

SENATE BILL REPORT

SB 5496

As Reported by Senate Committee On:
Housing, February 15, 2023

Title: An act relating to creating the covenant homeownership account and program to address the history of housing discrimination due to racially restrictive real estate covenants in Washington State.

Brief Description: Creating the covenant homeownership account and program to address the history of housing discrimination due to racially restrictive real estate covenants in Washington State.

Sponsors: Senators Lovick, Saldaña, Cleveland, Frame, Kuderer, Liias, Lovelett, Nguyen, Pedersen, Salomon, Stanford, Valdez, Wellman and Wilson, C..

Brief History:

Committee Activity: Housing: 2/08/23, 2/15/23 [DPS-WM, DNP, w/oRec].

Brief Summary of First Substitute Bill

- Requires county auditors to collect a Covenant Homeownership Program (CHP) assessment of \$100 for each document recorded to fund the CHP.
- Requires the Department of Commerce to contract with the Washington State Housing Finance Commission (Commission) to create one or more Special Purpose Credit Programs to provide down payment assistance and closing cost assistance to economically disadvantaged classes of persons.
- Requires the Commission to complete an initial CHP study by December 31, 2023, and complete updated studies every five years thereafter.
- Establishes an oversight committee to oversee and review the Commission's activities and performance related to the CHP.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON HOUSING

Majority Report: That Substitute Senate Bill No. 5496 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kuderer, Chair; Frame, Vice Chair; Cleveland, Saldaña, Shewmake and Trudeau.

Minority Report: Do not pass.

Signed by Senators Fortunato, Ranking Member; Braun and Wilson, J..

Minority Report: That it be referred without recommendation.

Signed by Senators Gildon and Rivers.

Staff: Riley Benge (786-7316)

Background: Fair Housing Act. The Fair Housing Act (FHA) protects people from discrimination on the basis of race, color, national origin, religion, sex, familial status, or disability when they are renting or buying a home, getting a mortgage, seeking housing assistance, or engaging in other housing-related activities. The FHA is enforced by the United States Department of Housing and Urban Development (HUD). The Washington Law Against Discrimination (WLAD), which is substantially similar to the FHA, is enforced by the state Human Rights Commission (HRC).

Washington Law Against Discrimination. The WLAD prohibits discriminatory practices in employment; places of public resort, accommodation, or amusement; real estate transactions; and credit and insurance. The law protects persons from discrimination based on their race, creed, color, national origin, citizenship or immigration status, families with children, sex, marital status, sexual orientation, age, honorably discharged veterans, or military status. The law also protects persons from discrimination based on the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

The WLAD declares void any provision in a written instrument relating to real property that purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease of the property to individuals within a protected class. If a written instrument contains a provision void under the WLAD, the owner, occupant, or tenant of the property or the homeowners' association board may bring an action in superior court to have the provision struck from the public records, or may record a restrictive covenant modification document with the county auditor.

Restrictive Covenants. Restrictive real estate covenants prohibiting people of certain races, religions, and ethnicities from buying or owning homes were recorded across Washington State until 1968, when the FHA prohibited real estate covenants that discriminate on the basis of race, color, religion, or national origin. In 1969, the WLAD declared these types of

covenants void and having no legal effect.

Currently, property owners in Washington State are able to record a restrictive covenant modification document that has the legal effect of striking discriminatory language from a property's chain of title, but these modifications do not physically strike the discriminatory provisions from the original deed.

Property owners are also able to file a lawsuit in superior court to physically strike restrictive covenants from the chain of title. If the court finds that a covenant is void, the court will issue an order striking the discriminatory language from the public record. The property owner may obtain and deliver a certified copy of the order to the county auditor, and the auditor must record the documents prepared by the court and comply with certain other requirements.

Duties and Authority of County Auditors. The county auditor is responsible for recording specified documents required by law to be maintained as part of the public record kept by a county. The documents that must be recorded by a county auditor include judgments, liens, deeds, mortgages, and many other categories of documents pertaining to property ownership and real estate transactions. State law specifies requirements that must be met by an auditor when exercising their recording duties, including the collection of specified fees when a document is recorded.

Housing Finance Commission. The Housing Finance Commission (Commission) is a finance authority established to act as a financial conduit to help provide housing throughout the state. To provide financing, the Commission may: issue bonds; make loans to or deposits with mortgage lenders for making mortgage loans; make loans for down payment assistance to home buyers; and participate in federal, state, and local housing programs to make additional funds available to help provide low- to moderate-income housing without the use of public funds or lending the state's credit.

