

# HOUSE BILL REPORT

## E2SSB 5160

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**As Reported by House Committee On:**  
Housing, Human Services & Veterans  
Appropriations

**Title:** An act relating to addressing landlord-tenant relations by providing certain tenant protections during the public health emergency, providing for legal representation in eviction cases, establishing an eviction resolution pilot program for nonpayment of rent cases, and authorizing landlord access to certain rental assistance programs.

**Brief Description:** Addressing landlord-tenant relations by providing certain tenant protections during the public health emergency, providing for legal representation in eviction cases, establishing an eviction resolution pilot program for nonpayment of rent cases, and authorizing landlord access to certain rental assistance programs.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Kuderer, Lias, Conway, Das, Lovelett, Saldaña and Wilson, C.).

**Brief History:**

**Committee Activity:**

Housing, Human Services & Veterans: 3/16/21, 3/25/21 [DPA];  
Appropriations: 3/31/21, 4/1/21 [DPA(HHSV)].

**Brief Summary of Engrossed Second Substitute Bill  
(As Amended By Committee)**

- Requires landlords to offer tenants a repayment plan for unpaid rent that accrued between March 1, 2020, and six months following the expiration of the eviction moratorium or the end of the public health emergency, whichever is greater, with monthly payments no more than one-third of the tenant's monthly rent.
- Provides that landlords may file reimbursement claims under the Landlord Mitigation Program for unpaid rent that accrued between March 1, 2020, and six months following the expiration of the eviction

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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.*

moratorium, when the tenant has voluntarily vacated or abandoned the tenancy or when the tenant defaults on a repayment plan.

- Requires the Administrative Office of the Courts to contract with dispute resolution centers to establish a two-year, statewide Eviction Resolution Pilot Program to facilitate the resolution of nonpayment of rent cases.
- Provides that, subject to funds appropriated for this purpose, the court must appoint counsel for indigent tenants in unlawful detainer proceedings.
- Authorizes landlords access to certain rental assistance programs through the Department of Commerce, if feasible.

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## HOUSE COMMITTEE ON HOUSING, HUMAN SERVICES & VETERANS

**Majority Report:** Do pass as amended. Signed by 7 members: Representatives Peterson, Chair; Taylor, Vice Chair; Barkis, Bateman, Chopp, Leavitt and Thai.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Caldier, Ranking Minority Member; Gilday, Assistant Ranking Minority Member.

**Staff:** Lena Brodsky (786-7192).

### **Background:**

#### Residential-Landlord Tenant Act.

The Residential Landlord Tenant Act (RLTA) regulates the relationship between landlords and tenants, and includes provisions regarding the duties of tenants and landlords, remedies for violations of those duties, and prohibited actions.

In the last biennium, the Legislature enacted several reforms covering a wide variety of issues governing the landlord-tenant relationship, including requiring landlords to accept any pledge of emergency rental assistance funds provided to the tenant from a governmental or nonprofit entity before the notice to pay or vacate for nonpayment of rent expires, and to suspend any court action for seven court days after they provide necessary payment information to the nonprofit or governmental entity to allow for payment of the assistance funds.

#### Enforcement Remedies and Unlawful Detainer.

Landlord remedies for a tenant's failure to comply with his or her duties includes eviction of a tenant in unlawful detainer status. The definition of "unlawful detainer" applicable under the RLTA, as well as with respect to other tenancies not governed by the RLTA, is found in a chapter separate from the RLTA, chapter 59.12 RCW. A tenant is in unlawful detainer

status when he or she:

- holds over after the expiration of the specified term for which it is let to him or her. When real property is leased for a specified term or period, the tenancy shall be terminated without notice at the expiration of the specified term or period;
- continues in possession of premises leased for an indefinite period, such as month to month, after the end of any month or period when the landlord, more than 20 days prior to the end of the month or period, served notice requiring the tenant to quit the premises at the end of the month or period;
- continues in possession after a default in rent, and after a three-day notice to pay rent or vacate has been served, without complying with the duty to pay;
- continues in possession after failing to comply with a duty of tenancy other than to pay rent, and after a 10-day notice to comply or vacate has been served, without complying with the duty;
- permits waste upon the premises, carries on an unlawful business, or maintains a nuisance and remains in possession after the service of a three-day notice to quit the premises;
- enters upon the premises without permission, without having color of title, and refuses to leave after a three-day notice. Such a person may also be subject to criminal laws; or
- commits or permits any gang-related activity as prohibited by the RLTA.

