

# SENATE BILL REPORT

## SB 5160

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As Reported by Senate Committee On:  
Housing & Local Government, February 3, 2021

**Title:** An act relating to addressing landlord-tenant relations by providing certain tenant protections during and after public health emergencies, providing for legal representation in eviction cases, and authorizing landlord access to state rental assistance programs.

**Brief Description:** Addressing landlord-tenant relations by providing certain tenant protections during and after public health emergencies, providing for legal representation in eviction cases, and authorizing landlord access to state rental assistance programs. [**Revised for 1st Substitute:** Addressing landlord-tenant relations by providing certain tenant protections during and after public health emergencies, providing for legal representation in eviction cases, establishing an eviction resolution pilot program for nonpayment of rent cases, and authorizing landlord access to state rental assistance programs.]

**Sponsors:** Senators Kuderer, Lias, Conway, Das, Lovelett, Saldaña and Wilson, C..

**Brief History:**

**Committee Activity:** Housing & Local Government: 1/20/21, 2/03/21 [DPS-WM, DNP].

### Brief Summary of First Substitute Bill

- Prohibits landlords from terminating or refusing to renew a rental lease that expires at the end of the lease term or is subject to a 20-day termination notice until two years after expiration of any public health emergency, with exceptions.
- Authorizes tenants adversely impacted by COVID-19 to terminate their tenancy upon a 20-day written notice.
- Requires landlords, before any collection action for unpaid rent accrued during the Governor's eviction moratorium or public health emergency and if the rent debt is no more than six months, to first offer tenants a repayment plan schedule equal to or greater than payment of the rent

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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.*

debt in monthly payments of at least one-sixth of the rent debt owed.

- Requires the court to appoint counsel for indigent tenants at the initial hearing and at trial and for the state to pay the costs of such legal services subject to amounts appropriated.
- 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.
- Requires the Department of Commerce to authorize landlords an opportunity to apply to certain state rental assistance programs, if feasible, while establishing necessary application and eligibility and conditions on receipt of funds .
- Provides that unlawful detainer actions are presumptively of limited dissemination, with exceptions.
- Eliminates the optional notice for landlords to use in nonpayment of rent cases that instructs tenants to pay into the court registry the rent allegedly owed or file a statement denying rent is owed.

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## SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

**Majority Report:** That Substitute Senate Bill No. 5160 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kuderer, Chair; Das, Vice Chair; Cleveland, Lovelett and Salomon.

**Minority Report:** Do not pass.

Signed by Senators Fortunato, Ranking Member; Gildon, Assistant Ranking Member; Short, Assistant Ranking Member; Warnick.

**Staff:** Brandon Popovac (786-7465)

**Background:** Residential-Landlord Tenant Act—Generally. The Residential Landlord-Tenant Act (RLTA) regulates the creation of residential tenancies and the relationship between landlords and tenants of residential dwelling units. The RLTA establishes rights and duties of both tenants and landlords, procedures for the parties to enforce their rights, how and when a tenancy expires or may be terminated, and remedies for violations of the RLTA.

In the last biennium, the Legislature enacted several reforms covering a wide variety of issues governing the landlord-tenant relationship, including:

- modifying how rent is defined and how and when landlords apply tenant payments to

- rent or other costs and nonpossessory fees;
- providing a uniform 14-day notice to pay or vacate with an updated summons form for landlords to use when a tenant fails to pay rent;
- modifying the tenancy reinstatement process, with limits on late fees, before a judgement is issued during an unlawful detainer action;
- establishing how and when judges can exercise judicial discretion to stay a writ of restitution after judgment in cases involving non-payment of rent;
- prohibiting access to such judicial discretion if a tenant is issued three 14-day notices to pay or vacate within the prior 12-month period; and
- 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.

Governor's 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 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:
  1. 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
  2. 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 demonstrates 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. Within these communications, landlords may provide information to residents regarding financial resources, including coordinating with residents to apply for state or other rental assistance programs, and information on how to engage with them in discussions regarding reasonable repayment plans.

The moratorium also strongly encourages landlords and tenants to access services offered at existing dispute resolution centers to come to agreement on payment and repayment solutions.

Eviction Resolution Pilot Program. On September 9, 2020, the Washington Supreme Court (court) issued Order No. 25700-B-639 authorizing an eviction resolution program (ERP) in the superior courts.

Six counties have been chosen to participate in the ERP pilot. Each ERP operates in accordance with the court enabling order and a standing order of the local superior court. These orders require 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). Eligible cases are those where non-payment of rent or non-compliance with previously agreed-upon payment plans are the primary reason for the decision to evict.

The stated objective of the ERP is to:

- bring all parties to the table with the assistance of qualified and trained Eviction Resolution Specialists (specialists);

- explore the amount of rent arrears, the current and prospective circumstances of the tenant, the availability of rent and other assistance to cure or partially cure the arrearage; and
- discover a range of other terms that might resolve the matter in a way that allows the tenant to retain housing and avoid the need for filing an unlawful detainer action.

