
Housing Committee

HB 1474

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: Representatives Taylor, Chopp, Berg, Peterson, Reed, Stonier, Gregerson, Bronoske, Cortes, Mena, Street, Ramel, Fosse, Fey, Goodman, Duerr, Bateman, Morgan, Alvarado, Macri, Senn, Berry, Kloba, Hackney, Springer, Slatter, Callan, Orwall, Farivar, Simmons, Ortiz-Self, Thai, Ryu, Stearns, Wylie, Ramos, Doglio, Riccelli, Chapman, Santos, Davis, Ormsby, Bergquist and Pollet.

Brief Summary of Bill

- Creates the Covenant Homeownership Account and a document recording assessment of \$100 to fund the Covenant Homeownership Program (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 and closing cost assistance to one or more economically disadvantaged classes of persons identified in a CHP study.
- Requires the Commission to complete an initial CHP study by December 31, 2023, and updated studies every five years after the initial study is completed.
- Creates an oversight committee to oversee and review the Commission's activities and performance related to the CHP.

Hearing Date: 2/6/23

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.

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Background:

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 federal Fair Housing Act (FHA) prohibited real estate covenants that discriminate on the basis of race, color, religion, or national origin, and 1969, when the Washington Law Against Discrimination provided that these types of covenants are void and have no legal effect.

Property owners in Washington 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. However, restrictive covenant modifications do not physically strike these 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.

Document Recording.

Document recording serves a public accessibility and preservation function. A wide range of documents can be publicly recorded and are potentially subject to document recording fees and surcharges. Many documents that are recorded are related to real estate, such as deeds, liens, deeds of trust, covenants, easements, leases, plats, and surveys. Other examples of the types of documents that may be recorded include community property agreements; certain notices; divorce decrees; and foreign birth, marriage, and death certificates. There is no comprehensive list of the types of documents that can be recorded.

Generally, the county auditor will accept a document for recording as long as the document meets the formatting requirements, and the appropriate fees and surcharges are paid. County auditors do not review recorded documents for content accuracy or legality.

Fees and Surcharges.

Fees for recording a document are set by statute, collected by the county auditors, and distributed to certain funds and programs. There is a five-dollar fee for recording the first page of a document and an additional one dollar fee for recording each additional page of a document.

In addition to the document recording fees, there are a number of document-recording surcharges created by statute, including surcharges to support preservation and accessibility of permanent documents, the State Library Operations, the State Library Archives Building, urban planning, and affordable housing. These surcharges generally apply to all documents recorded, although

some surcharges include exceptions for certain types of documents.

County auditors collect and distribute the following housing surcharges:

- \$13 Affordable Housing for All surcharge;
- \$62 Local Homeless Housing and Assistance surcharge;
- \$8 additional Local Homeless Housing and Assistance surcharge; and
- \$100 housing surcharge enacted in 2021.

For standard documents with no applicable exemptions, the total document recording fee for the first page, including the surcharges, is around \$200.

Federal and State Fair Housing Laws.

The FHA protects people from discrimination because of race, color, national origin, religion, sex (including gender, gender identity, sexual orientation, and sexual harassment), 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, which is substantially similar to the FHA, is enforced by the state Human Rights Commission. Anyone who has been harmed by a housing action may file a complaint.

Equal Credit Opportunity Act.

The federal Equal Credit Opportunity Act (ECOA) prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age, because an applicant receives income from a public assistance program, or because an applicant has in good faith exercised any right under the federal Consumer Credit Protection Act.

The ECOA is enforced by the United States Department of Justice (DOJ) where there is a pattern or practice of discrimination. In cases involving discrimination in home mortgage loans or home improvement loans, the DOJ may file suit under both the FHA and ECOA. Individuals who believe that they have been the victims of any unfair credit transaction involving residential property may also file a complaint with the HUD or may file their own lawsuit.

The Consumer Financial Protection Bureau (CFPB) has issued regulations under ECOA. These regulations, known as Regulation B, provide the substantive and procedural framework for fair lending.