#### Stay of the Writ of Restitution in Unlawful Detainer Proceeding.

A tenant against whom a judgment has been entered for the restitution of the premises and forfeiture of the tenancy due to nonpayment of rent may obtain a stay of the writ of restitution upon good cause and on such terms that the court deems fair and just for both parties.

In making a determination with respect to a stay, the court is to consider several factors including the tenant's willful or intentional default, whether nonpayment was caused by exigent circumstances beyond the tenant's control, the tenant's conduct, and hardship on the tenant if evicted. A tenant who has been served with three or more notices to pay or vacate within 12 months prior to the notice to pay or vacate upon which the unlawful detainer proceeding is based is prohibited from seeking a stay.

#### Eviction Moratorium.

On March 18, 2020, Governor Inslee issued Proclamation 20-19 to prohibit a number of activities related to evictions by all residential landlords operating residential rental property in the state. Since then, the Governor has issued multiple extensions of the eviction moratorium with the current variation, Proclamation 20-19.5, set to expire on March 31, 2021.

The eviction moratorium prohibits residential landlords, manufactured housing community landlords, property managers, and property owners from:

- serving or enforcing, or threatening to serve or enforce, any notice requiring a

- resident to vacate any dwelling or parcel of land occupied as a dwelling, including an eviction notice, notice to pay or vacate, notice of unlawful detainer, notice of termination of rental, or notice to comply or vacate, as applied to tenancies or other housing arrangements, such as hotel/motel or camping area stays of more than 14 days, that have expired or that will expire during the moratorium's effective period; and
- seeking or enforcing, or threatening to seek or enforce, judicial eviction orders involving any dwelling or parcel of land occupied as a dwelling, unless, as applied to both circumstances:
    - an affidavit to the eviction or termination of tenancy notice attests that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or
    - at least 60 days' written notice of the property owner's intent to personally occupy the premises as a primary residence or sell the property is provided to the tenant by affidavit signed under penalty of perjury.

The current moratorium also prohibits landlords from:

- assessing, or threatening to assess, late fees for the nonpayment or late payment of rent or other charges as of February 29, 2020;
- retaliating against individuals for invoking their rights or protections under the moratorium or any other state or federal law providing rights or protections for residential dwellings, with the exception for landlords to engage in reasonable communications with tenants to explore repayment plans;
- assessing, or threatening to assess, rent or other charges for any period during which the resident's access to, or occupancy of, the dwelling was prevented as a result of COVID-19; and
- treating any unpaid rent or other charges as an enforceable debt or obligation that is owing or collectable, when nonpayment of rent or other charges resulted from COVID-19 and occurred on or after February 29, 2020, including attempts to collect, or threats to collect, through a collection agency, by filing an unlawful detainer or other judicial action, withholding any portion of a security deposit, billing or invoicing, reporting to credit bureaus, or by any other means, with the exception for landlords who demonstrate by a preponderance of the evidence to a court that the resident was offered, and refused or failed to comply with, a repayment plan that was reasonable based on the individual financial, health, and other circumstances of that resident.

A failure to provide a reasonable repayment plan under the moratorium is a defense to any lawsuit or other attempts to collect. A landlord may engage in customary and routine communications with residents of a dwelling or parcel of land occupied as a dwelling.

#### Eviction Resolution Pilot Program.

On September 9, 2020, the state Supreme Court issued an order authorizing superior courts to implement an Eviction Resolution Program (ERP). Six counties chose to participate in

the pilot ERP. The ERP requires landlords to undertake efforts to engage tenants in pre-filing resolution efforts including direct negotiation, facilitated conciliation services, and, upon agreement of both parties, formal mediation provided by the participating Dispute Resolution Centers (DRCs).

