

HB1229_L.011

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Business Affairs & Labor.HB21-1229 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, 37-60-126, **amend**
4 (11)(a) as follows:

5 **37-60-126. Water conservation and drought mitigation**
6 **planning - programs - relationship to state assistance for water**
7 **facilities - guidelines - water efficiency grant program - definitions -**
8 **repeal.** (11) (a) Any section of a restrictive covenant or of the
9 declaration, bylaws, or rules and regulations of a common interest
10 community, all as defined in section 38-33.3-103, and any rule or policy
11 of a special district, as defined in section 32-1-103 (20), that prohibits or
12 limits xeriscape, prohibits or limits the installation or use of
13 drought-tolerant vegetative landscapes, ~~or~~ requires cultivated vegetation
14 to consist wholly or partially of turf grass, ~~OR PROHIBITS THE USE OF~~
15 ~~NONVEGETATIVE TURF GRASS IN THE BACKYARD OF A RESIDENTIAL~~
16 ~~PROPERTY~~ is hereby declared contrary to public policy and, on that basis,
17 is unenforceable. This subsection (11)(a) does not prohibit common
18 interest communities or special districts from adopting and enforcing
19 design or aesthetic guidelines or rules that ~~require~~ APPLY TO
20 drought-tolerant vegetative ~~OR NONVEGETATIVE~~ landscapes or regulate
21 the type, number, and placement of drought-tolerant plantings and
22 hardscapes that may be installed on property that is subject to the
23 guidelines or rules; EXCEPT THAT THE GUIDELINES OR RULES MUST NOT
24 PROHIBIT THE USE OF NONVEGETATIVE TURF GRASS IN THE BACKYARD OF
25 A RESIDENTIAL PROPERTY.

26 **SECTION 2.** In Colorado Revised Statutes, 38-30-168, **amend**
27 (2) introductory portion and (2)(a) as follows:

28 **38-30-168. Unreasonable restrictions on renewable energy**
29 **generation devices - definitions.** (2) Subsection (1) of this section ~~shall~~
30 DOES not apply to:

31 (a) Aesthetic provisions that impose reasonable restrictions on the
32 dimensions, placement, or external appearance of a renewable energy
33 generation device and that do not:

34 (I) ~~Significantly~~ Increase the cost of the device ~~or~~ BY MORE THAN
35 TEN PERCENT;

36 (II) ~~Significantly~~ Decrease ~~its~~ THE performance or efficiency OF
37 THE DEVICE BY MORE THAN TEN PERCENT; OR

38 (III) REQUIRE A PERIOD OF REVIEW AND APPROVAL THAT EXCEEDS
39 SIXTY DAYS AFTER THE DATE OF APPLICATION. IF AN APPLICATION FOR
40 INSTALLATION OF A RENEWABLE ENERGY GENERATION DEVICE IS NOT
41 DENIED OR RETURNED FOR MODIFICATIONS WITHIN SIXTY DAYS, IT IS

1 DEEMED APPROVED. THE REVIEW PROCESS MUST BE TRANSPARENT;
2 DENIAL OF APPROVAL MUST NOT BE ARBITRARY OR CAPRICIOUS; AND THE
3 BASIS FOR ANY DENIAL MUST BE DESCRIBED IN REASONABLE DETAIL.

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

6 **38-33.3-106.5. Prohibitions contrary to public policy -**
7 **patriotic, political, or religious expression - emergency vehicles - fire**
8 **prevention - renewable energy generation devices - affordable**
9 **housing - drought prevention measures - child care - definitions.**

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

13 (c) (I) The display of a political sign by the owner or occupant of
14 a unit on property within the boundaries of the unit or in a window of the
15 unit; except that:

16 (A) An association may prohibit the display of political signs
17 earlier than forty-five days before the FIRST day of THAT MAIL-IN BALLOTS
18 FOR an election ARE SENT TO VOTERS and later than seven days after an
19 THE OFFICIAL DATE OF THE election; ~~day~~; and

