

HOUSE BILL REPORT

HB 1335

As Reported by House Committee On:

Local Government
Appropriations

Title: An act relating to review and property owner notification of recorded documents with unlawful racial restrictions.

Brief Description: Concerning review and property owner notification of recorded documents with unlawful racial restrictions.

Sponsors: Representatives Valdez, Rude, Berry, Fitzgibbon, Morgan, Santos, Shewmake, Davis, Berg, Gilday, Bergquist, Fey, Bateman, Lekanoff, Lovick, Callan, Riccelli, Rule, Pollet, Senn and Harris-Talley.

Brief History:

Committee Activity:

Local Government: 2/2/21, 2/3/21, 2/5/21 [DPS];

Appropriations: 2/18/21, 2/19/21 [DP2S(w/o sub LG)].

Brief Summary of Second Substitute Bill

- Establishes a grant program to be administered by the Department of Commerce to provide grants to institutions of higher education to review existing deeds and covenants for unlawful racial or other discriminatory restrictions and provide notice of such restrictions to property owners and county auditors.
- Adds to the seller disclosure statement a notice to the buyer of real property that covenant or deed restrictions based on race or other protected classes are unlawful and specifies the methods by which such restrictions can be struck.
- Requires a person bringing an action to strike an unlawful covenant or deed restriction in superior court to deliver the court order striking such provisions to the county auditor or county official responsible for

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recording official documents, and specifies how those provisions are to be removed.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Pollet, Chair; Duerr, Vice Chair; Goehner, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Berg, Robertson and Senn.

Staff: Elizabeth Allison (786-7129).

Background:

Washington Law Against Discrimination.

The Washington Law Against Discrimination (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 stricken from the public records.

Department of Commerce.

The Department of Commerce (Department) is a state agency responsible for facilitating community and economic development. Some of its duties include managing growth and achieving sustainable development, providing greater access to economic opportunity, and stimulating private sector entrepreneurship. The Department administers and distributes various state and federal grants to counties, cities, and other units of local government for local community development, workforce development, growth management planning, and infrastructure projects.

Summary of Substitute Bill:

Subject to the availability of funding, the Department is required to establish and administer a grant program to review existing recorded covenants and deed restrictions to identify recorded documents that include racial or other unlawful restrictions against a protected class under the WLAD. The Department must establish a process for accepting grant applications from public and private not-for-profit higher education institutions and must begin awarding grants no later than January 1, 2022. Selected higher education institutions must review existing recorded covenants and deed restrictions to identify documents that include racial or other unlawful restrictions against property ownership, and must notify owners of property with such restrictions and county auditors. Selected higher education institutions are encouraged to utilize students, including law and graduate students, to complete the review and notification requirements.

Realtors are required to notify purchasers of real property at the time of sale of any recorded covenant or deed restriction that includes unlawful racial or other restrictions on property ownership or use against a protected class.

Substitute Bill Compared to Original Bill:

The substitute bill removes the requirement that counties and cities review existing deeds and covenants for unlawful racial or other discriminatory restrictions and provide notice to property owners, and removes county and city authority to use real estate excise tax revenue for the review and notification requirements. It establishes a grant program to be administered by the Department to provide grants to institutions of higher education to review existing deeds and covenants for unlawful racial or other discriminatory restrictions and provide notice of such restrictions to property owners and county auditors. Additionally, it requires realtors to provide notice of any unlawful recorded covenant or deed restriction to purchasers of real property at the time of sale.

Appropriation: The bill appropriates \$475,000 for the fiscal year ending June 30, 2022, and \$475,000 for the fiscal year ending June 30, 2023.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The use of racial covenants or deed restrictions to prevent ownership of property are some of the most explicit examples of racism that we have had in our housing system. They have been ruled unconstitutional but still exist on many titles and are very

offensive. The Legislature created an administrative process to allow homeowners to file a document to repudiate the racial covenants without the need to use an attorney, however, most property owners will never know if their property has a racial covenant. If property owners knew, they would likely be deeply troubled, and the bill is trying to address that by providing a review of existing records and documents where these restrictions exist and notify owners so they can have the provisions stricken and removed. Diversity, equity, and inclusion efforts are a priority of Washington realtors, and Washington is a leader in diversity, equity, and inclusion. Living with restrictive covenants has led to racism and obstacles to education, food, and jobs, and has manifested in ways that hold people back. Offensive language in deeds still exists today, and it's unimaginable how it has made people feel. The language is a legacy of the racist past, serves no purpose today, and is unenforceable. There has been a long history of discrimination in real estate, and the industry is currently going through a reckoning with gaining awareness of this activity. People have come to realize that this issue will not be addressed with a silver-bullet solution and will require a long-term effort. The bill focuses on raising awareness of this racist history. Many states, like Washington, have an existing process for removing restrictive language, but many people are not aware of the language in property records. There is a need for a statewide process to bring this information forward.