Special Purpose Credit Programs.

ECOA and Regulation B permit creditors to extend special purpose credit to applicants who meet eligibility requirements under certain types of credit programs, including a credit assistance program expressly authorized by federal or state law for the benefit of an economically disadvantaged class of persons.

On December 7, 2021, HUD released guidance concluding that special purpose credit programs (SPCP) created in conformity with ECOA and Regulation B generally do not violate the FHA.

On February 22, 2022, eight federal agencies, including the CFPB, HUD, and DOJ, issued an interagency statement encouraging lenders to explore opportunities available to them to increase credit access through SPCPs to better serve historically disadvantaged individuals and communities.

Washington State Housing Finance Commission.

The Washington State Housing Finance Commission (Commission) is a public body created by the Legislature to make housing financing available at affordable rates throughout the state by acting as a financial conduit. Without using public funds or lending the credit of the state or local government, the Commission can issue both tax-exempt and taxable nonrecourse revenue bonds, and participate in federal, state, and local housing programs. The Commission offers affordable home loans and down payment assistance programs; helps build and rehabilitate affordable multifamily housing through programs such as the low-income housing tax credit program; and provides below market-rate financing for sustainable energy projects, new farms and ranches, and nonprofit facilities.

Some of the Commission's programs assist low-income and first-time home buyers with qualifying for a mortgage by lending them funds for the required down payment. These down payment assistance loans are low- or no-interest loans that do not need to be paid back until either the primary mortgage is paid or the home is sold.

Summary of Bill:

Covenant Homeownership Program Assessment.

Beginning January 1, 2024, the county auditor must collect a Covenant Homeownership Program (CHP) assessment of \$100 for each document recorded, with certain exceptions. The assessment is in addition to any other charge, surcharge, or assessment allowed by law. The county auditor may retain up to 1 percent of the moneys for collection costs and must remit the remainder to the State Treasurer to be deposited in the CHA.

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 exempted under state law; marriage licenses issued by the county auditor; or documents recording a federal, state, county, city, water-sewer district, or wage lien, or satisfaction of lien.

The statute related to county auditor's fees is amended to include a reference to the new CHP assessment.

Covenant Homeownership Account.

The CHA is created as an appropriated account in the state treasury that may be used only for the purposes of the CHP. The legislature may appropriate moneys in the count as follows:

- up to 1 percent to the Department of Commerce (Department) for costs related to the CHP including, but not limited to, costs related to administering contracts with the Commission,

- costs related to the CHP oversight committee, costs related to outreach and stakeholder engagement, and other administrative, data collection, and reporting costs; and
- the remainder to the Department to contract with the Commission for the CHP.

The statute identifying the appropriated treasury accounts that retain all or a portion of the account's interest earnings is amended to include a reference to the CHA. There are two versions of this statute: one that expires July 1, 2024, and one that takes effect July 1, 2024. Both are amended.

Covenant Homeownership Program Study.

The Commission must complete an initial CHP study by December 31, 2023, and updated CHP studies every five years after the initial study is completed, with the first updated study due December 31, 2028. 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, including access to credit and other homeownership barriers;
- 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, including creating of one or more SPCPs, to remedy this discrimination and its impacts; and
- identify methodology to evaluate the efficacy of any recommended programmatic and policy changes over time.

"Special purpose credit program" is defined as a credit assistance program created by the Commission as 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.

As part of the SPCP recommendations, the report must identify through evidence-based documentation the economically disadvantaged class or classes of persons that require down payment and closing cost assistance in order to reduce racial disparities in homeownership in the 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.

An updated CHP study must:

- update and reevaluate the findings and recommendations contained in the initial CHP study and any subsequent CHP studies;
- document the experience of CHP participants and others impacted by past and ongoing discrimination, including their experience accessing 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 CHP 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 Legislature and post them on the Commission's website. The Board of the Commission must review and consider each subsequent CHP study in designing and implementing CHP amendments.