20 (i) (I) The use of xeriscape, NONVEGETATIVE TURF GRASS, or
21 drought-tolerant vegetative landscapes to provide ground covering to
22 property for which a unit owner is responsible, including a limited
23 common element or property owned by the unit owner. Associations may
24 adopt and enforce design or aesthetic guidelines or rules that **require**
25 **APPLY TO NONVEGETATIVE TURF GRASS AND** drought-tolerant vegetative
26 landscapes or regulate the type, number, and placement of
27 drought-tolerant plantings and hardscapes that may be installed on a unit
28 owner's property or on a limited common element or other property for
29 which the unit owner is responsible. AN ASSOCIATION MAY RESTRICT THE
30 INSTALLATION OF NONVEGETATIVE TURF GRASS TO REAR YARD LOCATIONS
31 ONLY.

32 **SECTION 4.** In Colorado Revised Statutes, 38-33.3-124, **amend**
33 (1)(b) as follows:

34 **38-33.3-124. Legislative declaration - alternative dispute**
35 **resolution required - notice to unit owners of association's policy.**

36 (1) (b) On or before January 1, ~~2007~~ 2022, each association shall adopt
37 a written MEDIATION policy ~~setting forth its procedure for addressing~~
38 ~~disputes arising between the association and unit owners. The association~~
39 ~~shall make a copy of this policy available to unit owners upon request~~
40 PROVIDING A FAIR AND EFFICIENT PROCEDURE TO ENCOURAGE THE
41 RESOLUTION OF DISPUTES BETWEEN UNIT OWNERS AND THE ASSOCIATION
42 AND BETWEEN UNIT OWNERS THAT ARISE UNDER THIS ARTICLE 33.3 OR THE
43 COMMON INTEREST COMMUNITY'S DECLARATION, BYLAWS, OR RULES AND

1 REGULATIONS. THE POLICY MUST:

2 (I) (A) REQUIRE, EXCEPT AS PROVIDED IN SUBSECTION (1)(b)(I)(B)
3 OF THIS SECTION, MEDIATION AS A PREREQUISITE TO EITHER THE
4 ASSOCIATION OR THE UNIT OWNER COMMENCING LITIGATION OR
5 ARBITRATION FOR MATTERS ARISING UNDER THE ASSOCIATION'S
6 GOVERNING DOCUMENTS OR THIS ARTICLE 33.3, OTHER THAN ROUTINE
7 ASSESSMENT COLLECTION OR AN ACTION OR PROSPECTIVE ACTION
8 AGAINST A CONSTRUCTION PROFESSIONAL, AS DEFINED IN SECTION
9 13-20-802.5 (4).

10 (B) MEDIATION IS NOT REQUIRED AS A PREREQUISITE TO
11 LITIGATION OR ARBITRATION IF THE PARTY INITIATING THE LITIGATION OR
12 ARBITRATION CERTIFIES IN THE PLEADING INITIATING THE ACTION THAT
13 MEDIATION HAS BEEN OFFERED AND NOT ACCEPTED WITHIN FOURTEEN
14 DAYS AFTER THE OFFER OR THAT MEDIATION IS NOT FEASIBLE DUE TO THE
15 LIKELIHOOD OF IMMEDIATE AND IRREPARABLE INJURY, LOSS, OR DAMAGE,
16 INCLUDING THE POTENTIAL EXPIRATION OF APPLICABLE STATUTES OF
17 LIMITATION.

18 (II) REQUIRE THE ASSOCIATION TO PROVIDE WRITTEN NOTICE OF
19 THE PROCESS BY WHICH A UNIT OWNER MAY DEMAND MEDIATION FROM
20 THE ASSOCIATION OR ANOTHER UNIT OWNER;

21 (III) REQUIRE THE USE OF A NEUTRAL, THIRD-PARTY MEDIATOR
22 AGREED UPON BY THE PARTIES TO THE DISPUTE AND SPECIFY HOW THE
23 COSTS OF MEDIATION WILL BE BORNE BY THE PARTIES;

24 (IV) STATE THAT ANY AGREEMENT REACHED IN MEDIATION IS
25 LIMITED TO A SPECIFIC CASE OR CONTROVERSY AND DOES NOT CONSTITUTE
26 PRECEDENT FOR ANY OTHER CASE OR CONTROVERSY;

27 (V) BE PUBLISHED ON THE ASSOCIATION'S WEBSITE OR OTHERWISE
28 PROVIDED TO ALL UNIT OWNERS WHEN ADOPTED, IF ADOPTED AFTER THE
29 EFFECTIVE DATE OF THIS SUBSECTION (1)(b)(V), AND THEREAFTER MADE
30 AVAILABLE UPON REQUEST AS REQUIRED BY SECTION 38-33.3-209.4 (2)(i);
31 AND

32 (VI) DEFER TO ANY PRE-EXISTING DISPUTE RESOLUTION
33 PROCESSES CONTAINED IN THE ASSOCIATION'S DECLARATION, ARTICLES OF
34 INCORPORATION, BYLAWS, OR RULES AND REGULATIONS IF THOSE
35 PROCESSES ARE CONSISTENT WITH THE REQUIREMENTS OF THIS
36 SUBSECTION (1)(b).

37 **SECTION 5.** In Colorado Revised Statutes, **amend**
38 38-33.3-209.6 as follows:

39 **38-33.3-209.6. Executive board member education.** The
40 EXECUTIVE board may authorize, and account for as a common expense,
41 reimbursement of EXECUTIVE board members for their actual and
42 necessary expenses incurred in attending educational meetings and
43 seminars on responsible governance of unit owners' associations. To

1 QUALIFY FOR REIMBURSEMENT, the course content of ~~such~~ THE
2 educational meetings and seminars ~~shall~~ MUST be specific to Colorado
3 and ~~shall~~ MUST make reference to applicable sections of this ~~article~~
4 ARTICLE 33.3.

5 **SECTION 6.** In Colorado Revised Statutes, 38-33.3-302, **amend**
6 (1)(f) as follows:

7 **38-33.3-302. Powers of unit owners' association.** (1) Except as
8 provided in subsections (2) and (3) of this section, and subject to the
9 provisions of the declaration, the association, without specific
10 authorization in the declaration, may:

11 (f) Regulate the use, maintenance, repair, replacement, and
12 modification of common elements; EXCEPT THAT:

13 (I) UNLESS NECESSARY DUE TO EMERGENCY OR AN IMMINENT
14 THREAT TO HEALTH OR SAFETY, THE ASSOCIATION SHALL NOT DENY UNIT
15 OWNERS ACCESS TO OR USE OF COMMON ELEMENTS WITHOUT PROVIDING
16 BOTH ADVANCE NOTICE AND A REASONABLE, CLEARLY ARTICULATED
17 BASIS FOR DOING SO. ANY CLOSURE OF COMMON ELEMENTS MUST BE NO
18 LONGER THAN NECESSARY TO EFFECTUATE THE PURPOSE OF THE CLOSURE,
19 AS DETERMINED BY THE EXECUTIVE BOARD IN THE EXERCISE OF
20 REASONABLE BUSINESS JUDGMENT.

21 (II) AN EXECUTIVE BOARD MEMBER'S EFFORTS TO DELAY OR DEFER
22 ANY MAINTENANCE, REPAIR, REPLACEMENT, OR MODIFICATION OF
23 COMMON ELEMENTS FOR DEMONSTRATED RETALIATORY REASONS MAY
24 CONSTITUTE A WANTON OR WILLFUL ACT OR OMISSION UNDER SECTION
25 38-33.3-303 (2)(b).

