

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

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 23-0801.01 Richard Sweetman x4333

SENATE BILL 23-178

SENATE SPONSORSHIP

Jaquez Lewis and Will, Marchman, Priola

HOUSE SPONSORSHIP

McCormick and Lindsay,

Senate Committees

Local Government & Housing

House Committees

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.

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) 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 OR NONVEGETATIVE landscapes to provide
2 ground covering to property for which a unit owner is responsible,
3 including a limited common element or property owned by the unit owner
4 AND ANY RIGHT-OF-WAY OR TREE LAWN THAT IS THE UNIT OWNER'S
5 RESPONSIBILITY TO MAINTAIN. Associations may adopt and enforce design
6 or aesthetic guidelines or rules that apply to ~~nonvegetative turf grass and~~
7 drought-tolerant vegetative OR NONVEGETATIVE landscapes OR TO
8 VEGETABLE GARDENS or THAT regulate the type, number, and placement
9 of drought-tolerant plantings and hardscapes that may be installed on a
10 ~~unit owner's property or on a limited common element or other property~~
11 ~~for which the unit owner is responsible. An association may restrict the~~
12 ~~installation of nonvegetative turf grass to rear yard locations only.~~
13 PROPERTY THAT IS SUBJECT TO THE GUIDELINES OR RULES; EXCEPT THAT
14 THE GUIDELINES OR RULES MUST:

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

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

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

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

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

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

26 (IV) BEFORE A UNIT OWNER COMMENCES A CIVIL ACTION AS
27 DESCRIBED IN SUBSECTION (1)(i)(III) OF THIS SECTION, THE UNIT OWNER

1 SHALL NOTIFY THE ASSOCIATION IN WRITING OF THE VIOLATION AND
2 ALLOW THE ASSOCIATION FORTY-FIVE DAYS AFTER RECEIPT OF THE NOTICE
3 TO CURE THE VIOLATION.

4 ~~(B)~~ (V) This subsection (1)(i), as amended by House Bill 21-1229,
5 enacted in 2021, does not apply to an association that includes time share
6 units, as defined in section 38-33-110 (7).

7 ~~(H)~~ (VI) This ~~paragraph (i)~~ SUBSECTION (1)(i) does not supersede
8 any subdivision regulation of a county, city and county, or other
9 municipality.

10 (VII) NOTHING IN THIS SUBSECTION (1)(i) SHALL BE CONSTRUED
11 TO PROHIBIT OR RESTRICT THE AUTHORITY OF ASSOCIATIONS TO:

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

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

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

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

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

26 (B) A CONDOMINIUM.

27 **SECTION 2.** In Colorado Revised Statutes, 37-60-126, **amend**

1 (11)(a) and (11)(b)(IV); and **add** (11)(e) as follows:

2 **37-60-126. Water conservation and drought mitigation**
3 **planning - programs - relationship to state assistance for water**
4 **facilities - guidelines - water efficiency grant program - definitions -**
5 **repeal.** (11) (a) (I) Any section of a restrictive covenant or of the

6 declaration, bylaws, or rules and regulations of a common interest
7 community, all as defined in section 38-33.3-103, and any rule or policy
8 of a special district, as defined in section 32-1-103 (20), that prohibits or
9 limits xeriscape, prohibits or limits the installation or use of
10 drought-tolerant vegetative OR NONVEGETATIVE landscapes, requires
11 cultivated vegetation to consist wholly or partially of turf grass, or
12 prohibits the use of nonvegetative turf grass in the backyard of a
13 residential property is hereby declared contrary to public policy and, on
14 that basis, is unenforceable.

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

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

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

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

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

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

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

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

20 (e) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE
21 CONTRARY, THIS SUBSECTION (11) APPLIES TO A UNIT OF A COMMON
22 INTEREST COMMUNITY, AS THOSE TERMS ARE DEFINED IN SECTION
23 38-33.3-103 (8) AND (30), ONLY IF THE UNIT IS A SINGLE-FAMILY
24 DWELLING, AS DEFINED IN SECTION 38-45-101 (7).

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

27 **37-60-115. Water studies - rules - repeal. (6) Precipitation**

1 harvesting pilot projects. (e) (I) This subsection (6) is repealed,
2 effective July 1, 2026.

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

7 **SECTION 4. Act subject to petition - effective date.** This act
8 takes effect at 12:01 a.m. on the day following the expiration of the
9 ninety-day period after final adjournment of the general assembly; except
10 that, if a referendum petition is filed pursuant to section 1 (3) of article V
11 of the state constitution against this act or an item, section, or part of this
12 act within such period, then the act, item, section, or part will not take
13 effect unless approved by the people at the general election to be held in
14 November 2024 and, in such case, will take effect on the date of the
15 official declaration of the vote thereon by the governor.