

An Act

SENATE BILL 23-178

BY SENATOR(S) Jaquez Lewis and Will, Marchman, Priola, Bridges, Buckner, Coleman, Cutter, Exum, Fields, Ginal, Gonzales, Hansen, Hinrichsen, Kolker, Moreno, Roberts, Sullivan, Fenberg;
also REPRESENTATIVE(S) McCormick and Lindsay, Amabile, Bird, Boesenecker, Brown, Dickson, Froelich, Hamrick, Herod, Jodeh, Kipp, Martinez, McLachlan, Michaelson Jenet, Ortiz, Parenti, Ricks, Sirota, Snyder, Titone, Valdez, Velasco, Weissman, Willford, Woodrow, McCluskie.

CONCERNING REMOVING BARRIERS TO WATER-WISE LANDSCAPING IN
COMMON INTEREST COMMUNITIES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 38-33.3-106.5, **amend** (1)(i)(I)(A); and **add** (1)(i.5) as follows:

38-33.3-106.5. Prohibitions contrary to public policy - patriotic, political, or religious expression - public rights-of-way - fire prevention - renewable energy generation devices - affordable housing - drought prevention measures - child care - definitions. (1) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

association to the contrary, an association shall not prohibit any of the following:

(i) (I) (A) The use of xeriscape, nonvegetative turf grass, or drought-tolerant vegetative landscapes to provide ground covering to property for which a unit owner is responsible, including a limited common element or property owned by the unit owner. Associations may adopt and enforce design or aesthetic guidelines or rules that apply to nonvegetative turf grass and drought-tolerant vegetative landscapes or regulate the type, number, and placement of drought-tolerant plantings and hardscapes that may be installed on a unit owner's property or on a limited common element or other property for which the unit owner is responsible. An association may restrict the installation of nonvegetative turf grass to rear yard locations only. THIS SUBSECTION (1)(i)(I)(A), AS AMENDED BY SENATE BILL 23-178, ENACTED IN 2023, APPLIES ONLY TO A UNIT THAT IS A SINGLE-FAMILY HOME THAT SHARES ONE OR MORE WALLS WITH ANOTHER UNIT AND DOES NOT APPLY TO A UNIT THAT IS A DETACHED SINGLE-FAMILY HOME.

(i.5) (I) THE USE OF XERISCAPE, NONVEGETATIVE TURF GRASS, OR DROUGHT-TOLERANT OR NONVEGETATIVE LANDSCAPES TO PROVIDE GROUND COVERING TO PROPERTY FOR WHICH A UNIT OWNER IS RESPONSIBLE, INCLUDING A LIMITED COMMON ELEMENT OR PROPERTY OWNED BY THE UNIT OWNER AND ANY RIGHT-OF-WAY OR TREE LAWN THAT IS THE UNIT OWNER'S RESPONSIBILITY TO MAINTAIN. ASSOCIATIONS MAY ADOPT AND ENFORCE DESIGN OR AESTHETIC GUIDELINES OR RULES THAT APPLY TO DROUGHT-TOLERANT VEGETATIVE OR NONVEGETATIVE LANDSCAPES OR TO VEGETABLE GARDENS OR THAT REGULATE THE TYPE, NUMBER, AND PLACEMENT OF DROUGHT-TOLERANT PLANTINGS AND HARDSCAPES THAT MAY BE INSTALLED ON PROPERTY THAT IS SUBJECT TO THE GUIDELINES OR RULES; EXCEPT THAT THE GUIDELINES OR RULES MUST:

(A) NOT PROHIBIT THE USE OF NONVEGETATIVE TURF GRASS IN THE BACKYARD OF A UNIT OWNER'S PROPERTY;

(B) NOT UNREASONABLY REQUIRE THE USE OF HARDSCAPE ON MORE THAN TWENTY PERCENT OF THE LANDSCAPING AREA OF A UNIT OWNER'S PROPERTY;