The ERP is a two-step process. Along with a rent due notice/letter, a landlord will send notice number 1, a request for a formal first meeting involving the two parties and DRC staff. Notice number 1 also includes contact information of the participating DRC, rental assistance resources, and the county tenant attorneys. Upon receipt of the rent due notice and notice number 1, the tenant has 14 days to voluntarily engage in the process. If the tenant does not respond to the initial contact, the landlord sends the tenant notice number 2, which is another request to engage in the ERP program. The tenant has 10 days to respond to this second contact and the landlord sends a copy of notice number 2 to the participating DRC.

Once a landlord and tenant voluntarily enter into the ERP process, specialists will work with both parties and external partners to resolve the issue of nonpayment and future payments. If resolution cannot be achieved, formal mediation will be offered to the landlords/tenants at no cost.

The ERP process can be initiated by either the landlord or the tenant without service of a 14-day notice. If the tenant initiates or responds to a notice, the landlord is obligated to participate in the process. Once the Governor's eviction moratorium—Proclamation 20-19.5—and any of its amendments or extensions expire, the ERP will require landlords to engage in pre-litigation conciliation efforts prior to filing an unlawful detainer action.

#### Right to Counsel.

The United States and Washington constitutions, as well as state statutes and court rules, provide for the right to legal counsel for indigent persons in certain court proceedings, including criminal, juvenile, involuntary commitment, and dependency cases.

"Indigent" is defined as a person, at any stage of the court proceedings, who:

- receives one of several types of public assistance;
- has been involuntarily committed to a public mental health facility;
- has an annual income of 125 percent or below the federal poverty level; or
- has insufficient funds to retain counsel.

There is no federal or state guaranteed right to counsel for indigent tenants in unlawful detainer cases. A few cities in the country have implemented some form of right to counsel for tenants in eviction proceedings.

#### Office of Civil Legal Aid.

The Legislature established the Office of Civil Legal Aid (OCLA) in 2005 as an independent agency in the judicial branch. The OCLA is responsible for the administration

and oversight of state funds that are appropriated by the Legislature to provide civil legal aid services. The OCLA does not provide legal aid services directly, but contracts with attorneys to provide civil legal aid services to eligible low-income clients throughout the state. The Northwest Justice Project is the primary statewide provider of civil legal aid services. The OCLA is responsible for reporting to the legal aid oversight committee on the use of state funds for legal aid.

#### Dispute Resolution Centers.

Dispute Resolution Centers were first authorized in statute as part of the 1984 Court Improvement Act in order to provide forums in which persons may voluntarily participate in the resolution of disputes in an informal and less adversarial atmosphere than a judicial setting. A DRC may be created and operated by a city or county, or by a nonprofit corporation. Participation by all parties is voluntary, and services offered by a DRC must be provided without charge to the participants or for a fee that is based upon the participant's ability to pay. Dispute Resolution Centers handle numerous types of cases, including those that involve landlords and tenants.

#### State Rental Assistance Programs.

The Department of Commerce (Commerce) administers a number of rental assistance programs that serve a variety of populations depending on certain eligibility standards. Funds received from the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act have allowed Commerce to set up an eviction rent assistance program to help qualifying households impacted by COVID-19. Funds are distributed to county grantees, such as county governments and nonprofit entities, which provide rent assistance to qualifying households.

#### Landlord Mitigation Program.

The Landlord Mitigation Program (LMP) allows landlords to seek reimbursement for claims related to landlord mitigation for renting private market rental units to low-income tenants using a housing subsidy program by submitting such claims to Commerce. The program offers up to \$1,000 in reimbursement to landlords for potentially required move-in upgrades, up to 14 days of lost rental income, and up to \$5,000 in any unpaid rent and utilities and qualifying damages caused by a tenant during the tenancy. Any landlord that has screened, approved, and offered rental housing to any applicant that will be using any form of housing subsidy program is eligible to submit a claim, except for properties operated by housing authorities. The LMP also includes landlord claims for reimbursement in unlawful detainer cases where judicial discretion is exercised and there is an unpaid judgment for rent, late fees, attorneys' fees, and costs, including any unpaid portion of the judgment after the tenant defaults on a court ordered-payment plan.