Covenant Homeownership Program.

As part of the CHP, the Department must contract with the Commission to create one or more SPCPs to provide, beginning July 1, 2024, down payment and closing cost assistance to one or more economically disadvantaged classes of persons identified in a CHP study. The contract must authorize the Commission to use:

- up to 1 percent of the contract funding for administrative costs including, but not limited to, costs related to completing a CHP study and other administrative, data collection, and reporting costs;
- up to 1 percent of the contract funding to provide targeted education, homeownership counseling, and outreach about the SPCPs to BIPOC and other historically marginalized communities; and
- the remainder of the contract funding to provide down payment and closing cost assistance to program participants.

Special Purpose Credit Program Requirements.

In creating a SPCP, the Commission must consider the information 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 in designing and implementing the SPCP. At minimum, a SPCP authorized as part of the CHP must:

- 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 at the time that the house is sold; and
- be implemented in conjunction with the Commission's housing finance programs.

Special Purpose Credit Program Applicant Eligibility.

To be eligible to receive down payment and closing cost assistance through a SPCP authorized as part of the CHP, a SPCP applicant must have a household income at or below 100 percent of the area median income; be a first-time homebuyer; and be a Washington state resident who:

- Was a state resident on or before the enactment of the federal Fair Housing Act 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 that date; or
- Is a descendant of a person who meets that criteria.

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 may be used to provide proof that a person satisfies this criteria, such as genealogical records, vital records, church records, military records, probate records, public records, census data, newspaper clippings, and other similar documents.

"Racially restrictive real estate covenant" is defined as a recorded covenant or deed restriction that includes or included racial restrictions on property ownership or use against protected classes that are void and unlawful. The definition includes examples and meanings of the terms, many of which are offensive, that were commonly included in racially restrictive real estate covenants in Washington state to exclude BIPOC and other historically marginalized communities.

Adoption of Rules and Policies.

The Commission may adopt rules, and must adopt policies, as necessary to implement the CHP. CHP rules or policies must include procedures and standards for extending credit under a SPCP, including program eligibility requirements. The Board of the Commission may amend the SPCPs, rules, and policies from time to time, including in response to a CHP study.

Annual Report to the Legislature.

Beginning December 31, 2025, the Commission must submit an annual report to the Legislature on the progress of the SPCPs developed under the CHP and post the report on the Commission's website. The report must include, at minimum, the program eligibility requirements, the type and amount of down payment and closing cost assistance provided to program participants, the number of program participants and their corresponding eligibility categories, the location of property financed, and program outreach efforts.

Covenant Homeownership Program Oversight Committee.

The Department 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 authorized under the CHP. The Committee may, from time to time, make recommendations to the Legislature regarding the CHP. The Department must provide administrative assistance and staff support to the Committee.

The Committee must consist of the following members appointed or approved by the Governor:

- one person who meets the eligibility criteria for SPCP applicants and is from east of the crest of the Cascade Mountains;
- one person who meets the eligibility criteria for SPCP applicants and is from west of the crest of the Cascade Mountains;
- one representative of an organization that operates a SPCP, counseling service, or debt relief program that serves people who were commonly subject to unlawful exclusions contained in racially restrictive real estate covenants;
- one representative of a community based organization that specializes in development of

permanently affordable housing that serves people 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;
- one representative of the nonprofit affordable housing development industry; and
- one person designated by the Director of the Washington State Office of Equity.

In addition to the members appointed or approved by the Governor, 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 Representative.

Committee members must 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 staggering of terms so that the terms of one-third of the members expire each year.

The Committee is identified as 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, the Department may provide a stipend to individuals who are low-income or have lived experience to support their participation on the Committee.

Other Provisions.

The bill may be known and cited as the Covenant Homeownership Account and Program Act. Federal and state severability clauses are included, and a new chapter is created in Title 43 RCW.

Appropriation: None.

Fiscal Note: Requested on January 27, 2023.

Effective Date: The bill contains multiple effective dates.