(Opposed) None.

(Other) There is no opposition to the goal of the bill. Racially discriminatory covenants are an ugly piece of history that should be rectified. These covenants are not enforceable, and there is already an existing process to remove them that was put in place in 2018. This existing process has not had time to work yet. There is an advertisement problem because people do not know about the existing program. The task that would be given to counties in this bill is daunting. Many of the deeds and covenants are old, hand-written documents that must be fished through and read one at a time. The funding in the bill just loosens what existing revenue can be used for, it does not provide additional funding. There are also concerns about Growth Management Act implications. Maybe the solution is a combination advertising the existing process and having a process that is less onerous. It is heartening to hear talk about shared responsibility for creating this racist history. Cities have a very large difference of populations and this bill would require a considerable use of staff time and pull staff away from their comprehensive plan duties. The timing in the bill requires it to be done before the comprehensive plan, and there is no provision on what happens if something is missed.

Persons Testifying: (In support) Jerry Martin and Bill Clarke, Washington REALTORS; Phil McBride, John L. Scott Real Estate; and Nick Maki, Windermere Real Estate.

(Other) Mellani McAleenan, Washington State Association of Counties; and Carl Schroeder, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Local Government. Signed by 33 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Chopp, Cody, Dolan, Dye, Fitzgibbon, Frame, Hansen, Harris, Hoff, Jacobsen, Johnson, J., Lekanoff, Pollet, Rude, Ryu, Schmick, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

Staff: Jessica Van Horne (786-7288).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Local Government:

The second substitute bill makes the following changes:

- adds an intent section;
- removes a section making appropriations;
- removes the requirement that realtors provide notice of any unlawful covenant or deed restriction to purchasers of real property at the time of sale;
- adds to a seller's disclosures a notice to the buyer of real property that covenant or deed restrictions based on race or other protected classes are unlawful and specifies the methods by which such restrictions can be stricken;
- requires a person bringing an action to strike unlawful covenant or deed restrictions in superior court to deliver the court order striking such provisions by electronic mail, mail, or personal delivery to the county auditor or county official responsible for recording official documents in the county records, and specifies how void provisions are to be removed by the auditor or official;
- provides that a record removed from the chain of title may be preserved for historical or archival purposes; and
- provides that the act applies to real estate transactions entered into on or after January 1, 2022.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The building industry and realtors support this bill, as it will help address a historical wrong. Legislation passed previously sets out a process for removing potentially discriminatory covenants and restrictions from recorded documents. Identifying these discriminatory covenants and alerting current property owners makes the process more proactive. Realtors would support an amendment to require the notice of potentially discriminatory covenants as part of the existing seller disclosure form.

There is a current collaboration between historians and Gonzaga University to help property owners identify these covenants and access the existing legal remedy to remove them. Including college students in assisting with the outreach program is supported. There have been legal conflicts around implementing large-scale, blanket removals of discriminatory restrictions from recorded documents, and a case is currently pending on this subject. An amendment to strengthen the current legal remedy is supported.

(Opposed) None.

(Other) County auditors contributed to the legislation that established the current legal remedy to remove discriminatory covenants. County auditors support a state-funded program where institutions of higher education will conduct outreach to inform property owners of the legal remedy. Institutions of higher education employ trained individuals who are better able to identify and verify potentially discriminatory covenants than county employees, and who will be more effective than counties. County auditors look forward to working with institutions of higher education to provide access to records to enable this process.

Persons Testifying: (In support) Logan Camporeale; Bill Clarke, Washington REALTORS; and Nora Burnes, Building Industry Association of Washington.

(Other) Vicky Dalton, Washington State Association of County Auditors.

Persons Signed In To Testify But Not Testifying: None.