Summary of Bill (First Substitute): Covenant Homeownership Program Assessment. Beginning January 1, 2024, each county auditor must collect a Covenant Homeownership Program (CHP) assessment of \$100 for each document recorded. The CHP assessment does not apply to:

- assignments or substitutions of previously recorded deeds of trust;
- documents recording a birth, marriage, divorce, or death;
- any recorded documents otherwise exempt from a recording fee or additional surcharges under state law;
- marriage licenses issued by the county auditor; or
- documents recording a state, county, city, water-sewer district, or wage lien or satisfaction of lien.

The county auditor may retain up to 1 percent of the assessment for its fee collection activities, and the remainder of the moneys must be remitted to the state treasurer to be

deposited in the Covenant Homeownership Account (CHA).

Covenant Homeownership Account. The CHA is created as an appropriated account in the state treasury. The Legislature may appropriate moneys in the account as follows:

- up to 1 percent to the Department of Commerce (Commerce) for costs related to the CHP. A portion of this 1 percent of moneys may be appropriated by the Legislature to the Department of Financial Institutions (DFI) for costs related to the oversight committee; and
- the remainder of the moneys to Commerce to contract with the Commission for the purposes of the CHP.

Covenant Homeownership Program Study. The Commission must complete an initial CHP study by December 31, 2023, and updated CHP studies every five years thereafter. The initial CHP study must:

- document past and ongoing discrimination against black, indigenous, and people of color (BIPOC) and other historically marginalized communities in Washington State and the impacts of this discrimination on homeownership in the state;
- analyze whether and to what extent existing programs and race-neutral approaches have been insufficient to remedy this discrimination and its impacts;
- recommend and evaluate potential programmatic and policy changes to remedy this discrimination and its impacts, including the creation of one or more special purpose credit program (SPCP); and
- identify methodology to evaluate the efficacy of any recommended programmatic and policy changes over time.

As part of the recommendations related to the creation of one or more SPCPs, the commission must identify through evidence-based documentation the economically disadvantaged class or classes of persons that require down payment and closing cost assistance to reduce racial disparities in homeownership in Washington State. The class or classes of persons identified in the study may share one or more common characteristics such as race, national origin, or sex.

A "special purpose credit program" means a credit assistance program created by the Commission, authorized by the Federal Consumer Financial Protection Bureau under regulation B pursuant to the Equal Credit Opportunity Act, allowing a creditor to extend special purpose credit to applicants who meet eligibility requirements under a credit assistance program expressly authorized by state law for the benefit of an economically disadvantaged class of persons.

The updated CHP study must:

- update and reevaluate the findings and recommendations contained in the initial CHP study and any subsequent program studies;
- document the experience of program participants and others impacted by past and ongoing discrimination, including their experience assessing or attempting to access

credit and any barriers to homeownership in the state that they have faced or continue to face;

- evaluate the SPCP's efficacy in providing down payment and closing cost assistance to the economically disadvantaged class or classes of persons identified in the initial CHP study and any subsequent program studies, and the SPCP's impacts on remedying discrimination and reducing racial disparities in homeownership in the state; and
- recommend CHP modifications and improvements.

The Commission must submit the initial and updated CHP studies to the appropriate committees of the Legislature and post copies on its website. The board of the Commission must review each CHP study and consider the evidence-based documentation and recommendations when designing and implementing CHP amendments.

Covenant Homeownership Program. As part of the CHP, Commerce must contract with the Commission, to design, develop, implement, and evaluate one or more SPCP to provide down payment and closing cost assistance to economically disadvantaged classes of persons identified in a CHP study. The contract must authorize the Commission to use the funding as follows:

- up to 1 percent for costs related to administering the program;
- up to 1 percent to provide targeted education, homeownership counseling, and outreach about SPCP's to BIPOC and other historically marginalized communities in Washington State, including outreach to relevant affinity groups for mortgage lenders; and
- the remainder to provide down payment and closing cost assistance to CHP participants.