The ERP is a two-step process. Along with a rent due notice/letter, a landlord will send notice #1, a request for a formal first meeting involving the two parties and DRC staff. Notice #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 #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 #2, which is another request to engage in the ERP program. The tenant has ten days to respond to this second contact and the landlord sends a copy of notice #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 non-payment 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. Both the federal and state constitutions contain guarantees of the right to legal representation for an accused person in a criminal prosecution. Court decisions at both the federal and state levels have construed these provisions to require public funding of indigent legal representation in criminal prosecutions in which the accused's liberty is at stake. Statutes and court decisions have also extended the right to publicly funded counsel to other cases, such as involuntary commitments, dependencies, and juvenile cases. A determination of indigence is to be made for any person requesting the appointment of counsel in a criminal, juvenile, involuntary commitment, dependency, or other case in which the right to counsel attaches. The indigent defense services law defines an indigent person as one who:

- receives public assistance in one of several enumerated forms;
- has been involuntarily committed to a public mental health facility;
- has an income of 125 percent or less of the federal poverty level; or
- has insufficient available funds to retain counsel.

There is no federal or state guaranteed right to counsel for indigent tenants in unlawful detainer eviction cases. A few cities in the county implement some form of right to counsel legal services for tenants.

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. OCLA is responsible for the administration and oversight of state funds that are appropriated by the Legislature to provide civil legal aid services. 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. OCLA is responsible for reporting to the legal aid oversight committee on the use of state funds for legal aid.

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.

Unlawful Detainer Filing Fee. In addition to any other fee required by law, any party filing the first or initial document in any civil action must pay at the time of filing a fee of \$200. However, in an unlawful detainer action under the RLTA or MHLTA, the plaintiff—landlord must pay a case initiating filing fee of \$45, which may not include an order to show cause or any other order or judgment except for a default order or judgment. An additional surcharge of \$40 is also collected at the time of filing and if the defendant—tenant serves or files an answer to the unlawful detainer complaint, the plaintiff—landlord must pay an additional \$112 before proceeding with the unlawful detainer action.

Payment of Rent Into Court Registry. The RLTA includes an additional, optional notice for landlords to use when the unlawful detainer action is based on a tenant's nonpayment of rent. If this form is also served, the tenant must either pay the amount of rent allegedly due and owing into the court registry, or file a sworn statement denying and setting forth the reasons that the rent is owing. If the tenant fails to do one or the other, the landlord is entitled to obtain an immediate writ of restitution without further notice and without paying a bond. The tenant may seek a hearing on the merits and an immediate stay of the writ, but must prove to the court that the landlord is not entitled to possession of the property based on certain legal or equitable defenses.

Limited Dissemination. The RLTA and MHLTA allows courts to order an unlawful detainer action to be of limited dissemination under certain circumstances, including for good cause, and prohibits a tenant screening service provider from disclosing or using the existence of the unlawful detainer action if such an order has been entered.

Dispute Resolution Centers. Dispute Resolution Centers (DRCs) 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 which is based upon the participant's ability to pay. DRCs handle numerous types of cases and disputes, including for 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 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.

**Summary of Bill (First Substitute):** A landlord may not terminate or refuse to renew a rental lease that expires at the end of the lease term or is subject to a 20-day termination notice until two years after expiration of any public health emergency unless:

- the landlord intends to sell the rental dwelling unit or property on which it sits or occupy the rental dwelling unit as their primary residence and at least 60 days' notice is provided to the tenant as an affidavit signed under penalty of perjury; or
- the landlord and tenant reside in the same dwelling unit.

A landlord is not precluded from filing an unlawful detainer action as otherwise authorized under law, including an action for: failure to keep or perform any condition or covenant of the lease; permitting or maintaining any nuisance; or failure to pay rent subject to the requirements of this act.

There is a rebuttable presumption that any notice issued to a tenant who has unpaid rent accrued between March 1, 2020, and the expiration date of the Governor's eviction moratorium and indicating expiration of the lease term or lease termination after 20 days constitutes a reprisal or retaliatory action. A landlord may also not take any adverse action

against a tenant who raises their rights under these provisions.

A tenant's right to possession of a dwelling unit used primarily for residential purposes may not be conditioned on satisfaction of any rent that accrued between March 1, 2020, and the expiration date of the Governor's eviction moratorium.

Any tenant adversely impacted by COVID-19 may terminate their tenancy upon a 20-day written notice, which includes a statement that termination of the tenancy is due to COVID-19. If a tenant elects to issue such a 20-day written notice:

- a landlord may not assess any penalty, early termination fee, or any other amount on the tenant for failing to continue their tenancy;
- any deposit paid by the tenant is not deemed forfeited unless rent from any prior months is still owed upon termination, in which case the landlord may apply deposit funds to the outstanding rent amount or any other charges or apply for reimbursement under the LMP up to \$5,000; and
- such decision may not be a factor in any housing decision affecting the tenant's right or ability to occupy a rental dwelling unit, as applied to both tenants and prospective tenants.

