

HOUSE BILL REPORT

E2SHB 2578

As Amended by the Senate

Title: An act relating to ensuring housing options.

Brief Description: Ensuring housing options.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Riccelli, Kirby, Macri, Peterson, Appleton, McBride, Frame, Doglio, Stanford, Goodman, Senn, Gregerson, Wylie, Sawyer, Kloba, Santos, Ormsby, Robinson and Bergquist).

Brief History:

Committee Activity:

Judiciary: 1/23/18, 2/1/18 [DPS];

Appropriations: 2/5/18, 2/6/18 [DP2S(w/o sub JUDI)].

Floor Activity:

Passed House: 2/9/18, 61-37.

Senate Amended.

Passed Senate: 3/1/18, 36-13.

Brief Summary of Engrossed Second Substitute Bill

- Amends the Residential Landlord-Tenant Act to prohibit discrimination based on a tenant's source of income and creates a civil cause of action for violations.
- Creates the Landlord Mitigation Program and Account (Account) in the Department of Commerce from which landlords of private market rental units rented to low-income tenants with certain sources of income may be reimbursed for damages.
- Increases the affordable housing surcharge to \$13 from \$10, and provides that approximately 40 percent of this additional \$3 goes to the Account.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Jinkins, Chair; Graves, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Muri, Orwall and Valdez.

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

Minority Report: Do not pass. Signed by 2 members: Representatives Klippert and Shea.

Staff: Cece Clynch (786-7195).

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 Judiciary. Signed by 21 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Bergquist, Cody, Fitzgibbon, Graves, Haler, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 12 members: Representatives Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Buys, Caldier, Condotta, Manweller, Schmick, Taylor, Vick, Volz and Wilcox.

Staff: Meghan Morris (786-7119).

Background:

Residential Landlord-Tenant Act.

The Residential Landlord-Tenant Act (RLTA) sets forth the rights and duties of residential landlords and tenants. Under the RLTA, landlords may screen and evaluate prospective tenants either by conducting their own search or by using companies that provide tenant screening reports. Gathered information may include details about a prospective tenant's credit, employment, criminal history, eviction history, and rental history. A landlord may use this information to determine whether a prospective tenant would make a suitable tenant.

The RLTA prohibits a landlord from terminating a tenancy, failing to renew a tenancy, or refusing to enter into a rental agreement based on a tenant's, applicant's, or a household member's status as a victim of domestic violence, sexual assault, or stalking. A landlord who violates this prohibition may be liable to the tenant or applicant in a civil action for damages sustained by the tenant or applicant. The prevailing party may recover court costs and reasonable attorneys' fees.

Additionally, under the Washington Law Against Discrimination it is generally an unfair practice to discriminate against a prospective tenant based on race, creed, color, national origin, sex, marital status, sexual orientation, or any of the following:

- honorably discharged veteran or military status;
- families with children status;
- the presence of any sensory, mental, or physical disability; or
- the use of a trained guide dog or service animal by a person with a disability.

Landlord Mitigation.

The 2016 Supplemental Capital Budget included a \$125,000 appropriation to the Department of Commerce for the Rapid Housing Improvement Program, including a proviso for landlord mitigation for the cost of damages that may be caused to private market units rented to

housing choice voucher holders in jurisdictions that prohibit denying tenancy based solely on the applicant's source of income.

Reimbursement was allowed only for amounts related to property damage, unpaid rent, and other damages caused as a result of the tenant's occupancy. To be eligible, damages had to exceed normal wear and tear and be in excess of \$500 but not more than \$5,000 per tenancy. In order to be eligible, a landlord must first obtain a judgment against the tenant and submit the claim within one year of that judgment.

The unspent monies have since been reappropriated.

Summary of Engrossed Second Substitute Bill:

Residential Landlord-Tenant Act.