#### Manufactured/Mobile Home Landlord-Tenant Act.

The Manufactured/Mobile Home Landlord-Tenant Act (MHLTA) governs the legal rights, remedies, and obligations arising from any rental agreement between a landlord and a tenant regarding a mobile home lot within a mobile home park where the tenant has no ownership

interest in the property, or in the association that owns the property.

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### **Summary of Amended Bill:**

#### Tenant Protections.

For a tenant's nonpayment of rent that accrued between March 1, 2020, and six months following the expiration of the eviction moratorium, a landlord may not:

- impose late fees or other charges;
- consider the nonpayment as a factor in any housing decision effecting a tenant's right or ability to occupy a rental dwelling unit, as applied to both tenants and prospective tenants; or
- report to a prospective landlord:
  - the tenant's nonpayment of rent during that period; or
  - an unlawful detainer action that resulted from a tenant's nonpayment of rent during that period.

A landlord or prospective landlord may not:

- deny, discourage application for, or otherwise make unavailable any dwelling unit based on a tenant's or prospective tenant's medical history, including any prior or current exposure or infection to the COVID-19 virus; or
- inquire about, consider, or require disclosure of a tenant's or prospective tenant's medical records or history, unless such disclosure is necessary to evaluate a reasonable accommodation or modification request.

A landlord or prospective landlord in violation of these prohibitions and requirements is liable for 4.5 times the monthly rent, court costs, and attorneys' fees.

"Eviction moratorium" means the Governor's Proclamation 20-19.6 proclaiming a moratorium on certain evictions, and any subsequent orders extending or amending the proclamation.

"Public health emergency" means the Governor's Proclamation 20-05 and any subsequent orders extending or amending the proclamation due to COVID-19.

"Tenant" is defined to include persons residing in transient lodging, such as hotels/motels or camping areas as primary dwellings, for 30 days or more prior to March 1, 2020. "Tenant" does not include any individual residing in a hotel, motel, or camping area as their primary dwelling for more than 30 days after March 1, 2020, if the hotel, motel, or camping area has provided the individual with a seven-day eviction notice, which must provide certain legal aid resource information, and does not include occupants of homeless mitigation sites or persons entering onto land without the permission of the owner or lessor. Any local government provision of solid waste or hygiene services to unsanctioned encampments does not constitute permission to occupy land.

### Landlord Mitigation Program.

A landlord may file a reimbursement claim under the LMP for unpaid rent that accrued between March 1, 2020, and six months following the expiration of the eviction moratorium, when:

- the tenant has voluntarily vacated or abandoned the tenancy; or
- when the tenant defaults on a repayment plan, and the tenancy has not been terminated at the time of reimbursement.

A landlord is ineligible for reimbursement under the LMP for unpaid rent that accrued between March 1, 2020, and six months following the expiration of the eviction moratorium when the tenant has been evicted. Claim reimbursement may not exceed \$15,000. For such claims, the landlord may not take legal action or pursue a collection action against the tenant to seek any remaining unpaid rent or recover for damages once reimbursed under the LMP.

Funds in the LMP account must be prioritized by Commerce for allowable costs, and may only be used for other allowable costs when funding exceeds the amount needed to pay those claims.

### Repayment Plans.

If a tenant has unpaid rent that accrued between March 1, 2020, and six months following the expiration of the eviction moratorium or the end of the public health emergency, whichever is greater, the landlord must offer the tenant a reasonable schedule for repayment of the unpaid rent, with monthly payments no more than one-third of the monthly rent. If the tenant fails to accept the terms of a reasonable repayment plan within 14 days of the offer, the landlord may proceed with an unlawful detainer action subject to any requirements under the ERP. If the tenant defaults on any rent owed under a repayment plan, the landlord may apply for reimbursement from the LMP up to \$15,000 or proceed with an unlawful detainer action, subject to any requirements under the ERP.

During any unlawful detainer proceeding, the court must consider the tenant's circumstances, including any decreased income or increased expenses due to COVID-19, and the repayment plan terms offered during any unlawful detainer proceeding. It is a defense to an unlawful detainer action if the landlord did not offer a repayment plan.