Any nonpayment of any rent that accrued between March 1, 2020, and the expiration date of the Governor's eviction moratorium may also not be 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.

A landlord may not impose late fees or other charges for a tenant's nonpayment of rent during any public health emergency.

A landlord may not deny, discourage application for, or otherwise make unavailable any rental 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. A landlord may also not 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. Any violation of these prohibitions constitutes a violation of the laws against discrimination.

Any landlord in violation of the aforementioned prohibitions and requirements is liable for four and one-half times the monthly rent, with court costs and attorneys' fees. The court must determine the penalty amount in order to deter future violations.

"Public health emergency" is defined as Governor Proclamation 20-05 and its amendments, as well as any emergency need for health care services to respond to a catastrophic disaster or event, a significant infectious disease outbreak, or bioterrorist attack, and the Governor has restricted the free and uninhibited movement of persons in the state, including any mandatory reduction in business service capacity or hours resulting in a loss of employment



or significantly reduced work hours. "Tenant" is defined to include persons residing in transient lodging, such as hotels/motels or camping areas as primary dwellings, for more than 14 days, but 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.

Repayment Plans. Before taking any collection action for unpaid rent accrued between March 1, 2020, and the expiration date of the Governor's eviction moratorium, or during the public health emergency, and if the total amount of unpaid rent is equal to no more than six months of rent due, a landlord must first offer tenants a repayment plan based on a repayment schedule equal to or greater than payment of the outstanding rent debt in monthly payments of at least one-sixth of the outstanding debt owed. A "collection action" is defined as any attempt or threat 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, reporting to tenant screening companies, or by any other means.

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

- begin no sooner than 60 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 non-profits, churches, religious institutions, or governmental entities;
- not include provisions or be conditioned on:
  1. 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;
  2. a requirement that the tenant apply for or provide proof of receipt of governmental benefits; and
  3. the tenant's waiver of any rights to an unlawful detainer notice or related provisions before a writ of restitution is issued.

A repayment plan may also incorporate any unpaid rent before March 1, 2020, but only if an unlawful detainer action for nonpayment of rent was not filed with the court before March 1, 2020.

A landlord may pursue an unlawful detainer action for nonpayment of rent by issuing a 14-day pay or vacate notice if the tenant knowingly refuses the offer of repayment plan, fails to respond to the offer, or defaults on the repayment plan. Issuance of the 14-day pay or vacate notice is subject to any requirements under the eviction resolution pilot program. It is a defense to an unlawful detainer eviction if the landlord did not offer a repayment plan, but not if the landlord can prove that tenant was offered and knowingly refused or failed to respond to or comply with the repayment plan.

Eviction Resolution Pilot Program. The administrative office of the courts (AOC) must contract with DRCs within or serving each county to establish a two-year, statewide court-based eviction resolution pilot program (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 eviction resolution pilot program:

- 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;
- the following statement: "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
- the following statement: "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 housing justice project or other designee of OCLA; and
- the local DRC serving the area where the property is located.

The AOC must establish ERP participation requirements for both the landlord and tenant consistent with any standing judicial order in effect. A landlord must be issued a certification of participation by the appropriate DRC before the landlord may file an unlawful detainer action for nonpayment of rent with the court.

Right to Counsel. By October 1, 2021, or the date that OCLA certifies to the presiding judge of the judicial district that sufficient attorney capacity has been contracted to represent indigent tenants in the respective district consistent with the requirements of this section, whichever is earlier, the court must appoint an attorney for an indigent tenant at any show cause hearing or scheduled trial. "Indigent" is defined as any person:

- receiving assistance from certain public and medical benefits programs;
- with an annual income, after taxes, at 200 percent or below of the federally established poverty level; or

- unable to pay anticipated cost of counsel due to insufficient funds.

The state must pay the costs of right to counsel legal services subject to the availability of amounts appropriated for such services. If appropriated amounts are insufficient to underwrite or maintain full state responsibility to pay for appointed attorney services, the court's duty to appoint attorneys is suspended, and the court is not required to appoint attorneys at the court or county's expense. The duty to appoint attorneys to represent indigent tenants resumes upon certification from OCLA that sufficient funding has been appropriated to pay for the costs of legal services provided by an appointed attorney.

OCLA is responsible for implementation of the indigent tenant's right to counsel program and for the administration of program funds. OCLA must contract with attorneys and other agencies to implement right to counsel legal services within appropriated amounts. Within 90 days of the effective date of the act, OCLA must also submit to the Legislature and Administrative Office of the Courts a plan 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 right to counsel mandate for qualifying low-income renters, 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. Upon expiration of the ERP -

- a landlord must also 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 right to counsel mandate for indigent tenants and to provide general information regarding DRC services.

