

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

DRAFT
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Bill 1

LLS NO. 23-0081.02 Richard Sweetman x4333

INTERIM COMMITTEE BILL

Water Resources and Agriculture Review Committee

BILL TOPIC: "Xeriscaping In HOA Communities"

A BILL FOR AN ACT

101 **CONCERNING REMOVING BARRIERS TO XERISCAPING IN COMMON**
102 **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/>.)

Water Resources and Agriculture Review Committee. 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

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

design or aesthetic guidelines or rules that apply to 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 or on a limited common element or other property for which the unit owner is responsible.

The bill states that an association's guidelines or rules must not unreasonably require the use of hardscape or turf grass or both on more than 20% of landscaping area and must allow a unit owner or tenant an option that consists of 80% drought-tolerant plantings.

The bill also requires an association to permit the installation of at least 2 designs from the Colorado state university extension Plant Select "downloadable designs" list.

The bill allows a unit owner of a common interest community or a tenant of a unit owner affected by a 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 \$5,000, 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) 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
12 drought-tolerant vegetative OR NONVEGETATIVE landscapes to provide
13 ground covering to property for which a unit owner is responsible,
14 including a limited common element or property owned by the unit
15 owner. Associations may adopt and enforce design or aesthetic guidelines
16 or rules that apply to ~~nonvegetative turf grass and~~ drought-tolerant

1 vegetative OR NONVEGETATIVE landscapes or regulate the type, number,
2 and placement of drought-tolerant plantings and hardscapes that may be
3 installed on ~~a unit owner's property or on a limited common element or~~
4 ~~other property for which the unit owner is responsible. An association~~
5 ~~may restrict the installation of nonvegetative turf grass to rear yard~~
6 ~~locations only.~~ 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 the
9 backyard of a unit;

10 (B) NOT UNREASONABLY REQUIRE THE USE OF HARDSCAPE OR
11 TURF GRASS OR BOTH ON MORE THAN TWENTY PERCENT OF LANDSCAPING
12 AREA; AND

13 (C) ALLOW A UNIT OWNER OR A TENANT OF A UNIT OWNER AN
14 OPTION THAT CONSISTS OF EIGHTY PERCENT DROUGHT-TOLERANT
15 PLANTINGS.

16 (II) AN ASSOCIATION SHALL PERMIT AT LEAST TWO DESIGNS FROM
17 THE COLORADO STATE UNIVERSITY EXTENSION PLANT SELECT
18 "DOWNLOADABLE DESIGNS" LIST TO BE INSTALLED WITHIN THE COMMON
19 INTEREST COMMUNITY.

20 (III) A UNIT OWNER OR A TENANT OF A UNIT OWNER AFFECTED BY
21 ANY VIOLATION OF THIS SUBSECTION (1)(i) MAY BRING A CIVIL ACTION TO
22 RESTRAIN FURTHER VIOLATION AND TO RECOVER:

23 (A) DAMAGES IN AN AMOUNT EQUAL TO ACTUAL DAMAGES PLUS
24 FIVE THOUSAND DOLLARS PLUS ANY OTHER DAMAGES;

25 (B) COSTS; AND

26 (C) REASONABLE ATTORNEY FEES.

27 ~~(B)~~ (IV) This subsection (1)(i), as amended by House Bill

1 21-1229, enacted in 2021, does not apply to an association that includes
2 time share units, as defined in section 38-33-110 (7).

3 ~~(H)~~ (V) This ~~paragraph (i)~~ SUBSECTION (1)(i) does not supersede
4 any subdivision regulation of a county, city and county, or other
5 municipality.

