

# SENATE BILL REPORT

## HB 1165

As of February 24, 2020

**Title:** An act relating to encouraging low-water landscaping practices as a drought alleviation tool.

**Brief Description:** Encouraging low-water landscaping practices as a drought alleviation tool.

**Sponsors:** Representatives Orwall, Dent, Blake, Fitzgibbon and Doglio.

**Brief History:** Passed House: 1/27/20, 93-4.

**Committee Activity:** Agriculture, Water, Natural Resources & Parks: 2/20/20.

### Brief Summary of Bill

- Specifies that condominium unit owners associations (COAs), homeowner's associations (HOAs), and common interest communities (CICs) may not prohibit a homeowner or resident from taking certain water-efficient or wildfire ignition-resistant landscaping measures.
- Prohibits COAs, HOAs, and CICs from penalizing a homeowner or resident for taking certain water-efficient or wildfire ignition-resistant landscaping measures during a state-issued drought condition order.
- Encourages those undertaking state-funded major facility projects (projects) to design and construct such projects to acquire all possible water-efficient landscaping credits under a nationally recognized consensus standard or the Washington Sustainable School Design Protocol.

### SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

**Staff:** Karen Epps (786-7424)

**Background:** Condominiums, Homeowner's Associations, and Common Interest Communities. A condominium is real property where units are designated for separate ownership and the remainder is designated for common ownership solely by the owners of those units. COAs may, among other things, adopt and amend bylaws, rules, and regulations.

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

HOAs are legal entities composed of the owners of residential real property located within the association's jurisdiction. An HOA may, among other things, appoint a board of directors, adopt bylaws, make contracts, and regulate the use of common areas.

In 2018, the Legislature adopted the Washington Uniform Common Interest Ownership Act (WUCIOA), which applies to all residential common interest communities (CICs) created after the effective date of the act. A CIC is real estate described in a declaration—the instrument creating a CIC—with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units, or other real estate described in the declaration. A CIC includes condominiums, cooperatives, leasehold CICs, miscellaneous communities, and plat communities.

A CIC created before the effective date may elect to amend its declaration to provide that WUCIOA applies. Two sections, one governing adoption of budgets, assessments, and special assessments and another providing a process for an existing CIC to elect to come under the WUCIOA, apply to all CICs, whether created before or after the effective date, and regardless of election. A variety of laws apply to entities created before the effective date of WUCIOA, including the Washington Condominium Act (WCA) and the Homeowners' Association Act.

Drought Emergencies. The Department of Ecology (Ecology) is authorized to declare drought emergencies by administrative order. Before it may declare a drought emergency, Ecology must determine an area is experiencing or is expected to experience less than 75 percent of normal water supply and is expected to suffer undue hardships as a result of the dry conditions. Prior to issuing an order, Ecology must first consult with federal and state agencies and must receive approval from the Governor.

Ecology may, upon issuing a drought emergency order, authorize emergency withdrawals of public surface and ground waters, as long as the withdrawals are put to beneficial uses and will not reduce flows below the essential minimum for fisheries and other state and federal interests. Issuing a drought order also allows Ecology to approve temporary changes in the use of a water right, employ additional people, acquire emergency equipment, and revise any drought contingency plans.

Leadership in Energy and Environmental Design Rating System and Washington Sustainable School Design Protocol Standards. The state has a variety of programs and standards that support sustainable building for state and other projects, including the High Performance Public Buildings standards and the Department of Commerce's Evergreen Sustainable Building Standards. There are state educational programs dedicated towards sustainable design, including Washington State University's (WSU) Institute for Sustainable Design and Composite Materials and Engineering Center.

Under the High Performance Building Standards, certain public agency and school district projects funded through the Capital Budget must achieve Leadership in Energy and Environmental Design (LEED) Silver certification under the United States Green Building Council's LEED Rating System. There are four ranks of LEED certification: (1) Certified; (2) Silver; (3) Gold; and (4) Platinum. To achieve any level of LEED certification, a project

must earn a certain number of points. Points are allotted for a variety of elements. One point is available for incorporating water-efficient landscaping that reduces water use by 50 percent, and one point is available for not using potable water for irrigation. The Department of Enterprise Services and Superintendent of Public Instruction develop methods and procedures for implementation and compliance of this requirement.

The WSU Sustainable Design Institute creates sustainable processes and designs by merging expertise in architecture, construction management, civil engineering, wood engineering, and materials discovery and processing. The WSU Composite Materials and Engineering Center develops new building materials and innovative structural systems from sustainable resources.

**Summary of Bill:** COAs, HOAs, and CICs may not prohibit the use of drought-resistant or wildfire ignition-resistant landscaping. If a property falls in the geographic area of a drought condition order issued by Ecology, then COAs, HOAs, and CICs in that area may not sanction or impose a fine against an owner or resident who reduces or stops watering their lawns or vegetation during the drought condition order.

COAs, HOAs, and CICs may establish rules governing the placement and aesthetic appearance of drought-resistant or wildfire-resistant landscaping so long as the rules do not render the use of such landscaping arbitrarily costly or otherwise infeasible.

"Drought resistant landscaping" means the use of any noninvasive vegetation adapted to arid or dry conditions, or stone and landscaping rock. "Wildfire ignition-resistant landscaping" includes any landscaping tools or techniques, or noninvasive vegetation that do not readily ignite from a flame or other ignition source.

Those undertaking state-funded major facility projects are encouraged to design such projects to receive all possible water-efficient landscaping credits from either the LEED Rating System, other nationally recognized consensus standards, or WSSP standards. Elements of state-funded major facility projects that are eligible to be excluded from the project design for the purpose of meeting LEED standards, other nationally recognized consensus standards, or WSSP standards are not required to be considered for the purpose of earning all possible water-efficient landscaping credits.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill balances the needs of the HOAs and the needs of the homeowners. The bill also addresses the need to have the state practice water efficiency with its landscaping. This bill allows homeowners to practice good stewardship of water. With climate change and the possibility of increasing drought, this bill ensures that homeowners can take action. This bill encourages low-water landscaping in

community associations throughout the state. This bill reaches a good balance between the rights of the association and the desires of individual homeowners to have environmentally conscious landscaping. This bill removes barriers to water conservation and drought-resistant landscaping. This bill will help to ensure that, during times of drought, HOA bylaws do not conflict with local and statewide guidance on water use availability.

**Persons Testifying:** PRO: Representative Tina Orwall, Prime Sponsor; Martin Gibbins, League of Women Voters; Krystelle Purkey, Washington State Chapter of Community Association Institute; Carrie Sessions, Department of Ecology.

**Persons Signed In To Testify But Not Testifying:** No one.