Special Purpose Credit Program Requirements. When creating a SPCP, the Commission must consider the evidence-based documentation and programmatic and policy recommendations in the CHP studies. If the CHP study identifies an economically disadvantaged class or classes of persons that share one or more common characteristics such as race, national origin, or sex, and the board of the Commission finds it necessary to consider this information in tailoring a SPCP to provide credit assistance to economically disadvantaged classes of persons, the Commission may consider these characteristics when designing and implementing the SPCP.

An authorized SPCP must, at a minimum:

- provide loans for down payment and closing cost assistance to program participants that can be combined with other forms of down payment and closing cost assistance;
- require a program participant to repay loans or down payment and closing cost assistance at the time the the house is sold; and
- be implemented in conjunction with the Commission's housing finance programs.

Applicant Eligibility. To be eligible to receive down payment and closing cost assistance

through a SPCP, an applicant must:

- have a household income at or below 100 percent of the area median income;
- be a first-time homebuyer; and
- be, or be a descendant of, a Washington State resident who was a Washington State resident on or before the enactment of the FHA on April 11, 1968, and was or would have been excluded from homeownership in Washington State by a racially restrictive real estate covenant on or before April 11, 1968.

Records that show a person's address on or about a specific date or include a reference indicating that a person is a resident of a specific city or area on or about a specific date such as genealogy records, vital records, church records, military records, probate records, public records, census data, newspaper clippings, and other similar documents may be used to prove that such a person satisfies the eligibility criteria.

Adoption of Rules and Policies. The Commission may adopt rules, and must adopt policies, necessary to implement the CHP. CHP rules or policies must include procedures and standards for extending credit under the SPCP, including program eligibility requirements.

Annual Report to the Legislature. The Commission must submit a report to the appropriate committees of the Legislature on the progress of the SPCP beginning December 31, 2025, and annually thereafter.

One or more SPCP must begin providing down payment and closing cost assistance to program participants by July 1, 2024.

Covenant Homeownership Program Oversight Committee. DFI must establish an oversight committee (Committee) to oversee and review the Commission's activities and performance related to the CHP, including the Commission's creation and administration of the SPCPs.

The Committee must consist of the following members appointed by the Director of DFI :

- one person from east of the crest of the Cascade mountains who meets the eligibility criteria for the SPCP;
- one person from west of the crest of the Cascade mountains who meets the eligibility criteria for the SPCP;
- one representative of an organization that operates a SPCP, counseling service, or debt relief program that serves persons subject to unlawful exclusions contained in racially restrictive real estate covenants;
- one representative of a community-based organization that specializes in the development of permanently affordable housing that serves persons who were commonly subject to unlawful exclusions contained in racially restrictive real estate covenants;
- one representative of the real estate sales profession;
- one representative of the home mortgage lending profession who has a minimum of five years lending or underwriting experience; and

- one representative of the nonprofit affordable housing development industry.

The Committee must also consist of the following legislative members:

- two senators, one from each of the two largest caucuses, appointed by the President of the Senate; and
- two members of the House of Representatives, one from each of the two largest caucuses, appointed by the Speaker of the House of Representatives.

Members of the Committee shall each serve a three-year term, subject to renewal for no more than one additional three-year term. The Committee must develop rules that provide for staggered terms so that after the first three years of the Committee's existence, the terms of one-third of the members expire each year.

The Committee is a class one group under the statute that sets compensation and allowances for members of part-time boards, committees, and other similar groups established by state government that function primarily in an advisory coordinating or planning capacity. Members of the Committee do not receive compensation for their services, but may be reimbursed for travel and other expenses. As authorized by the class one group statute, DFI may provide a stipend to individuals who are low-income or have lived experience to support their participation on the Committee.

DFI must provide administrative assistance and staff support to the Committee.

EFFECT OF CHANGES MADE BY HOUSING COMMITTEE (First Substitute):

- Clarifies that the state has a compelling interest in remedying past and ongoing discrimination and its impacts on access to credit and homeownership for black, indigenous, and people of color, and other historically marginalized communities in Washington State.
- Makes technical corrections so that the Covenant Homeownership Account (Account) is consistent throughout the bill.
- Requires DFI, rather than Commerce, to establish the oversight committee and appoint the non-legislative members of the committee.
- Authorizes the Legislature to appropriate moneys from the Account to DFI for costs related to the oversight committee.
- Modifies the list of oversight committee members by removing the requirement that one of the members be designated by the Washington State Office of Equity.
- Provides, in addition to the standard severability clause, that if the Covenant Homeownership Program is held invalid, the Legislature may appropriate moneys in the Account to Commerce to contract with the Washington State Housing Finance Commission for one or more other programs that support homeownership for first-time homebuyers.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Homeownership is the primary wealth builder for most Washingtonians. For generations, black, brown, indigenous and people of color have faced massive barriers to homeownership. Homeownership rates among people of color are nearly 20 percent lower than white Washingtonians. We have a large wealth gap in our state and this bill can do something to close that gap. Forty-two percent of black households in this state have zero net wealth.