(C) ALLOW A UNIT OWNER AN OPTION THAT CONSISTS OF AT LEAST EIGHTY PERCENT DROUGHT-TOLERANT PLANTINGS; AND

(D) NOT PROHIBIT VEGETABLE GARDENS IN THE FRONT, BACK, OR SIDE YARD OF A UNIT OWNER'S PROPERTY. AS USED IN THIS SUBSECTION (1)(i.5), "VEGETABLE GARDEN" MEANS A PLOT OF GROUND OR AN ELEVATED SOIL BED IN WHICH POLLINATOR PLANTS, FLOWERS, OR VEGETABLES OR HERBS, FRUITS, LEAFY GREENS, OR OTHER EDIBLE PLANTS ARE CULTIVATED.

(II) FOR THE PURPOSES OF THIS SUBSECTION (1)(i.5), EACH ASSOCIATION SHALL SELECT AT LEAST THREE PREPLANNED WATER-WISE GARDEN DESIGNS THAT ARE PREAPPROVED FOR INSTALLATION IN FRONT YARDS WITHIN THE COMMON INTEREST COMMUNITY. TO BE PREAPPROVED, A GARDEN DESIGN MUST ADHERE TO THE PRINCIPLES OF WATER-WISE LANDSCAPING, AS DEFINED IN SECTION 37-60-135 (2)(1), WHICH EMPHASIZE DROUGHT-TOLERANT AND NATIVE PLANTS, OR BE PART OF A WATER CONSERVATION PROGRAM OPERATED BY A LOCAL WATER PROVIDER. EACH GARDEN DESIGN MAY BE SELECTED FROM THE COLORADO STATE UNIVERSITY EXTENSION PLANT SELECT ORGANIZATION'S "DOWNLOADABLE DESIGNS" LIST OR FROM A MUNICIPALITY, UTILITY, OR OTHER ENTITY THAT CREATES SUCH GARDEN DESIGNS. AN ASSOCIATION SHALL CONSIDER A UNIT OWNER'S USE OF ONE OF THE GARDEN DESIGNS SELECTED BY THE ASSOCIATION TO BE PREAPPROVED AS COMPLYING WITH THE ASSOCIATION'S AESTHETIC GUIDELINES AND SHALL ALLOW A UNIT OWNER TO USE REASONABLE SUBSTITUTE PLANTS WHEN A PLANT IN A DESIGN ISN'T AVAILABLE. EACH ASSOCIATION SHALL POST ON ITS PUBLIC WEBSITE, IF ANY, INFORMATION CONCERNING PREAPPROVALS OF GARDEN DESIGNS.

(III) EXCEPT AS DESCRIBED IN SUBSECTION (1)(i.5)(IV) OF THIS SECTION, IF AN ASSOCIATION KNOWINGLY VIOLATES THIS SUBSECTION (1)(i.5), A UNIT OWNER WHO IS AFFECTED BY THE VIOLATION MAY BRING A CIVIL ACTION TO RESTRAIN FURTHER VIOLATION AND TO RECOVER UP TO A MAXIMUM OF FIVE HUNDRED DOLLARS OR THE UNIT OWNER'S ACTUAL DAMAGES, WHICHEVER IS GREATER.

(IV) BEFORE A UNIT OWNER COMMENCES A CIVIL ACTION AS DESCRIBED IN SUBSECTION (1)(i.5)(III) OF THIS SECTION, THE UNIT OWNER SHALL NOTIFY THE ASSOCIATION IN WRITING OF THE VIOLATION AND ALLOW THE ASSOCIATION FORTY-FIVE DAYS AFTER RECEIPT OF THE NOTICE TO CURE THE VIOLATION.

