

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

ENGROSSED

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

LLS NO. 13-0772.02 Chuck Brackney x2295

SENATE BILL 13-183

SENATE SPONSORSHIP

Carroll, Giron, Schwartz

HOUSE SPONSORSHIP

Fields,

Senate Committees
Local Government

House Committees

A BILL FOR AN ACT

101 **CONCERNING WATER CONSERVATION MEASURES IN COMMON INTEREST**
102 **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://www.leg.state.co.us/bills/summaries>.)

The bill amends current law to specify that restrictive covenants or declarations, bylaws, and rules and regulations of common interest communities that prohibit or limit xeriscape or drought-tolerant vegetation or require ground covering vegetation to consist of any amount of turf grass are contrary to public policy and unenforceable. The bill also

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
March 1, 2013

adds a definition of "xeriscape" to the "Colorado Common Interest Ownership Act" and says that a unit owners' association (association) may not prohibit the use of xeriscape or other drought-tolerant vegetative landscapes to provide ground covering and may not levy fines against unit owners for violations of declarations, bylaws, or rules and regulations of the association for failure to adequately water when water restrictions are in place and the unit owner waters in compliance with those restrictions.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 37-60-126, **amend**
3 (11) (a), (11) (b) (III), (11) (c) introductory portion, (11) (c) (I), and (11)
4 (c) (III); and add (11) (d) 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 - repeal.**

8 (11) (a) Any section of a restrictive covenant OR OF THE DECLARATION,
9 BYLAWS, OR RULES AND REGULATIONS OF A COMMON INTEREST
10 COMMUNITY, ALL AS DEFINED IN SECTION 38-33.3-103, C.R.S., that
11 prohibits or limits xeriscape, prohibits or limits the installation or use of
12 drought-tolerant vegetative landscapes, or requires cultivated vegetation
13 to consist ~~exclusively or primarily~~ WHOLLY OR PARTIALLY of turf grass is
14 hereby declared contrary to public policy and, on that basis, ~~that section~~
15 ~~of the covenant shall be~~ IS unenforceable. THIS PARAGRAPH (a) DOES NOT
16 PROHIBIT COMMON INTEREST COMMUNITIES FROM ADOPTING AND
17 ENFORCING DESIGN OR AESTHETIC GUIDELINES OR RULES THAT REQUIRE
18 DROUGHT-TOLERANT VEGETATIVE LANDSCAPES OR REGULATE THE TYPE,
19 NUMBER, AND PLACEMENT OF DROUGHT-TOLERANT PLANTINGS AND
20 HARDSCAPES THAT MAY BE INSTALLED ON THE UNIT OWNER'S PROPERTY
21 OR PROPERTY FOR WHICH THE UNIT OWNER IS RESPONSIBLE.

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

1 (III) "Turf grass" means continuous plant coverage consisting of
2 ~~hybridized~~ NONNATIVE grasses ~~that~~, OR GRASSES THAT HAVE NOT BEEN
3 HYBRIDIZED FOR ARID CONDITIONS WHICH, when regularly mowed, form
4 a dense growth of leaf blades and roots.

5 (c) Nothing in this subsection (11) ~~shall preclude~~ PRECLUDES the
6 executive board of a common interest community from taking
7 enforcement action against a unit owner who allows his or her existing
8 landscaping to die ___ ; except that:

9 (I) ~~Such~~ NO enforcement action shall ~~be suspended during a~~
10 ~~period~~ REQUIRE THAT A UNIT OWNER WATER IN VIOLATION of water use
11 restrictions declared by the jurisdiction in which the common interest
12 community is located, in which case the unit owner shall ~~comply with~~
13 WATER HIS OR HER LANDSCAPING APPROPRIATELY BUT NOT IN EXCESS OF
14 any watering restrictions imposed by the water provider for the common
15 interest community;

16 (III) ~~Once the drought emergency is lifted~~, IN ANY ENFORCEMENT
17 ACTION IN WHICH THE EXISTING TURF GRASS IS DEAD _____ DUE TO
18 INSUFFICIENT WATERING, the unit owner shall be allowed a reasonable and
19 practical opportunity, as defined by the association's executive board,
20 with consideration of applicable local growing seasons or practical
21 limitations, to reseed and revive turf grass before being required to
22 replace it with new sod.