State Rental Assistance Programs. The Department of Commerce must authorize landlords an opportunity to apply to certain state rental assistance programs, if feasible, and establish necessary application and eligibility requirements and any conditions on the receipt of funds.

Unlawful Detainer Filing Fee. The \$45 initial case filing fee and \$112 fee that is due once the tenant serves or files an answer for unlawful detainer actions under the RLTA and MHLTA are removed, creating a new one-time unlawful detainer action filing fee of \$200.

Limited Dissemination. An unlawful detainer action for a dwelling used as a primary residence is presumptively of limited dissemination. Upon a motion by the landlord after a final judgment, a court may grant an order permitting dissemination of an unlawful detainer

action record only if both a writ of restitution is granted and a final order or judgment is entered in favor of the landlord; however, a court may not grant an order permitting dissemination if either the tenancy is reinstated or good cause exists for prohibiting dissemination. A court may not award attorneys' fees or costs for a motion to grant an order permitting dissemination.

If a court grants an order permitting dissemination of an unlawful detainer action record, upon motion by the tenant, the court must prohibit the dissemination of the record if the tenant has satisfied the monetary judgment or debt associated with the unlawful detainer action or there is other good cause. Any tenant screening service must not disclose both the existence of and any monetary amounts associated with the unlawful detainer action unless the court has granted an order permitting dissemination.

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.

Residential-Landlord Tenant Act—Generally. Any oral or written agreement between the landlord and tenant pursuant to an unlawful detainer eviction 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.

The prohibition on judicial discretion eligibility if a tenant receives three or more pay or vacate notices for failure to pay rent within the previous 12 months of the current pay or vacate notice is removed.

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

Provisions requiring the tenant to be current in the payment of rent, including all utilities, before exercising any of the remedies provided to the tenant under the RLTA are repealed.

Application to the Manufactured/Mobile Home Landlord-Tenant Act. Provisions relating to the right to counsel legal services for indigent tenants, the limited dissemination of unlawful detainer action records, and the eviction summons form are applied to unlawful detainer actions for MHLTA tenancies.

#### **EFFECT OF CHANGES MADE BY HOUSING & LOCAL GOVERNMENT COMMITTEE (First Substitute):**

- Clarifies which types of unlawful detainer actions are permissible after expiration of

the eviction moratorium.

- Clarifies the definition of "public health emergency" as applied to other emergencies not related to Proclamation 20-05 and its amendments.
- Excludes occupants of homeless mitigation sites from the definition of "tenant," and clarifies that the provision of waste/hygiene services to unsanctioned encampments does not constitute permission to occupy.
- Expands the use of the LMP to reimburse claims for any unpaid rent from prior months up to \$5,000 upon early termination of the tenancy by the tenant as authorized under the bill.
- Clarifies that repayment plans only apply when the amount of rent debt owed is no more than six months, to be paid in monthly payments of at least one-sixth of the amount of rent owed.
- Authorizes repayment plans to include unpaid rent accrued before March 1, 2020, but only if an unlawful detainer action for nonpayment of rent was not filed before March 1, 2020.
- Conditions commencement of the right to legal representation on the earlier of October 1, 2021 or when OCLA certifies that sufficient capacity exists for legal representation to be implemented.
- Suspends a court's duty to appoint counsel if appropriated amounts are insufficient to maintain full legal representation, with resumption of legal representation occurring when OCLA certifies that sufficient funding is available.
- Updates the 14-day pay or vacate notice with information regarding DRC services.
- Clarifies which rental assistance programs to which Commerce must provide a landlord the opportunity to apply, if feasible.
- Requires the AOC to contract with DRCs to establish a 2-year eviction resolution pilot program in accordance with the current Supreme Court enabling order and any standing judicial order to facilitate resolution of nonpayment of rent cases.
- Provides that unlawful detainer actions are presumptively of limited dissemination, with exceptions.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: Current resources available for landlords and tenants are inadequate, and both parties need more resources but for different purposes. This bill is the next step to the eviction moratorium and sets up a structure for future pandemics, but is also a work in progress. Legal aid quickly resolves conflicts between landlords and parties, and provides access to resources for tenants to avoid