(V) NOTHING IN THIS SUBSECTION (1)(i.5) SHALL BE CONSTRUED TO PROHIBIT OR RESTRICT THE AUTHORITY OF ASSOCIATIONS TO:

(A) ADOPT BONA FIDE SAFETY REQUIREMENTS CONSISTENT WITH APPLICABLE LANDSCAPE CODES OR RECOGNIZED SAFETY STANDARDS FOR THE PROTECTION OF PERSONS AND PROPERTY;

(B) PROHIBIT OR RESTRICT CHANGES THAT INTERFERE WITH THE ESTABLISHMENT AND MAINTENANCE OF FIRE BUFFERS OR DEFENSIBLE SPACES; OR

(C) PROHIBIT OR RESTRICT CHANGES TO EXISTING GRADING, DRAINAGE, OR OTHER STRUCTURAL LANDSCAPE ELEMENTS NECESSARY FOR THE PROTECTION OF PERSONS AND PROPERTY.

(VI) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, THIS SUBSECTION (1)(i.5) APPLIES ONLY TO A UNIT THAT IS A SINGLE-FAMILY DETACHED HOME AND DOES NOT APPLY TO:

(A) A UNIT THAT IS A SINGLE-FAMILY ATTACHED HOME THAT SHARES ONE OR MORE WALLS WITH ANOTHER UNIT; OR

(B) A CONDOMINIUM.

SECTION 2. In Colorado Revised Statutes, 37-60-126, amend (11)(b)(IV); and add (11)(a)(III) and (11)(a.5) as follows:

37-60-126. Water conservation and drought mitigation planning - programs - relationship to state assistance for water facilities - guidelines - water efficiency grant program - definitions - repeal.
(11) (a) (III) THIS SUBSECTION (11)(a), AS AMENDED BY SENATE BILL 23-178, ENACTED IN 2023, APPLIES ONLY TO A UNIT THAT IS A SINGLE-FAMILY HOME THAT SHARES ONE OR MORE WALLS WITH ANOTHER UNIT AND DOES NOT APPLY TO A UNIT THAT IS A DETACHED SINGLE-FAMILY HOME.

(a.5) (I) ANY SECTION OF A RESTRICTIVE COVENANT OR OF THE DECLARATION, BYLAWS, OR RULES AND REGULATIONS OF A COMMON INTEREST COMMUNITY, ALL AS DEFINED IN SECTION 38-33.3-103, AND ANY RULE OR POLICY OF A SPECIAL DISTRICT, AS DEFINED IN SECTION 32-1-103 (20), THAT PROHIBITS OR LIMITS XERISCAPE, PROHIBITS OR LIMITS THE INSTALLATION OR USE OF DROUGHT-TOLERANT VEGETATIVE OR NONVEGETATIVE LANDSCAPES, REQUIRES CULTIVATED VEGETATION TO

CONSIST WHOLLY OR PARTIALLY OF TURF GRASS, OR PROHIBITS THE USE OF NONVEGETATIVE TURF GRASS IN THE BACKYARD OF A RESIDENTIAL PROPERTY IS HEREBY DECLARED CONTRARY TO PUBLIC POLICY AND, ON THAT BASIS, IS UNENFORCEABLE. THIS SUBSECTION (11)(a.5) DOES NOT PROHIBIT COMMON INTEREST COMMUNITIES OR SPECIAL DISTRICTS FROM ADOPTING AND ENFORCING DESIGN OR AESTHETIC GUIDELINES OR RULES THAT APPLY TO DROUGHT-TOLERANT VEGETATIVE OR NONVEGETATIVE LANDSCAPES OR REGULATE THE TYPE, NUMBER, AND PLACEMENT OF DROUGHT-TOLERANT PLANTINGS AND HARDSCAPES THAT MAY BE INSTALLED ON PROPERTY THAT IS SUBJECT TO THE GUIDELINES OR RULES; EXCEPT THAT THE GUIDELINES OR RULES MUST:

(A) NOT PROHIBIT THE USE OF NONVEGETATIVE TURF GRASS IN THE BACKYARD OF A RESIDENTIAL PROPERTY;

(B) NOT UNREASONABLY REQUIRE THE USE OF HARDSCAPE ON MORE THAN TWENTY PERCENT OF THE LANDSCAPING AREA OF A UNIT OF A COMMON INTEREST COMMUNITY, AS THOSE TERMS ARE DEFINED IN SECTION 38-33.3-103 (8) AND (30);