A landlord is prohibited from taking any of the following actions based on the source of income of an otherwise eligible prospective or current tenant (tenant):

- refusing to rent or lease the property, unless the tenant's source of income is conditioned on the real property passing inspection, the written estimate of the cost of improvements is at least \$1500, and the landlord has not received moneys from the Landlord Mitigation Program Account (Account) to make the improvements;
- expelling a tenant;
- making any distinction, discrimination, or restriction in the price, terms, conditions, or privileges relating to the rental, lease, or occupancy;
- attempting to discourage the rental or lease;
- assisting, inducing, inciting, or coercing another person to commit an act or engaging in a practice that violates this new section;
- coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of any right granted under this new section; and
- representing to a person that a dwelling unit is not available for inspection or rental when the dwelling unit is available for inspection or rental.

Additionally, a landlord may not publish, circulate, issue, or display, or cause to be published, circulated, issued, or displayed, any communication, notice, advertisement, or sign of any kind relating to the rental or lease of real property that indicates a preference, limitation, or requirement based on any source of income.

"Source of income" includes benefits or subsidy programs including housing assistance, public assistance, emergency rental assistance, veterans benefits, Social Security, Supplemental Security Income or other retirement programs, and other programs administered by a federal, state, local, or nonprofit entity. The term does not include income derived in an illegal manner.

If a landlord requires a tenant to have a certain threshold level of income, any source of income in the form of a rent voucher or subsidy must be subtracted from the total of the monthly rent prior to calculating if the income criteria have been met.

A person in violation of these prohibitions and requirements shall be held liable in a civil action for four and one-half times the monthly rent of the real property, as well as court costs and reasonable attorneys' fees.

Landlord Mitigation Program.

Subject to the availability of funds for this purpose, a Landlord Mitigation Program (Program) is created in the Department of Commerce (Commerce) from which landlords of private market rental units rented to low-income tenants whose source of income meets the definition above may be reimbursed for certain damages:

- "Private market rental unit" means any unit available for rent that is owned by an individual or entity, but does not include housing acquired or constructed by a public housing agency as defined in federal law.
- "Low income" means income that does not exceed 80 percent of the median income for the standard metropolitan statistical area in which the private market rental unit is located.

The following are eligible for reimbursement under the Program:

1. up to \$1,000 for improvements identified as necessary for purposes of the tenant's source of income. In order to be eligible, a landlord must pay for the first \$500 for improvements, and rent to the tenant whose source of income was conditioned on the inspection. Reimbursement may include up to 14 days of lost rental income;
2. reimbursement for damages as reflected in a court judgment; and
3. reimbursement for damages established by means of specified documentation presented to Commerce. The rental property must have been inspected by the tenant and the landlord or the landlord's agent at the commencement of the tenancy and a written move-in inspection report prepared and signed by both; the landlord must have made the repairs and must submit a claim on a form, signed under penalty of perjury, together with before- and after-repair photographs, copies of repair receipts, and other documentation or information as Commerce may request.

Commerce must make reasonable efforts to review claims within 10 business days of receipt. In reviewing a claim, Commerce must confirm that the claim involves a private market rental unit rented to a low-income tenant whose source of income meets the definition above. Commerce may inspect the property and records related to a claim and may make use of a third-party inspector as needed to investigate fraud.

Damages must be beyond wear and tear and total at least \$500. Damages may exceed \$5,000, but reimbursement may not exceed that cap. Reimbursements are to be made on a first-come, first-served basis, to the extent of available funds. Commerce must make best efforts to notify a tenant of the amount and reason for reimbursement.

A landlord in receipt of reimbursement from the Program is prohibited from taking legal action against the tenant for damages attributable to the same tenancy, or from pursuing collection, or authorizing another entity to pursue collection on the landlord's behalf, of a judgment against the tenant for damages attributable to the same tenancy. If a landlord is denied reimbursement from Commerce, he or she may seek to obtain a judgment in court for the damages and, if successful, may resubmit a claim for damages supported by the judgment.