unnecessary homelessness. The bill will benefit state employees because there has been an increased need for state unemployment insurance. Other cities nationally have seen success in implementing legal right to counsel, including an 86 percent success rate in New York City. Tenants with counsel often leave court with clean eviction records or are provided longer timelines to resolve cases. The bill provides necessary regulations to ensure tenants are not evicted when unpaid rent is not their fault. Immigrant communities have benefited from moratorium protections since some are not eligible for rental or other public assistance, forcing some to seek other private programs. Tenant bills are accumulating due to lost jobs or extremely reduced hours. Some tenants have sold their vehicles to pay rent. Some tenants are not eligible for federal stimulus funds due to immigration status. COVID-19 outbreaks have occurred at certain job sites. Some tenants have faced threats of eviction, threats of accumulated interest, and rent increases from landlords even if there has been no prior instances of nonpayment. Some tenants have paid rent in fear of eviction despite moratorium protections. Some rental assistance programs lack funds to provide greater service to persons on disabilities. The just cause protections in the bill will prevent economic evictions. Landlords already have mortgage relief opportunities and other resources not available for renters. Landlords should always have a legitimate business reason to evict. Public resources are wasted if a landlord can evict after 20 days' notice. Rental assistance is important but an insufficient solution alone to maintain housing security. BIPOC and single mothers are the most impacted by the COVID-19 pandemic. Black women are seven times more likely to be evicted than white men. BIPOC disproportionately pushed into poverty, and this bill would help with discriminatory reasons for eviction. Right to counsel provides access to justice for low-income renters, with less than 8 percent of tenants having access to attorneys. Most pro se tenants are unsuccessful at court. Tenants with counsel likely stay housed and cases will most often settle out of court. Right to counsel is as necessary as public defense mandate and more likely to prevent homelessness and spread of COVID-19. Party negotiations improve with attorney legal services. Evictions disrupt the progression of low-income renters along the housing spectrum. Homelessness often results in poor academic outcomes and health and diet deficiencies. Repayment plan requirements are critical to keep folks housed, keep debt out of collections and allow tenants to catch up on other financial obligations. Repayment plans will help renters endure a slow economic recovery to address other financial obligations. Many tenants are using credit cards to pay rent and other debt resulting in possible negative credit rating. The vast majority of tenants are not looking to scam the system. Burien recently passed just cause and other tenant protections consistent with the bill. At least 170,000 in Washington have not been able to pay rent. The bill provides a glide path out of moratorium while addressing critical civil rights issues. Some counties have failed to provide rental assistance, thus furthering need for other protections in bill. State employees have endured furloughs and reduced work hours while earning less than median income, putting them at risk as renters. Tenants still have the incentive to pay rent since they can still be evicted after the moratorium expires. Some tenants have inherently inequitable access to the court system and some cases have gone forward during the moratorium, with almost all of the tenants without counsel. Landlords are intentionally creating a backlog of month-to-month tenancies in order to evict. Landlords are already using other tactics to



deal with tenants not paying their rent. Mental health and racism in housing policy can be addressed in the bill. The bill provides youth and families a path to getting back on their feet, which is critical since young renters cannot afford a negative eviction history. No city wants to see an increase in families being evicted or facing homelessness. The bill presents a good balance between rental assistance and tenant protections.

CON: The bill has many technical issues, specifically the definition of public health is too broad and might incorporate other crises not similar to the pandemic, other terms need to be defined, and repayment plans need additional information and guidance. The bill is not directed at COVID-19 but looks to reform the eviction process. The Governor's moratorium work group discussed issues not consistent with the bill. Too few tenants with unpaid rent are interested in payment plans. The lack of clarity regarding payment plans is a concern, especially with a 60-day delay period. The bill does not allow landlords to keep tenants in their home. Landlords can no longer afford to pay property taxes and mortgages without rental payments, and the moratorium unfairly allows tenants to avoid paying rent. The bill should promote collaboration between the parties and better connect tenants with rental assistance. The bill discourages the preservation of rental housing and places entire burden of COVID-19 pandemic on housing providers. Smaller landlords with single-family homes will be punished the most. Most rental homes will be sold as owner-occupied residences, thus reducing the rental housing stock. The bill extends the moratorium by another two years. Because some landlords have invested retirement and life savings in their properties, some will be forced to sell. Current scant resources should only go to those tenants who are in need, not skipping rent payments. Landlords are not banks or attorneys and do not have resources for payment plans. Landlords experience stress from some tenants not behaving properly and threatening other tenants and risking the public health and safety. Landlords with rentals next to or near primary dwellings are considering selling their rentals. The bill will wipe out smaller landlords, especially those whose rentals are their only income. Landlords have no recourse with tenants who are still working but not paying rent. Landlords providing free housing cannot continue for two more years. One landlord has been forced to live with their children since tenant has not paid rent. The government should not interfere with private contracts. Nothing in the bill allows tenants to come to the table if things go wrong, and the state needs to encourage more property owners to enter the landlord domain. The eviction moratorium empowers tenants to not communicate with landlords and to take advantage. The bill's sweeping eviction reforms are unnecessary to address specific needs due to the COVID-19 pandemic. Retailers cannot give away free inventory, so why should homeowners have to provide free housing. Very little provisions address or are devoted to landlord protections. Some landlords have not been able to remedy or evict nonpaying tenants since before commencement of the moratorium. The bill devastates small businesses and does not address bad apple tenants. The bill needs to exempt those tenants that were facing eviction before the COVID-19 pandemic hit.

OTHER: The bill does not do enough to address institutional racism in the court system. BIPOC need a non-legal entity process without lawyers, like DRCs. All residents and

tenants deserve equitable access. Amendments are needed to address multiple points in the eviction process where dispute resolution and/or mediation can occur. Landlords already appreciate the eviction resolution pilot program, and a statewide early resolution program should be promoted.