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

8 **37-60-126. Water conservation and drought mitigation**
9 **planning - programs - relationship to state assistance for water**
10 **facilities - guidelines - water efficiency grant program - definitions -**
11 **repeal.** (11) (a) (I) Any section of a restrictive covenant or of the
12 declaration, bylaws, or rules and regulations of a common interest
13 community, all as defined in section 38-33.3-103, and any rule or policy
14 of a special district, as defined in section 32-1-103 (20), that prohibits or
15 limits xeriscape, prohibits or limits the installation or use of
16 drought-tolerant vegetative OR NONVEGETATIVE landscapes, requires
17 cultivated vegetation to consist wholly or partially of turf grass, or
18 prohibits the use of nonvegetative turf grass in the backyard of a
19 residential property is hereby declared contrary to public policy and, on
20 that basis, is unenforceable.

21 (II) This subsection (11)(a) does not prohibit common interest
22 communities or special districts from adopting and enforcing design or
23 aesthetic guidelines or rules that apply to drought-tolerant vegetative or
24 nonvegetative landscapes or regulate the type, number, and placement of
25 drought-tolerant plantings and hardscapes that may be installed on
26 property that is subject to the guidelines or rules; except that the
27 guidelines or rules must:

1 (A) Not prohibit the use of nonvegetative turf grass in the
2 backyard of a residential property;

3 (B) NOT UNREASONABLY REQUIRE THE USE OF HARDSCAPE OR
4 TURF GRASS OR BOTH ON MORE THAN TWENTY PERCENT OF LANDSCAPING
5 AREA; AND

6 (C) ALLOW A UNIT OWNER, AS DEFINED IN SECTION 38-33.3-103
7 (31), OR A TENANT OF A UNIT OWNER AN OPTION THAT CONSISTS OF
8 EIGHTY PERCENT DROUGHT-TOLERANT PLANTINGS.

9 ~~(H)~~ (III) This subsection (11)(a), as amended by House Bill
10 21-1229, enacted in 2021, does not apply to an association that includes
11 time share units, as defined in section 38-33-110 (7).

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

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

19 **SECTION 3.** In Colorado Revised Statutes, 38-35.7-107, **amend**
20 (1)(a)(III) introductory portion and (1)(a)(III)(A) as follows:

21 **38-35.7-107. Water-smart homes option.** (1) (a) Every person
22 that builds a new single-family detached residence for which a buyer is
23 under contract shall offer the buyer the opportunity to select one or more
24 of the following water-smart home options for the residence:

25 (III) If landscaping is financed, installed, or sold as upgrades
26 through the home builder and will be maintained by the ~~home owner~~
27 HOMEOWNER, the home builder shall offer a landscape design that follows

1 the landscape practices specified in this ~~subparagraph (H)~~ SUBSECTION
2 (1)(a)(III) to ensure both the professional design and installation of such
3 landscaping and that water conservation will be accomplished. These best
4 management practices are contained in the document titled "Green
5 Industry Best Management Practices (BMPs) for the Conservation and
6 Protection of Water Resources in Colorado: Moving Toward
7 Sustainability", 3rd release, and appendix, released in May 2008, or ~~this~~
8 THE document's successors due to future inclusion of improved
9 landscaping practices, water conservation advancements, and new
10 irrigation technology. The best management practices specified in this
11 ~~subparagraph (H)~~ SUBSECTION (1)(a)(III), through utilization of the
12 proper landscape design, installation, and irrigation technology,
13 accomplish substantial water savings compared to landscape designs,
14 installation, and irrigation system utilization where these practices are not
15 adhered to. The following best management practices and water budget
16 calculator form the basis for the design and installation for the front yard
17 landscaping option if selected by the homeowner as an upgrade:

18 (A) Xeriscape: To include the seven principles of xeriscape, ~~that~~
19 AS DEFINED IN SECTION 38-33.3-103 (33), WHICH provide a comprehensive
20 approach for conserving water;

21 **SECTION 4. Act subject to petition - effective date.** This act
22 takes effect at 12:01 a.m. on the day following the expiration of the
23 ninety-day period after final adjournment of the general assembly; except
24 that, if a referendum petition is filed pursuant to section 1 (3) of article V
25 of the state constitution against this act or an item, section, or part of this
26 act within such period, then the act, item, section, or part will not take
27 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.