Commerce must establish a website that advertises the Program. By January 1, 2021, Commerce must submit a report to the appropriate committees of the Legislature regarding the effectiveness of the Program and recommend modifications. In preparing the report, Commerce must convene and solicit input from a group of stakeholders to include representatives of large multifamily housing property owners or managers, small rental housing owners in both rural and urban markets, a representative of tenant advocates, and a representative of the housing authorities. The report must include a variety of specific data, as well as any other modifications and recommendations made by stakeholders to improve the effectiveness and applicability of the Program, and an evaluation of the feasibility for expanding the use of the mitigation fund to provide up to 90-day no interest loans to landlords who have not received timely rental payments from a housing authority administering section 8 rental assistance.

Landlord Mitigation Program Account.

The Account is created in the custody of the State Treasurer. Administrative costs associated with the Program may not exceed 10 percent of the annual funds available for the Program; Reappropriations must not be included in the calculation of the annual funds available for determining the administrative cost.

In addition to the original purpose, the reappropriated moneys from the Rapid Housing Improvement Program may be used to implement the new Landlord Mitigation Program.

The \$10 affordable housing-for-all surcharge which is charged by county auditors for each document recorded is raised to \$13. Of the remaining funds after county administrative and distribution costs, 40 percent of the revenue generated through the surcharge must be transmitted to the State Treasurer for deposit as follows:

- The portion of the funds attributable to the original \$10 of the surcharge must continue to be deposited into the affordable housing-for-all account.
- The portion of the funds attributable to the additional \$3 of the surcharge must be deposited into the Account.

All of the remaining funds generated by the entire surcharge will continue to be retained by the county and be deposited into a fund that must be used by the county and its cities and towns for eligible housing activities.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment retains the underlying bill as it passed the House floor, with the following changes to the Landlord Mitigation Program (Program):

- The Senate amendment: (1) provides that, to be eligible, claims must be related to landlord mitigation for renting private market rental units to low income tenants using a "housing subsidy program" (rather than a "source of income" as defined in the section prohibiting discrimination); and defines "housing subsidy program" as a housing voucher established under federal law or other housing subsidy program including, but not limited to, valid short-term or long-term federal, state, or local government, private nonprofit, or other assistance program in which the tenant's rent

is paid either partially by the program and partially by the tenant, or completely by the program directly to the landlord.

- The Senate amendment: (1) allows reimbursement for unpaid rent and unpaid utilities, provided that the landlord submits evidence of the same to the Department of Commerce's satisfaction; and strikes the cap on unpaid rent reimbursement (which had been set at 20 percent of the total claim).

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Judiciary):

(In support) Washington has an affordable housing crisis. Misconceptions, stereotypes and stigmas sometimes associated with people who receive certain forms of rental assistance create unfair barriers to finding and obtaining housing, and this discrimination then limits the effectiveness of the rental assistance efforts. Numerous stakeholders and legislators from both bodies and both parties have been, and continue to be, at the table working on this issue. The bill is different from last year's bill and continues to be worked. People sometimes wait for years to receive federal rental assistance such as Section 8 and then cannot find a landlord that will accept them because of this rental assistance. Discrimination based on source of income also creates a loophole around federal and state antidiscrimination laws that prohibit discrimination based on race and other protected classes. One woman had lived in a rental unit for several years, paying more than she could afford while on the waiting list for Section 8 assistance. When she finally received that assistance, she was told that she could no longer continue to live there. This is not unusual and seems to be experienced by single mothers and persons of color, particularly. One landlord who currently rents to 60 Section 8 tenants in Kitsap County finds it very simple to work with the local housing authority. It takes him only about 10 minutes to complete the paperwork, and the property inspections done with respect to Section 8 are for health and safety and many of the things that inspectors look for are already covered by state law. Moreover, tenants are briefed by the housing authority on how to be a good tenant, and they are specifically advised that illegal behavior can result in the loss of housing. Some cities in Washington, and states like Oregon, already have these protections. Landlords do not suffer any negative effects. Seniors and LGBTQ renters are disproportionately impacted by source of income discrimination. Many of them are living with disabilities and are economically vulnerable and need assistance with housing.