**Persons Testifying:** PRO: Senator Patty Kuderer, Prime Sponsor; Ryan Donohue, Habitat for Humanity Seattle-King County; Sandra Toussaint, AFSCME Council 28 and Washington Federation of State Employees; Galina Betz, G&L Holdings LLC; Jim Bamberger, Washington State Office of Civil Legal Aid; John Pollock, National Coalition for a Civil Right to Counsel; Gia Owens, Washington CAN; Kimberlee Thornton, citizen; Kevin Breen, citizen; Emily Murphy, Washington Community Action Network; Tiffany Butler, citizen; Terri Anderson, Tenants Union of Washington State; Julissa Sanchez, Tenants Union; Kayla Newcomer, YouthCare; Arianna Laureano, citizen; Tyler Graber, Northwest Justice Project; Joelle Craft, citizen; Karen Womack, UNITE HERE Local 8; Eva Lopez, SEIU 925; Kiki Nobbe, SEIU 925; Chris Heer, citizen; Ashok Chandwaney, citizen; Elizabeth Jennings, Community Action of Skagit County; Debbie Carlsen, LGBTQ Allyship; Andrew Dugan, Skagit Volunteer Lawyer Program; Sarah Nagy, Columbia Legal Services; Antonio Salazar, citizen; Alicia Glenwell, citizen; Jaime Brooks, citizen; Krystal Marx, City of Burien; Edmund Witter, King County Bar Association; Mindy Woods, Resident Action Project; Michele Thomas, Washington Low Income Housing Alliance; Cele via sister Rosy, citizen; Eviy Decline, citizen; Stina Janssen, citizen; Liliana Decline, citizen; Carl Schroeder, Association of Washington Cities; Megan Veith, Building Changes; Breanne Schuster, ACLU of Washington; Patricia Decline, citizen.

CON: Cory Brewer, Windermere Property Management NW Inc.; Nathaly Burnett, RE/MAX Sound Properties; Malik Baz, citizen; Bethany Petrova, citizen; Jennifer Lekisch, citizen; Charles Steinberg, citizen; Mark Meinzinger, citizen; Terry Farrah, citizen; Dean Zelikovsky, Reliant Properties NW LLC; Clyde Priddy, Rental Housing Association; Denice Neddo, Wise Move PM; Ross Wolf, Wolf Family Properties LLC; Todd Monohon, Olympic Rentals; Greg Cerbana, Weidner Properties; Maureen Mallonee, citizen; Gordon Haggerty, Rental Housing Association of Washington; Ronald Bunn, citizen; Sara Fried, Washington Multi-Family Housing Association; Audrey Riddle, Washington Multi-Family Housing Association; Travis Maxwell, Washington Multi-Family Housing Association; Shep Salusky, citizen; Guy Parisi, citizen; Russ Millard, Preferred Properties LLC; Chris Dobler, Dobler Management Company; Cristina Dugoni, Davis Investors and Management, LLC; Brett Waller, Washington Multi-Family Housing Association; Carol Lee Braithwait, citizen; Brandon Leyritz, Rental Housing Association of Washington; Cristina Dugoni, Manufactured Housing Communities of Washington.

OTHER: Brett Frank-Looney, citizen; Sakara Remmu, The Washington Black Lives Matter Alliance; Alan Kirtley, University of Washington School of Law; Robert Akhtar, Rental Housing Association of Washington; Sarah Augustine, Resolution Washington, DRC of Yakima & Kittitas Counties.

**Persons Signed In To Testify But Not Testifying:** PRO: Adam Herbst, citizen; P A

Karnay, citizen; Jubert Berrios, Washington CAN; Violeta Sialer, Washington CAN; Jasmine Kaneshiro, citizen; Adeel Riaz, citizen; Nathaniel Baum, citizen; Cynthia Stewart, League of Women Voters of Washington; Shannon Waits, citizen; Nathan Rodke, citizen; Ishbel Dickens, Association of Manufactured Home Owners; Tara Villalba, Bellingham Tenants Union; Noah Martin, Quaker Voice on Washington Public Policy; Ashley Mearns, citizen; Liat Arama, citizen; Colin Donovan, LGBTQ Allyship.

