

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 23-0801.01 Richard Sweetman x4333

SENATE BILL 23-178

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A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Under current law, a unit owners' association (association) of a common interest community may not prohibit 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. There is, however, an exception authorizing an association to adopt and enforce design or aesthetic guidelines or rules that apply to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

HOUSE
3rd Reading Unamended
April 26, 2023

HOUSE
Amended 2nd Reading
April 24, 2023

SENATE
3rd Reading Unamended
April 4, 2023

SENATE
Amended 2nd Reading
April 3, 2023

nonvegetative turf grass and drought-tolerant vegetative landscapes or to regulate the type, number, and placement of drought-tolerant plantings and hardscapes that may be installed on a unit owner's property, on a limited common element, or on other property for which the unit owner is responsible.

The bill states that an association's guidelines or rules must:

- Not prohibit the use of nonvegetative turf grass in the backyard of a unit owner's property;
- Not unreasonably require the use of hardscape on more than 20% of the landscaping area of a unit owner's property;
- Allow a unit owner an option that consists of at least 80% drought-tolerant plantings; and
- Not prohibit vegetable gardens in the front, back, or side yard of a unit owner's property.

The bill also requires an association to permit the installation of at least 3 garden designs that are preapproved by the association 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 and emphasize drought-tolerant and native plants.

The bill allows a unit owner who is affected by an association's violation of the new requirements to bring a civil action to restrain further violation and to recover damages in an amount equal to actual damages plus \$500, plus any other damages, costs, and reasonable attorney fees.

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

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

4 **38-33.3-106.5. Prohibitions contrary to public policy -**
5 **patriotic, political, or religious expression - public rights-of-way - fire**
6 **prevention - renewable energy generation devices - affordable**
7 **housing - drought prevention measures - child care - definitions.**

8 (1) Notwithstanding any provision in the declaration, bylaws, or rules
9 and regulations of the association to the contrary, an association shall not
10 prohibit any of the following:

11 (i) (I) (A) The use of xeriscape, nonvegetative turf grass, or

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

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

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

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

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

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

14 (II) FOR THE PURPOSES OF THIS SUBSECTION (1)(i.5), EACH
15 ASSOCIATION SHALL SELECT AT LEAST THREE PREPLANNED WATER-WISE
16 GARDEN DESIGNS THAT ARE PREAPPROVED FOR INSTALLATION IN FRONT
17 YARDS WITHIN THE COMMON INTEREST COMMUNITY. TO BE PREAPPROVED,
18 A GARDEN DESIGN MUST ADHERE TO THE PRINCIPLES OF WATER-WISE
19 LANDSCAPING, AS DEFINED IN SECTION 37-60-135 (2)(I), WHICH
20 EMPHASIZE DROUGHT-TOLERANT AND NATIVE PLANTS, OR BE PART OF A
21 WATER CONSERVATION PROGRAM OPERATED BY A LOCAL WATER
22 PROVIDER. EACH GARDEN DESIGN MAY BE SELECTED FROM THE
23 COLORADO STATE UNIVERSITY EXTENSION PLANT SELECT
24 ORGANIZATION'S "DOWNLOADABLE DESIGNS" LIST OR FROM A
25 MUNICIPALITY, UTILITY, OR OTHER ENTITY THAT CREATES SUCH GARDEN
26 DESIGNS. AN ASSOCIATION SHALL CONSIDER A UNIT OWNER'S USE OF ONE
27 OF THE GARDEN DESIGNS SELECTED BY THE ASSOCIATION TO BE

1 PREAPPROVED AS COMPLYING WITH THE ASSOCIATION'S AESTHETIC
2 GUIDELINES AND SHALL ALLOW A UNIT OWNER TO USE REASONABLE
3 SUBSTITUTE PLANTS WHEN A PLANT IN A DESIGN ISN'T AVAILABLE. EACH
4 ASSOCIATION SHALL POST ON ITS PUBLIC WEBSITE, IF ANY, INFORMATION
5 CONCERNING PREAPPROVALS OF GARDEN DESIGNS.

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

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

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

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

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

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

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

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

6 (B) A CONDOMINIUM.

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

9 **37-60-126. Water conservation and drought mitigation**
10 **planning - programs - relationship to state assistance for water**
11 **facilities - guidelines - water efficiency grant program - definitions -**
12 **repeal.** (11) (a) (III) THIS SUBSECTION (11)(a), AS AMENDED BY SENATE
13 BILL 23-178, ENACTED IN 2023, APPLIES ONLY TO A UNIT THAT IS A
14 SINGLE-FAMILY HOME THAT SHARES ONE OR MORE WALLS WITH ANOTHER
15 UNIT AND DOES NOT APPLY TO A UNIT THAT IS A DETACHED SINGLE-FAMILY
16 HOME.

17 (a.5) (I) ANY SECTION OF A RESTRICTIVE COVENANT OR OF THE
18 DECLARATION, BYLAWS, OR RULES AND REGULATIONS OF A COMMON
19 INTEREST COMMUNITY, ALL AS DEFINED IN SECTION 38-33.3-103, AND ANY
20 RULE OR POLICY OF A SPECIAL DISTRICT, AS DEFINED IN SECTION 32-1-103
21 (20), THAT PROHIBITS OR LIMITS XERISCAPE, PROHIBITS OR LIMITS THE
22 INSTALLATION OR USE OF DROUGHT-TOLERANT VEGETATIVE OR
23 NONVEGETATIVE LANDSCAPES, REQUIRES CULTIVATED VEGETATION TO
24 CONSIST WHOLLY OR PARTIALLY OF TURF GRASS, OR PROHIBITS THE USE OF
25 NONVEGETATIVE TURF GRASS IN THE BACKYARD OF A RESIDENTIAL
26 PROPERTY IS HEREBY DECLARED CONTRARY TO PUBLIC POLICY AND, ON
27 THAT BASIS, IS UNENFORCEABLE. THIS SUBSECTION (11)(a.5) DOES NOT

1 PROHIBIT COMMON INTEREST COMMUNITIES OR SPECIAL DISTRICTS FROM
2 ADOPTING AND ENFORCING DESIGN OR AESTHETIC GUIDELINES OR RULES
3 THAT APPLY TO DROUGHT-TOLERANT VEGETATIVE OR NONVEGETATIVE
4 LANDSCAPES OR REGULATE THE TYPE, NUMBER, AND PLACEMENT OF
5 DROUGHT-TOLERANT PLANTINGS AND HARDSCAPES THAT MAY BE
6 INSTALLED ON PROPERTY THAT IS SUBJECT TO THE GUIDELINES OR RULES;
7 EXCEPT THAT THE GUIDELINES OR RULES MUST:

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

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

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

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

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


24 (A) A UNIT OWNERS' ASSOCIATION, AS DEFINED IN SECTION
25 38-33.3-103 (3), THAT INCLUDES TIME SHARE UNITS, AS DEFINED IN
26 SECTION 38-33-110 (7); OR

27 (B) A UNIT, AS DEFINED IN SECTION 38-33.3-103 (30), THAT IS A

1 SINGLE-FAMILY HOME THAT SHARES ONE OR MORE WALLS WITH ANOTHER
2 UNIT.

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

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

10 
11 **SECTION 3.** In Colorado Revised Statutes, 37-60-115, **amend**
12 **(6)(e)** as follows:

13 **37-60-115. Water studies - rules - repeal. (6) Precipitation**
14 **harvesting pilot projects. (e) (I) This subsection (6) is repealed,**
15 **effective July 1, 2026.**

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

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

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