Any repayment plan entered into by the landlord and tenant must:

- begin no sooner than 30 days after the plan is offered;
- cover rent only and not legal fees, late fees, or other charges;
- allow for payment from any source of income, including benefits, assistance or subsidy programs, or from pledges by nonprofits, churches, religious institutions, or government entities; and
- not be conditioned on:
  - the tenant's compliance with the rental agreement, payment of attorneys' fees,



court costs, or other costs related to litigation if the tenant defaults on the agreement;

- a requirement that the tenant apply for or provide proof of receipt of governmental benefits; or
- the tenant's waiver of any rights to an unlawful detainer notice or related provisions before a writ of restitution is issued.

Eviction Resolution Pilot Program.

Subject to funds appropriated for this purpose, the Administrative Office of the Courts (AOC) must contract with DRCs within or serving each county to establish a two-year, statewide court-based ERP operated in accordance with Washington Supreme Court Order No. 25700-B-639 and any standing judicial order of the individual superior court. The ERP must be used to facilitate the resolution of nonpayment of rent cases between a landlord and tenant before the landlord files an unlawful detainer action. Before filing an unlawful detainer action for nonpayment of rent, the landlord must provide a 14-day pay or vacate notice and an additional notice to the tenant informing them of the ERP. The landlord must retain proof of service or mailing of the additional notice.

The additional notice to the tenant must provide at least the following information regarding the ERP:

- contact information for the local DRC;
- contact information for the county's housing justice project or, if none, a statewide organization providing housing advocacy services for low-income residents;
- a statement providing: "The Washington State Office of the Attorney General has this notice in multiple languages on its website. You will also find information there on how to find a lawyer or advocate at low or no cost and any available resources to help you pay your rent. Alternatively, you may find additional information to help you at <http://www.washingtonlawhelp.org>";
- the name and contact information of the landlord, the landlord's attorney, if any, and the tenant; and
- a statement that "Failure to respond to this notice within 14 days may result in the filing of a summons and complaint for an unlawful detainer action with the court."

At the time of service or mailing of the pay or vacate notice and additional notice to the tenant, a landlord must also send copies of these notices to the local DRC serving the area where the property is located.

A landlord must secure a certification of participation by the appropriate DRC before an unlawful detainer action for nonpayment of rent may be heard by the court.

Any superior court, in collaboration with the DRC located within or serving the same county, participating in the ERP must report annually to the AOC beginning January 1, 2022, until January 1, 2023, on the following:

- the number of unlawful detainer actions for nonpayment of rent that were subject to

- ERP requirements;
- the number of referrals made to DRCs;
- the number of nonpayment of rent cases resolved by the ERP;
- how many instances the tenant had legal representation, either at the conciliation stage or formal mediation stage;
- the number of certifications issued by DRCs and filed by landlords with the court; and
- any other information that relates to the efficacy of the ERP.

By July 1, 2022, until July 1, 2023, the AOC must provide a report to the Legislature summarizing the ERP report data shared by the superior courts and DRCs.

#### Right to Counsel.

Subject to appropriations, the court must appoint an attorney for an indigent tenant in an unlawful detainer proceeding. The OCLA must prioritize providing legal representation to indigent tenants in counties in which the most evictions occur and to indigent tenants who are disproportionately at risk of eviction. "Indigent" means any person who:

- receives assistance from certain public and medical benefits programs; or
- has an annual income, after taxes, at 200 percent or below the federal poverty level.

The OCLA is responsible for implementation of the indigent tenant's right to counsel. The OCLA must contract with attorneys and other agencies to implement tenants' right to counsel within appropriated amounts. Within 90 days of the effective date of the act, the OCLA must also submit a plan to the Legislature and AOC outlining full implementation of the Right to Counsel Program within 12 months of the effective date of the act.

The uniform 14-day pay or vacate notice for nonpayment of rent is updated to inform tenants of the appointment of counsel for qualifying low-income renters, contact information for tenants believing they may qualify, general information regarding DRC services, as well as state and local rental assistance programs as listed on the Office of the Attorney General's website. The notice is also updated to inform tenants that upon expiration of the ERP:

- a landlord must provide the 14-day notice to the DRC located within or serving the county of tenancy;
- DRCs are encouraged to notify the housing justice project or Northwest Justice Project located within or serving the county in which the DRC is located, as appropriate, once the 14-day notice is received from the landlord; and
- it is a defense to an unlawful detainer eviction if a landlord does not provide the notice to the appropriate DRC.

