



## Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

# Fiscal Note

**Drafting Number:** LLS 23-0081  
**Prime Sponsors:**

**Date:** September 19, 2022  
**Bill Status:** Bill Request  
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**Bill Topic:** XERISCAPING IN HOA COMMUNITIES

**Summary of Fiscal Impact:**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> State Revenue     | <input type="checkbox"/> TABOR Refund            |
| <input checked="" type="checkbox"/> State Expenditure | <input type="checkbox"/> Local Government        |
| <input type="checkbox"/> State Transfer               | <input type="checkbox"/> Statutory Public Entity |

This bill requires that Home Owner Associations (HOAs) allow the use of non-vegetative landscaping, and limits how community covenants may otherwise restrict xeriscaping by unit owners or their tenants. The bill allows unit owners or tenants to bring civil action for violations by an HOA. The bill minimally increases state revenue and workload beginning in FY 2023-24.

**Appropriation Summary:** No appropriation is required.

**Fiscal Note Status:** The fiscal note reflects the bill draft requested by the Water Resources and Agriculture Review Committee.

## Summary of Legislation

Under current law, a restrictive covenant of a common interest community (i.e., a homeowner or condominium owner associations or HOAs) may not prohibit an individual property owner from employing the use of xeriscape, nonvegetative turf grass, or drought-tolerant vegetative landscaping. This bill allows home owners to also employ non-vegetative landscaping. HOAs may subject property landscaping to the community's guidelines and rules; however, the rules must:

- not unreasonably require the use of hardscape or turf grass, or both, on more than 20 percent of landscaping; and
- allow property owners an option consisting of 80 percent drought-tolerant plantings.

HOAs are required to permit at least two designs from the Colorado State University Extension Plant Select "downloadable designs" list to be installed within the community. A unit owner or tenant in the community affected by an HOA landscaping rule violation may bring a civil action to restrain further violations, and to recover actual damages plus \$5,000, costs, and reasonable attorney fees.

## **Background**

Current law defines xeriscape to mean the combined application of several principles of landscape planning and design: soil analysis and improvement; hydro zoning of plants; use of practical turf areas; uses of mulches; irrigation efficiency; and appropriate maintenance.

## **State Revenue and Expenditures**

Allowing a unit owner, or a tenant of a unit owner in an HOA to bring civil actions may minimally increase state revenue from filing fees, and workload for the trial courts in the Judicial Department. It is assumed that HOAs will comply with the new requirements and that the number and complexity of civil actions will be limited. For this reason, any increase in fee revenue and workload for the trial courts will be minimal.

The bill may also minimally increase workload in the Colorado HOA Information and Resource Center in the Division of Real Estate in the Department of Regulatory Agencies to update resources, answer questions from the public, and register new online complaints.

## **Effective Date**

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

## **State and Local Government Contacts**

Judicial	Law
Local Affairs	Regulatory Agencies