

# SENATE BILL REPORT

## 2SHB 1474

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As of March 16, 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:** House Committee on Appropriations (originally sponsored by 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 History:** Passed House: 3/2/23, 53-43.

**Committee Activity:** Housing: 3/17/23.

### Brief Summary of 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 Program 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 March 1, 2024, 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.

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*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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## SENATE COMMITTEE ON HOUSING

**Staff:** Riley Bengé (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. 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.

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 voided under 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, WLAD declared these types of covenants void and having no legal effect.

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 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.

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. ECOA is enforced by the United States Department of Justice (DOJ). In cases involving discrimination in home mortgage loans or home improvement loans, DOJ may file suit under both the FHA and ECOA.

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 (SPCPs) 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.

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.

Public Records Act. Under the Public Records Act, state and local agencies must make

available for public inspection and copying all public records unless the record falls under an exemption. Certain financial, commercial, and proprietary information is exempt from disclosure under the Public Records Act, including information supplied by businesses or individuals during applications for loans or program services under certain state and local programs.

**Summary of Bill:** 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; documents recording a name change order; 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 that may be used only for the purposes of the CHP. 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, including but not limited to, administering contracts with the Commission, outreach and stakeholder engagement, reimbursing the Department of Financial Institutions (DFI) for its costs related to the oversight committee, and other administrative, data collection, and reporting costs; and
- the remainder of the moneys to Commerce to contract with the Commission for the CHP.

Covenant Homeownership Program Study. The Commission must complete an initial CHP study by March 1, 2024, 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, 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 to remedy this discrimination and its impacts, including the creation of one or more 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 characteristic 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 ECOA, 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 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. 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 SPCPs 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 CHP studies. If the CHP study identifies an economically disadvantaged class or classes of persons that share one or more common characteristic 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 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 an 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.

*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 review the Commission's activities and performance related to CHP, including the Commission's creation and administration of SPCPs.

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

- one person who meets the eligibility criteria for SPCP applicants and is from east of

- the crest of the Cascade mountains who meets the eligibility criteria for the SPCP;
- one person who meets the eligibility criteria for SPCP applicants and is 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.

The Committee must work with DFI to convene meetings, coordinate ongoing activities, and create a charter and operating procedures. The Committee must hold meetings at least once each quarter and must convene its first meeting and select a chair by October 1, 2023. Meetings may be conducted virtually. The Committee may make recommendations to the Legislature regarding CHP.

The Commission and Commerce must report to the Committee on a quarterly basis about the results of any education, counseling, outreach efforts, SPCPs, and down payment and closing cost assistance created or provided under CHP. Any information shared is confidential and exempt from public disclosure.

DFI must provide subject matter expertise, administrative assistance, and staff support to the Committee, and work in coordination with the Commission and Commerce to conduct outreach and financial education. DFI may have staff present at Committee meetings, and DFI may employ staff and hire outside experts and other professionals as necessary. Commerce must reimburse DFI for costs related to the Committee.

Public Records Act Exemption. Financial and commercial information and records supplied by businesses or individuals during applications for loans or program services under CHP are exempt from disclosure under the Public Records Act.

**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.