23 (d) THIS SUBSECTION (11) DOES NOT SUPERSEDE ANY SUBDIVISION
24 REGULATION OF A COUNTY, CITY AND COUNTY, OR OTHER MUNICIPALITY.

25 **SECTION 2.** In Colorado Revised Statutes, 38-33.3-103, **add**
26 (33) as follows:

27 **38-33.3-103. Definitions.** As used in the declaration and bylaws

1 of an association, unless specifically provided otherwise or unless the
2 context otherwise requires, and in this article:

3 (33) "XERISCAPE" MEANS THE APPLICATION OF THE PRINCIPLES OF
4 LANDSCAPE PLANNING AND DESIGN, SOIL ANALYSIS AND IMPROVEMENT,
5 APPROPRIATE PLANT SELECTION, LIMITATION OF TURF AREA, USE OF
6 MULCHES, IRRIGATION EFFICIENCY, AND APPROPRIATE MAINTENANCE
7 THAT RESULTS IN WATER USE EFFICIENCY AND WATER-SAVING PRACTICES.

8 **SECTION 3.** In Colorado Revised Statutes, 38-33.3-106.5, **add**
9 (1) (i) as follows:

10 **38-33.3-106.5. Prohibitions contrary to public policy -**
11 **patriotic and political expression - emergency vehicles - fire**
12 **prevention - renewable energy generation devices - affordable**
13 **housing - drought prevention measures - definitions.**

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

17 (i) (I) THE USE OF XERISCAPE OR DROUGHT-TOLERANT
18 VEGETATIVE LANDSCAPES TO PROVIDE GROUND COVERING TO PROPERTY
19 OWNED BY THE UNIT OWNER. ASSOCIATIONS MAY ADOPT AND ENFORCE
20 DESIGN OR AESTHETIC GUIDELINES OR RULES THAT REQUIRE
21 DROUGHT-TOLERANT VEGETATIVE LANDSCAPES OR REGULATE THE TYPE,
22 NUMBER, AND PLACEMENT OF DROUGHT-TOLERANT PLANTINGS AND
23 HARDSCAPES THAT MAY BE INSTALLED ON THE UNIT OWNER'S PROPERTY
24 OR PROPERTY FOR WHICH THE UNIT OWNER IS RESPONSIBLE.

25 (II) THIS PARAGRAPH (i) DOES NOT SUPERSEDE ANY SUBDIVISION
26 REGULATION OF A COUNTY, CITY AND COUNTY, OR OTHER MUNICIPALITY.

27 **SECTION 4.** In Colorado Revised Statutes, 38-33.3-302, **amend**

1 (1) (k) as follows:

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

6 (k) (I) Impose charges for late payment of assessments, recover
7 reasonable attorney fees and other legal costs for collection of
8 assessments and other actions to enforce the power of the association,
9 regardless of whether or not suit was initiated, and, after notice and an
10 opportunity to be heard, levy reasonable fines for violations of the
11 declaration, bylaws, and rules and regulations of the association.

12 (II) THE ASSOCIATION MAY NOT LEVY FINES AGAINST A UNIT
13 OWNER FOR VIOLATIONS OF DECLARATIONS, BYLAWS, OR RULES OF THE
14 ASSOCIATION FOR FAILURE TO ADEQUATELY WATER LANDSCAPES OR
15 VEGETATION FOR WHICH THE UNIT OWNER IS RESPONSIBLE WHEN WATER
16 RESTRICTIONS OR GUIDELINES FROM THE LOCAL WATER DISTRICT OR
17 SIMILAR ENTITY ARE IN PLACE AND THE UNIT OWNER IS WATERING IN
18 COMPLIANCE WITH SUCH RESTRICTIONS OR GUIDELINES. THE ASSOCIATION
19 MAY REQUIRE PROOF FROM THE UNIT OWNER THAT THE UNIT OWNER IS
20 WATERING THE LANDSCAPE OR VEGETATION IN A MANNER THAT IS
21 CONSISTENT WITH THE MAXIMUM WATERING PERMITTED BY THE
22 RESTRICTIONS OR GUIDELINES THEN IN EFFECT.

23 **SECTION 5. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, and safety.