(C) ALLOW A UNIT OWNER, AS DEFINED IN SECTION 38-33.3-103 (31), AN OPTION THAT CONSISTS OF AT LEAST EIGHTY PERCENT DROUGHT-TOLERANT PLANTINGS; AND

(D) NOT PROHIBIT VEGETABLE GARDENS IN THE FRONT, BACK, OR SIDE YARD OF A UNIT OWNER'S PROPERTY. AS USED IN THIS SUBSECTION (11)(a.5)(I)(D), "VEGETABLE GARDEN" MEANS A PLOT OF GROUND OR AN ELEVATED SOIL BED IN WHICH POLLINATOR PLANTS, FLOWERS, OR VEGETABLES OR HERBS, FRUITS, LEAFY GREENS, OR OTHER EDIBLE PLANTS ARE CULTIVATED.

(II) THIS SUBSECTION (11)(a.5) DOES NOT APPLY TO:

(A) A UNIT OWNERS' ASSOCIATION, AS DEFINED IN SECTION 38-33.3-103 (3), THAT INCLUDES TIME SHARE UNITS, AS DEFINED IN SECTION 38-33-110 (7); OR

(B) A UNIT, AS DEFINED IN SECTION 38-33.3-103 (30), THAT IS A SINGLE-FAMILY HOME THAT SHARES ONE OR MORE WALLS WITH ANOTHER UNIT.

(b) As used in this subsection (11):

(IV) ~~"Xeriscape" means the application of the principles of landscape planning and design, soil analysis and improvement, appropriate plant selection, limitation of turf area, use of mulches, irrigation efficiency, and appropriate maintenance that results in water use efficiency and water-saving practices~~ HAS THE MEANING SET FORTH IN SECTION 38-33.3-103 (33).

SECTION 3. In Colorado Revised Statutes, 37-60-115, **amend** (6)(e) as follows:

37-60-115. Water studies - rules - repeal. (6) **Precipitation harvesting pilot projects.** (e) (I) This subsection (6) is repealed, effective July 1, 2026.

(II) THIS REPEAL DOES NOT AFFECT OR OTHERWISE PRECLUDE WATER COURTS FROM ADJUDICATING ANY APPLICATION FOR AN AUGMENTATION PLAN PURSUANT TO THIS SUBSECTION (6) THAT IS FILED PRIOR TO JULY 1, 2026.

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in

November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.



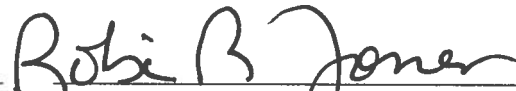
Steve Fenberg
PRESIDENT OF
THE SENATE



Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

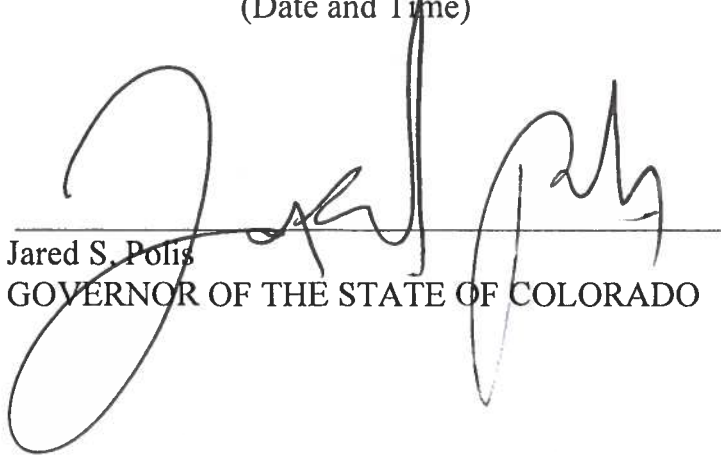


Cindi L. Markwell
SECRETARY OF
THE SENATE



Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED Wednesday, May 17th, 2023 at 9:55am
(Date and Time)



Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO