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Fiscal Note

Drafting Number: LLS 23-0801 Date: March 10, 2023
Prime Sponsors: Sen. Jaquez Lewis; Will Rep. McCormick Bill Status: Senate Local Government
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Bill Topic: WATER-WISE LANDSCAPING IN HOA COMMUNITIES

Summary of Fiscal Impact: [X] State Revenue [X] State Expenditure [] State Transfer [] TABOR Refund [] Local Government [] Statutory Public Entity

This bill requires that homeowner's associations (HOAs) allow the use of non-vegetative landscaping, and limits how community covenants may otherwise restrict xeriscaping by unit owners. The bill allows unit owners 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 introduced bill.

Summary of Legislation

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

- not prohibit the use of non-vegetative turf grass in the backyard of a unit owner's property;
not unreasonably require the use of hardscape on more than 20 percent of landscaping;
not prohibit vegetable gardens in the yard of a unit owner; and
allow property owners an option consisting of at least 80 percent drought-tolerant plantings.

HOAs are required to permit at least three designs approved by the HOA and that adhere to the principles of water-wise landscaping and emphasize drought tolerant and native plants. Designs may be downloaded from the Colorado State University Extension Plant Select Organization's design list. A unit owner affected by an HOA landscaping rule violation may bring a civil action to restrain further violations, and to recover actual damages plus \$500, costs, and reasonable attorney's fees. Unit owners must give the HOA 45 days to cure any violation before filing suit.

Background

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

State Revenue and Expenditures

Allowing a unit owner 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. No change in appropriations is required.

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

Information Technology
Local Affairs

Judicial
Natural Resources

Law
Regulatory Agencies