CON: Walter Pienkowski, citizen; Samantha Patterson, citizen; Osho Berman, citizen; Herminio Aguilar, citizen; Jamie Williams, Clockwise Property Management; Joseph Hoffman, citizen; James Luke Shover, citizen; Amy L Ai, citizen; Zijie He, citizen; Barbara Graef, citizen; Kelly Lim, citizen; Maxwell Ehrlich, citizen; Ye Feng, citizen; Greg Petersen, citizen; Timothy Chen, citizen; Andrew Wilson, citizen; Ye Wang, citizen; Rodrick Obando, citizen; Terri Meenach, citizen; Daniel Coleman, Coleman Properties; Judy Gurkin, citizen; Deborah Marshall, citizen; C. Goodell, citizen; Mike Roberts, citizen; Pamela Cook, citizen; Katherine Yundt, citizen; Kathy Bantle, citizen; Noah Trent, citizen; Takashi Koshikawa, Windermere Property Management; Nancy Olmos, citizen; Lyn Archer, citizen; Kindra Lynch, citizen; Che Cui, citizen; Michael Thomas, citizen; Stephen Palevich, Sol Assets LLC; Nadine Siemens, citizen; Kathleen Palevich, Sol Assets LLC; Jiayin Ge, citizen; David Sigmon, citizen; Robert Masse, citizen; Ivan Villescascas, citizen; Tam Tran, citizen; Erci Cheung, citizen; Mario Faria, citizen; Lonna Brockway, citizen; Reza Sadri, citizen; Rick Glenn, Yakima Landlords Association; Kile Sloppy, citizen; Karen Larson, citizen; Jason Lindsey, citizen; Jodi Williams, Steady Property Management; Shakeel Farooque, citizen; Hagen Kennecke, citizen; Kwee Chai, citizen; Stacey Salyer, National Association of Residential Property Managers; Ana Castro, citizen; DeAnna Williams, citizen; Paul Hill, citizen; David Nagel, citizen; Lee Rushton, citizen; Mel Codd, Chapter 11 Bankruptcy Trustee; Minh Trinh, citizen; Monika Mathisen, citizen; Nicole Stoddard, citizen; Steve Fischer, citizen; Joanne Rocheford, citizen; Jill Flodstrom, Jillville, LLC; Colleen Gray, citizen; Alexandra Torns, citizen; Scott McDonald, Hale Waikato LLC; Petra Johnson, citizen; Robert McCausland, 150 Pounds; Sharon Galloway, The Galloway Co. dba Live Wires; Turena Koontz, Firstpoint Real Estate; Ashley Snow, citizen; Paul Schmidt, citizen; Richard Beckman, Richard Beckman Realty Group; Aileen Zacarias, citizen; Scott McIlrath, citizen; Terrence Williams, citizen; Cynthia Cole, citizen; Jennifer Slater, citizen; Bart Olson, XEEPHD; Patrick Calcote, citizen; Kaitlyn Jackson, Dimension Law Group PLLC; Richard and Janet Christopherson, citizen; Whitney Hamann, citizen; Murray Kahn, self employed; Michelle Wilson, Camelot Square MHC; Hugh Stewart, citizen; James Emory Tungsvik, Around The Clock Inc.; Tore Sleveland, citizen; Jeremiah Maranelli, citizen; Joseph McDonald, citizen; Josh Auxier, Acres Property Management; Aaron Passow, citizen; Stephen Oldham, citizen; Matt Copple, Apple Care Home Care; Kody Lyons, citizen; Kyle Boyden, citizen; John Esmond, citizen; David Broening, citizen; Winnie Fung, Yee Gum LLC; Ben Phares, citizen; Sally Shannon, citizen; Kin Fung, Yee Hui LLC; Kathleen Corey, citizen; Christopher Jacobs, citizen; Christianna Colles, citizen; Michelle Wickett, citizen; Ron Hanson, citizen; Dennis Su, citizen; Aimee Esmond, citizen; Mahesh Gopalaiah, citizen; Winnie Fung, Yee Fai LLC; Nehal Raval, citizen; Jim Henderson, Rental Housing Association of Washington; Ryan Garrison, citizen; Shonda