(Opposed) Not all housing authorities are created equal. Experiences with the housing authority in Tacoma have not been entirely positive. Any program needs to be voluntary, and housing authorities need to be good partners. In Tacoma, landlords are forced by the housing authority to sign unilateral contracts. In 2013 the housing authority changed the rules and destabilized many tenants, leading a landlord to subsidize many of the tenants and request the housing authority to "grandfather" existing tenants from the new rules. Property controls will drive landlords out of the rental market.

(Other) Efforts are being made to make sure this works well for landlords, tenants, and the Department of Commerce (Commerce). The stakeholder process is ongoing, and the group seems to be getting close to a solution. At this point, the group is looking for a durable funding source as well as at issues related to Commerce. There is support for the principle of removing source of income discrimination. It imposes an additional barrier for people looking for housing, including those who are reentering society. One small landlord was only the third landlord to receive a mitigation payment pursuant to the proviso in the Capital Budget, but there was an 18-month delay between repairs and receipt of the payment due to the length of time it took to get through the small claims court process. It is best to incentivize landlords to rent to persons with a variety of sources of income rather than to impose punishment for not doing so. The rules for a tenant are three-fold: do not damage the unit; pay the rent; and be a good neighbor.

Staff Summary of Public Testimony (Appropriations):

(In support) Most households affected by this bill include children, elderly, or people with disabilities. Currently, it is legal to categorically deny housing to tenants based on income levels or rental assistance. Craigslist advertisements commonly tell certain tenants not to apply. This creates inefficiencies in our voucher system and impedes Washington's ability to prevent and end homelessness. This bill version is a win-win for tenants, landlords, and local government. The fiscal impact of the bill is for the Landlord Mitigation Program (Program), which will allow landlords renting to low-income tenants to apply for reimbursement of damages that exceed normal wear and tear. The Program will be paid for by a \$3 increase in the Affordable-Housing-For-All surcharge, which was created in 2002, bringing the surcharge to a total of \$13. The additional \$3 surcharge is split so that 40 percent will go into the Landlord Mitigation Program Account-State and 60 percent will go to counties. Of the state portion, 10 percent will fund the administration of the Program through the Department of Commerce (Department). This surcharge is a good fit with this new Program because coupled with the ban on discrimination, it will ensure tenants with income or rental assistance have more opportunities and fewer barriers to rental housing. Section 8 tenants are low-income and often struggle providing landlords with significant deposits, but having the state as a guarantor will help tenants with that hurdle. There is also a perception that Section 8 tenants are a higher risk than non-Section 8 tenants, but that is not always the case. The mitigation funds should significantly mitigate that concern. The maximum claim is more than most non-Section 8 tenants have available for damages or security deposits, and consequently, Section 8 tenants could be seen as a safer risk with more money on the table to mitigate any damages.

(Opposed) None.

(Other) The Program is an important tool to decrease barriers for securing housing. Considering a landlord's financial interest, somebody who is on a subsidy is made equal to someone who is not on a subsidy. There are a few issues that need to be worked out, such as ways the fund could pay for security deposits to pay for damages, holding fees, and failed inspections. Additionally, the timing for the Department to hire third-party inspectors to verify damages is not appealing for landlords. The Department's current pilot project takes small claims judgements. The Department should make judgements without a third party. There are also potential issues with subsidy location and timing.

Persons Testifying (Judiciary): (In support) Representative Riccelli, prime sponsor; Michele Thomas, Washington Low Income Housing Alliance; Jim Adrian, Adrian Properties; Kurt Weist, Bremerton Housing Authority; Toya Thomas; and Debbie Carlsen, LGBTQ Allyship.

(Opposed) Dan White, Washington Landlord Association; and Ronald Bunn.

(Other) Brett Waller, Washington Multi-Family Housing Association; Kyle Woodring, Rental Housing Association; Christopher Poulos, Washington Statewide Reentry Council; and William Shadbolt, Rental Housing Association of Washington.

Persons Testifying (Appropriations): (In support) Michele Thomas, Washington Low Income Housing Alliance.

(Other) Chester Baldwin, Washington Landlord Association; and Kyle Woodring, Rental Housing Association.

Persons Signed In To Testify But Not Testifying (Judiciary): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.