lease is the worst penalty a landlord could face.

CRITICS
SAY:

HB 531 has provisions that could have unintended consequences for lease termination. Its reference to "ponding of water" in the definition of "flooding" could be misconstrued. Ponding can occur for many reasons and the bill could leave open the possibility for water damage not caused by flooding to be used as the basis to terminate a lease. Although the bill would require a tenant to suffer substantial damage in order to terminate a lease, it would not define "substantial." This could leave the phrase open to interpretation for relatively minor damage to form the basis for a lease termination.

OTHER
CRITICS
SAY:

Free resources that provide all necessary flood information, including federal flood maps searchable by address, are available to prospective tenants when they are deciding whether or not to lease a property and make requiring landlords to give floodplain and recent flooding notices unnecessary.