The eviction summons is also updated to inform tenants of the appointment of counsel for low-income tenants, to provide contact information for tenants who believe they may qualify, and general information regarding DRC services.

### State Rental Assistance Programs.

Commerce must authorize landlords an opportunity to apply to certain state rental assistance programs (the Consolidated Homeless Grant Program, Emergency Solutions Grant Program, and any rental assistance program funded through federal COVID-19 relief funds) if feasible, and establish necessary application and eligibility requirements and any conditions on the receipt of funds.

### Payment of Rent into Court Registry.

The additional, optional notice for landlords to use in nonpayment of rent cases, instructing tenants with unpaid rent to pay into the court registry the amount of rent allegedly owed or file a sworn statement denying that rent is owing, is eliminated.

### Additional Changes to the Residential Landlord Tenant Act and Manufactured/Mobile Home Landlord-Tenant Act.

Any oral or written agreement between the landlord and tenant pursuant to an unlawful detainer action in which the tenant agrees to pay any amount other than for rent due or rent to retain the tenancy, pay any amount more than statutory judgment limits, or waives any rights afforded to the tenant under the court exercise of judicial discretion in nonpayment of rent cases or under the RLTA is void and unenforceable.

### *Stay of the Writ of Restitution.*

For one year beyond the expiration of the eviction moratorium, a tenant may demonstrate ability to pay in order to reinstate the tenancy after judgment in favor of the landlord by means of reimbursement from the LMP; in such cases, the restriction that a tenant who has been served with three or more notices to pay or vacate for failure to pay rent within one year may not seek relief for reinstating the tenancy does not apply.

Licensed assisted living facilities, nursing homes, adult family homes, and registered continuing care retirement communities are exempt from the provisions of the act.

Provisions relating to the appointment of counsel for indigent tenants and the eviction summons form are applied to unlawful detainer actions for MHLTA tenancies.

### **Amended Bill Compared to Engrossed Second Substitute Bill:**

#### *Tenant Protections.*

For a tenant's nonpayment of rent that accrued between March 1, 2020, and six months following the expiration of the eviction moratorium, rather than the expiration of the eviction moratorium, a landlord may not:

- impose late fees or other charges;
- consider the nonpayment as a factor in any housing decision effecting a tenant's right or ability to occupy a rental dwelling unit, as applied to both tenants and prospective tenants; or
- report to a prospective landlord:

- the tenant's nonpayment of rent during that period; or
- an unlawful detainer action that resulted from a tenant's nonpayment of rent during that period.

A prospective landlord, in addition to a landlord, is prohibited from:

- denying or discouraging application any rental dwelling unit based on a tenant's or prospective tenant's medical history; and
- inquiring about, considering, or requiring disclosure of a tenant's or prospective tenant's medical records or history, unless such disclosure is necessary to evaluate a reasonable accommodation or modification request.

The provision that any violation of these prohibitions constitutes a violation of the laws against discrimination is stricken.

#### *Landlord Mitigation Program.*

A landlord may file a reimbursement claim under the LMP for unpaid rent that accrued between March 1, 2020, and six months following the expiration of the eviction moratorium, rather than the expiration of the eviction moratorium, when:

- the tenant has voluntarily vacated or abandoned the tenancy; or
- when the tenant defaults on a repayment plan, and the tenancy has not been terminated at the time of reimbursement.

Language is added that a landlord is ineligible for reimbursement under the LMP for unpaid rent that accrued during this time period where the tenant has been evicted. Claim reimbursement may not exceed \$15,000, rather than \$5,000. Funds in the LMP account must be prioritized by Commerce for allowable costs, and may only be used for other allowable costs when funding exceeds the amount needed to pay those claims.