26 **SECTION 7.** In Colorado Revised Statutes, 38-33.3-310, **amend**
27 (2)(a) as follows:

28 **38-33.3-310. Voting - proxies.** (2) (a) (I) Votes allocated to a
29 unit may be cast pursuant to a proxy duly executed by a unit owner. A
30 proxy shall not be valid if obtained through fraud or misrepresentation.
31 Unless otherwise provided in the declaration, bylaws, or rules of the
32 association, appointment of proxies may be made substantially as
33 provided in section 7-127-203. ~~C.R.S.~~

34 (II) A UNIT OWNER'S PROXY BELONGS SOLELY TO THE UNIT OWNER
35 OF RECORD FOR THE UNIT AND CANNOT BE ASSIGNED TO ANY OTHER
36 PERSON BY THE PROXY HOLDER WITHOUT THE UNIT OWNER'S PRIOR
37 WRITTEN OR ELECTRONICALLY COMMUNICATED AND RECORDED CONSENT
38 UNLESS:

39 (A) THE PROXY FORM EXPRESSLY STATES THAT THE PROXY MAY
40 BE ASSIGNED TO ANOTHER PERSON; AND

41 (B) THE UNIT OWNER GIVES CONSENT TO SUBSEQUENT
42 ASSIGNMENT BY EXECUTION OR TRANSMISSION OF THE FORM IN
43 ACCORDANCE WITH SECTION 7-127-204.

1 **SECTION 8.** In Colorado Revised Statutes, 38-33.3-317, **amend**
2 (4); and **add** (1)(h.5) and (4.5) as follows:

3 **38-33.3-317. Association records - rules.** (1) In addition to any
4 records specifically defined in the association's declaration or bylaws or
5 expressly required by section 38-33.3-209.4 (2), the association must
6 maintain the following, all of which shall be deemed to be the sole
7 records of the association for purposes of document retention and
8 production to owners:

9 (h.5) A LIST OF THE CURRENT AMOUNTS OF ALL UNIQUE AND
10 EXTRAORDINARY FEES, ASSESSMENTS, AND EXPENSES THAT ARE
11 CHARGEABLE BY THE ASSOCIATION IN CONNECTION WITH THE PURCHASE
12 OR SALE OF A UNIT AND ARE NOT PAID FOR THROUGH ASSESSMENTS,
13 INCLUDING TRANSFER FEES, RECORD CHANGE FEES, AND THE CHARGE FOR
14 A STATUS LETTER OR STATEMENT OF ASSESSMENTS DUE;

15 (4) The association may impose a reasonable charge, which may
16 be collected in advance and may cover the costs of labor and material, for
17 copies of association records. The charge may not exceed the estimated
18 cost of production and reproduction of the records, INCLUDING THE COSTS
19 OF COPYING, MAILING, AND ANY NECESSARY SPECIAL PROCESSING.

20 (4.5) IF THE ASSOCIATION FAILS TO ALLOW INSPECTION OR
21 COPYING OF RECORDS IN ACCORDANCE WITH THIS SECTION WITHIN THIRTY
22 CALENDAR DAYS AFTER RECEIPT OF A WRITTEN REQUEST SUBMITTED BY
23 CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND PAYMENT OF ANY FEES
24 REQUIRED PURSUANT TO SUBSECTION (4) OF THIS SECTION, THE
25 ASSOCIATION IS LIABLE FOR PENALTIES IN THE AMOUNT OF FIFTY DOLLARS
26 PER DAY, COMMENCING ON THE ELEVENTH BUSINESS DAY AFTER THE
27 ASSOCIATION RECEIVED THE WRITTEN REQUEST, UP TO A MAXIMUM OF
28 FIVE HUNDRED DOLLARS OR THE UNIT OWNER'S ACTUAL DAMAGES
29 SUSTAINED AS A RESULT OF THE REFUSAL, WHICHEVER IS GREATER.

30 **SECTION 9. Act subject to petition - effective date -**
31 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
32 the expiration of the ninety-day period after final adjournment of the
33 general assembly; except that, if a referendum petition is filed pursuant
34 to section 1 (3) of article V of the state constitution against this act or an
35 item, section, or part of this act within such period, then the act, item,
36 section, or part will not take effect unless approved by the people at the
37 general election to be held in November 2022 and, in such case, will take
38 effect on the date of the official declaration of the vote thereon by the
39 governor.

40 (2) This act applies to conduct occurring on or after the applicable
41 effective date of this act."

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