This bill is a once in a generational step to address the homeownership race gap in our state. It is a groundbreaking step in the right direction that demonstrates commitment to change. We want to see the damage from racially restrictive covenants repaired. This bill will address the harm done by investing in down payment assistance and essential programs for those who have been harmed by historically discriminative policies in Washington State.

We have had in this state, a long history of racially discriminative policies that violate the 14th Amendment of the U.S. Constitution. Home equity is the number one asset among Americans and it is an opportunity that has been excluded from the BIPOC community. Even when it was technically illegal, many people of color still found purchasing housing difficult. Redlining, racially restrictive covenants, and discrimination in access to credit all contributed to the difficulty for attaining homeownership even after these practices were outlawed. No one can read one of these restrictive covenants and not be ashamed. The shame people had to endure because of the restrictive covenants is real. No one is better than anyone else based on the color of your skin, this bill makes this point clearer than ever. It gets us closer to a world where we are judged by the content of our character and not by the color of our skin.

The program proposed by this bill speaks to the report produced by legislative work group on homeownership disparity. An alternative way to look at rent control or rent stabilization is the 30-year mortgage for those who are fortunate enough to have access to it. But, access to the ability to own houses has not been equally distributed. Barriers to credit and homeownership for black, indigenous, and people of color have been built into our system and laws. Systemic and structural changes are the only way to move forward. Credit, including home mortgages are harder and more expensive to obtain for people of color. The rise in prices over the last 40 years have exacerbated the problem and further created a housing gap. Without action, the gap will continue to widen. Homeowners net wealth is 40 times that of renters. Down payment is one of biggest obstacles to accessing the housing market. Purchase assistance works by providing down payment assistance and closing costs. This helps candidates be more attractive for lenders. Down payment assistance is looked at

positively by lenders. The program proposed by this bill has been looked at and worked on by a work group of stakeholders. Without this bill, the gap that was opened in society is widened. Renting is unstable and growing up with a stable house is important for children. Race neutral programs have not been effective in helping people of color.

OTHER: This bill is not in the Governor's budget. The homeownership disparities work group issued a report, improving homeownership rates for black, indigenous, and people of color in Washington State. Homeownership rates for BIPOC families are low, 19 percent less than for non-Hispanic white families. High-income black families are still 20 percent less likely to be homeowners than non-Hispanic white families. Although the Department of Commerce has a wide-array of homeownership assistance programs, but they are unable to address the needs identified in this bill: access to good credit, a chunk of savings for a down payment, and money left over to pay for closing costs.

Persons Testifying: PRO: Senator John Lovick, Prime Sponsor; Patience Malaba, HDC; Corinna Obar, Washington State Housing Finance Commission; Clifford Cawthon, Habitat for Humanity Seattle- King & Kittias; Ali Sheibani; Donald King, Nehemiah Initiative Seattle; Lisa Wolters, Seattle Housing Authority, Assoc of WA Housing Authorities; Michael Brown, Civic Commons; Amanda Sandoval, United Way of King County; Carl Schroeder, Association of Washington Cities; Darryl Smith, HomeSight; Anna Boone, Zillow Group; DENISE Rodriguez, Washington Homeownership Resource Center; Kiara Daniels, Tacoma City Council; George Davenport, Nehemiah Initiative; Michele Thomas, Washington Low Income Housing Alliance; Lechelle Lucas; Michone Preston, Habitat for Humanity of Washington State CEO; Sol Villareal; Shaun Scott; John Smith; Tonja Wortham, WMBA; Nathan Gorton, Washington REALTORS; Charles Kalonji, I am a loan officer with New American Funding; QUINTARD TAYLOR, BlackPast.org; Norma Martinez-Olivera.

OTHER: Ann Campbell, Department of Commerce.

Persons Signed In To Testify But Not Testifying: PRO: Lila Grant; Sophia Dowling.