Carrier, citizen; Ronald Greer, citizen; Sayuri Gould, citizen; Andre Zita, Cottonwood Place; Elyse Maffeo, citizen; Timothy Fisher, citizen; Doris Frost, citizen; Leslie Jones, citizen; Robert Myers, Rental Housing Association of Washington; Michael Wallace, citizen; Rocky Ricarte, citizen; Wenchang Tan, citizen; Mark Langager, citizen; Churli Su, citizen; Anita Woo, Woo Real Investments LLC; Sterling Tang, citizen; Michael Moore, citizen; Tom Dietrich, citizen; Jim Henderson Sr., citizen; Drew Haffner, citizen; Christophe Allen, citizen; Sangeeta Saigal, citizen; Sara Black, Olympic Rental & Landlord Services; Ron Stimmel, citizen; Robert Lilleness, citizen; Christine Zhang, citizen; Frank Escalona, citizen; Chastity Bryant, citizen; Stephen Locke, citizen; Cynthia Froembling, citizen; Bennet Barlean, citizen; Bennet Batlean, citizen; Hai Ho, citizen; Joseph Nicholson, citizen; Cody Davis, Blackwell Real Estate; Paulette Springer, citizen; Patti Hoendermis, Yakima Valley Landlords Association; Keith Walker, citizen; Deanna Andersen, citizen; Richard Sybert, citizen; Ditos Daranciang, citizen; Laurie Sand, citizen; Miranda Henderson, citizen; Amrik Bassi, citizen; Charles Crider, Skagit/Island Counties Builders Association; Cathy Jeney, citizen; Holly Minniti, citizen; Scott Lee, citizen; Kevin Campbell, RockTheRivers; Rebecca Gray, citizen; Julie Martiniello, Dimension Law Group PLLC; Sherry Riesner, Real Estate Investment Services; Eric Bessett, Madison Real Estate and Property Management, Inc.; Joni Gordon, Blue Lake Property Management; Bruce Fine, citizen; Juan Rubi, citizen; Chelsey Cowden, citizen; Michael Urquhart, citizen; Kim Cervantes, Olympic Rental & Landlord Services & NARPM; Steve Cook, Cornerstone Commercial Investment Properties; Michael Kruse, MKN Apartments; Ryan Enright, citizen; Brad Arritola, citizen; Robert Rothwell, citizen; John Arbeeney, Jakmed Properties, LLC; William McInnis, citizen; Mohamed Abouhamra, independent landlord; Mark Melsness, Spinnaker Property Management; Heather Figg, citizen; Donna Ruiz, Speck Property Management; Michele Woodhouse, citizen; Angel Prentiss, citizen; Jason Clifford, citizen; Carolyn Kairez, Speck Property Management; Kristina Morris, Williams Investments; Kai Bublitz, citizen; Lan Hoang, citizen; Joshua Krebs, citizen; William Shadbolt, citizen; James Clifford, citizen; Darcy Rohde, citizen; Donald Arsenault, CCIM, Arsenault Realty Advisors, LLC; Daniel Finnigan, citizen; Lynette Spivey, citizen; Jillian Walker, Silver Creek Apartments; Chelsy Parrish, citizen; Keri Dutton, citizen; Bob Mickey, citizen; Melissa LaChance, Grandview Management Services LLC; James Baker, Grandview Management Services LLC; David Petersen, citizen; Jonathan Harper, Go Pro Homes; Holly Gary, Spinnaker Property Management; Scott Wammack, Grandview North, LLC; Angelina Zimmerman, Spinnaker Property Management; Eileen Zube, citizen; Michael Buchner, citizen; Jayne Ranae, citizen; Robert Newgard, citizen; Zach Strong, Prime Locations; Jake Wisness, JLL; Jackie Nelson, citizen; Gary Dukelow, Mr. and Mrs.; John Piazza, John Piazza Jr Construction & Remodeling; Juani Nixon, citizen; Joshua Melanson, citizen; Pat Hatcher, Dobler Management; Glenn Wells, citizen; Greg Pubols, citizen; Vicki Moore, citizen; Natalya Krahn, citizen; Trisha Smith, Stout Investments; Andrey Potapchuk, citizen; Tami Jowers, citizen; Dong Kim, Gunmul Investment; Chantell Arnold, citizen; Matt Smith, Rush; Samantha Bokor, Westwood Heights Apts LLC; Joseph Fisher, NW Property Management Group; Cathy Rusnak, Pacifica University MHP; Cathy Rusnak, Pacifica University MHP; Dennis Plunkett, citizen; Charlene Verner, citizen; Jeff

Jensen, citizen; Ben Gervais, 88 St Apartments; Joe Eley, citizen; Valerie Frint, citizen; Kai Van Leuven, citizen; Bruce Becker, Bruce Becker; Kathy Piazza, citizen; Mark Pennington, citizen; Geoffrey Arthur, Northwest Realty Associates, LLC; Bruce Wagoner, citizen; John Palmer, JayPalmerBooks; George Howe, citizen; Amanda Shepherd, Brink Property Management; Carrie Fang, citizen; Shannon Talkington, citizen; Ashley Gallacher, citizen; Steve O'Hara, Ofad; Brian Connorton, citizen; Ed Hewson, HB Housing; Jim Arthur, WLA member; Nora Schultz, citizen; Thomas Salinas, citizen; Trinity Balles, Bridge Property Management; Glendol Wren, citizen; Chris Dobler, Rental Housing Association of Washington; Samantha Patterson, Rental Housing Association of Washington; Kasey Cartledge, citizen; Josh Auxier, Acres Real Estate, LLC; Christopher Frint, citizen; Bryan Gwynn, citizen; Phil Sodoma, citizen; Samantha Patterson, Rental Housing Association of Washington; Jennifer DeCaro, SUHRCO Residential Properties, LLC; Brandon Smith, citizen; Virgil Kroontje, citizen; Margo Henson, citizen; David L'Esperance, citizen; Stephen Schutt, citizen; Alyse Johnson, citizen; Virginia Hance, citizen; Kevin Glenn, citizen; Rowland Thompson, Allied Daily Newspapers of Washington; Jim Adrian, citizen; Hunter Freeman, citizen.

OTHER: Dindar Nasim, citizen.