#### *Repayment Plans.*

If a tenant has unpaid rent that accrued between March 1, 2020, and six months following the expiration of the eviction moratorium or the end of the public health emergency, whichever is greater, rather than the end of the public health emergency, the landlord must offer the tenant a reasonable schedule for repayment of the unpaid rent. To the extent available funds exist for rental assistance, the tenant or the landlord may continue to seek rental assistance to reduce or eliminate the unpaid rent balance.

#### *Eviction Resolution Pilot Program.*

At the time of service or mailing of the pay or vacate notice and additional notice to the tenant informing them of the ERP, the landlord is no longer required to send copies of the notice to the local housing justice project. A landlord must secure a certification of participation by the appropriate DRC before an unlawful detainer action for nonpayment of rent may be heard by the court.

#### *Right to Counsel.*

Subject to appropriations, the court must appoint an attorney for an indigent tenant in an unlawful detainer proceeding. The OCLA must prioritize providing legal representation to indigent tenants in counties in which the most evictions occur and to indigent tenants who are disproportionately at risk of eviction.

Language is added to the pay or vacate notice for nonpayment of rent and the eviction summons to provide contact information for the appointment of counsel for qualifying low-income renters.

*Stay of the Writ of Restitution.*

Language is added that, for one year beyond the expiration of the eviction moratorium, a tenant may demonstrate ability to pay in order to reinstate the tenancy after judgment in favor of the landlord by means of reimbursement from the LMP; in such cases, the restriction that a tenant who has been served with three or more notices to pay or vacate for failure to pay rent within one year may not seek relief for reinstating the tenancy does not apply.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:**

(In support) Those behind in rent are disproportionately low-income, people of color, and people with disabilities. The state should come together to help those behind in rent. This bill creates opportunities for landlords and tenants to come together. The repayment plans in this bill are required, and if those fail, the landlord and tenant go through the DRC process. There is strong support for this bill. The state cannot let the eviction moratorium expire without a mechanism in place. Many cities in the state, before the pandemic, were already in an affordable housing crisis. There needs to be more tools to address this crisis. The state must emerge from the pandemic with the tools necessary to support landlords and tenants. Renters who currently owe back rent are very worried about the eviction moratorium ending. Renters would like to see the eviction moratorium extended to prevent a huge number of evictions. Residents with disabilities need this bill to pass. This bill does not need means testing.

Washington would be the first state in the country to establish a right to counsel for certain tenants in unlawful detainer proceedings. This would provide huge benefits, which landlords support. Seven states are currently considering providing a right to counsel for indigent tenants. The statistics from the cities that have the right to counsel show that

eviction filings have decreased significantly. Studies show that providing a right to counsel for tenants saves millions of dollars for the cities that have it. Landlords understand when they enter the industry that they are entering a heavily regulated market. There is a very real power imbalance between landlords and tenants. One way to fix this imbalance is to provide counsel for tenants who need it. The bill provides much needed legal assistance to tenants at risk of losing their housing. Approximately only 8 percent of tenants facing eviction in Washington currently have counsel. This bill could reduce evictions by as much as 86 percent, as providing the right to counsel did in New York City. The money this bill will save the state outweighs the short-term fiscal impact.

The bill provides necessary requirements to ensure that tenants are not kicked out of their homes during a pandemic. This bill provides more time to the tenants while helping them get resources. There is strong support for this bill; keeping residents housed is essential for the health outcomes of all Washingtonians. This bill has undergone a lot of changes. House Bill 1441 had more thorough protections for tenants and the more protective provisions of that bill should be added to this bill.

(Opposed) Every time the RLTA changes, it increases expenses for landlords. Changes to the RLTA have been made for the last two years, and now there is consideration of making more changes for the third year in a row. Landlords cannot keep up with these changes. The bill imposes several new restrictions on the landlords who are already struggling. The Legislature has been hard on small property owners and this bill continues that trend. The bill does not address the need right now for a compassionate end to the eviction moratorium. There needs to be a limit placed on the length of the repayment plans landlords must offer tenants. The bill has some positive aspects, but other components need to be adjusted. To ensure that those who have been most affected get assistance, the LMP reimbursement cap should be increased from \$5,000 to \$15,000. There is concern that the bill creates a separate class of people, those who live in hotels, and this is unconstitutional.

**Persons Testifying:** (In support) Senator Kuderer, prime sponsor; John Pollock, National Coalition for a Civil Right to Counsel; Liliana; Alicia Glenwell; Amber Abrahamson, Tenants Union of Washington State; Ashok Chandwaney; Arianna Laureano; Mayor Penny Sweet, City of Kirkland; Max Savishinsky, Washington Physicians for Social Responsibility; Tara Villalba, Bellingham Tenants Union; Mindy Woods, Resident Action Project; Edmund Witter, King County Bar Association; and Michele Thomas, Washington Low Income Housing Alliance.

(Opposed) Christopher Ragen; Brett Waller, Washington Multi-Family Housing Association; George Petrie, Goodman Real Estate; Erika Nava-Sanchez; and Brandy Escobedo Schwartz, Yakima Valley Landlords Association.

**Persons Signed In To Testify But Not Testifying:** Jim Bamberger, Washington State Office of Civil Legal Aid; Violet Lavatai, Tenants Union of Washington; Tracy Turner; Sakara Remmu, The Washington Black Lives Matter Alliance; Emily Murphy, Washington

Community Action Network; Sandra Toussaint, American Federation of State, County and Municipal Employees Council 28 and Washington Federation of State Employees; Sarah Nagy, Columbia Legal Services; Ryan Donohue, Habitat for Humanity Seattle-King County; Clifford Cawthon, Black Lives Matter Seattle-King County; Tracy Turner, Housing Advocate; Nora Schultz; David Nagel; Chantell Arnold; Brett Frank-Looney, Housing Provider; and Karl Neiders, The Neiders Company.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass as amended by Committee on Housing, Human Services & Veterans. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

**Minority Report:** Do not pass. Signed by 13 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Dye, Hoff, Jacobsen, Rude, Schmick and Steele.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Harris.

**Staff:** Jessica Van Horne (786-7288).

### **Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Housing, Human Services & Veterans:**

No new changes were recommended.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill contains an emergency clause and takes effect immediately.

### **Staff Summary of Public Testimony:**

(In support) This bill will help stabilize tenants during a critical period. While an affordable housing crisis has been a persistent problem before COVID-19, the pandemic has been a difficult period for tenants and housing providers. The eviction moratorium has prevented tenants from falling into homelessness during the pandemic. However, without an off-ramp from the moratorium, many individuals and families will lose their housing on July 1, 2021. Without a legislative solution, tenants, housing providers, and local governments believe the end of the eviction moratorium will worsen the current homelessness crisis. It

will also slow economic recovery. Census survey data shows that approximately \$750 million, and possibly more, is owed in rental arrears in Washington since March 2020. While most tenants owe three months of back rent or less, those that owe six months or more account for a significant portion of the arrears owed. The rent crisis also disproportionately impacts families and people of color, especially Black renters. These are the same renters who face disproportionate likelihood of contracting COVID-19. Once tenants are more than two months behind on rent, housing providers begin operating in a deficit. This bill provides a reasonable off-ramp from the moratorium for tenants and housing providers. Tenants need hope and time, and this bill provides both.

Providing a right to counsel to tenants will help keep individuals and families in their homes. While most landlords have attorneys who specialize in eviction proceedings, tenants do not, and must navigate the process on their own. The right to counsel will provide equal access to justice, especially after the eviction moratorium expires.

Dispute resolution centers serve as intermediaries who help individuals resolve problems before going to court. The current eviction prevention pilot program has worked well to serve individuals thus far. Dispute resolution centers support expansion of the pilot program as included in the bill.

(Opposed) None.

**Persons Testifying:** Jay Arnold, City of Kirkland; Brett Waller, Washington Multifamily Housing Association; Rachael Myers, Washington Low Income Housing Alliance; Scott Crain, Northwest Justice Project; Annemarie Dooley, Washington Physicians for Social Responsibility; LaDessa Croucher, Resolution Washington; Paula Sardinias, Washington Build Back Black Alliance; and Terri Anderson, Tenants Union of Washington State.

**Persons Signed In To Testify But Not Testifying:** None.