

HOUSE BILL REPORT

HB 1172

As Reported by House Committee On:
Agriculture & Natural Resources

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, Blake, Fitzgibbon, Pollet and Doglio.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/18/17, 2/16/17 [DPS].

Brief Summary of Substitute Bill

- Specifies that condominium and homeowner's associations may not prohibit or penalize a homeowner for certain water-efficient landscaping measures.
- Requires state-funded buildings to be designed and constructed to acquire all possible water-efficient or wildfire-resistant landscaping credits under the United States Green Building Council LEED rating system, other nationally recognized consensus standard, or the Washington Sustainable School Design Protocol (WSSP) available for water efficiency measures.
- Specifies that elements of state-funded major facility projects that are eligible for exclusion from the project design under LEED or WSSP standards are not required to be designed and constructed to meet all possible water-efficient landscaping credits.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Blake, Chair; Chapman, Vice Chair; Dent, Assistant Ranking Minority Member; Fitzgibbon, Lytton, Orcutt, Pettigrew, Robinson, Springer and Stanford.

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.

Minority Report: Do not pass. Signed by 5 members: Representatives Buys, Ranking Minority Member; Chandler, Kretz, Schmick and J. Walsh.

Staff: Rebecca Lewis (786-7339).

Background:

Drought Condition Orders by the Department of Ecology.

A drought condition occurs when the water supply for a geographical area or a significant portion of a geographical area is below 75 percent of normal and the water shortage is likely to create undue hardships for various water uses and users. The Department of Ecology is authorized to issue orders to address a drought after obtaining input from certain state and federal agencies, and receiving written approval from the Governor.

Drought Resistant Landscaping.

There are a variety of drought-resistant landscaping techniques including the use of succulents, gravel or stone, drought-tolerant ornamental grasses, or artificial grass.

Condominiums and Homeowner's Associations.

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. Condominium unit owners' associations may, among other things, adopt and amend bylaws, rules, and regulations.

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

State-Funded Major Facility Project Standards.

LEED Certification.

The Department of Enterprise Services (DES), formerly General Administration, has been a member of the United States Green Building Council since 1998. The primary product of the United States Green Building Council is the Leadership in Energy and Environmental Design (LEED) Rating System, which provides national design guidelines and a third-party certification tool. The LEED rating system focuses on six major areas, one of which is water efficiency.

There are four ranks of LEED certification: (1) Certified; (2) Silver; (3) Gold; and (4) Platinum. In order to achieve any level of LEED certification, a project must earn a certain number of points. Points are allotted for a variety of elements. For example, 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.

State law requires new state agency and state college, and major renovation projects over 5,000 square feet, to achieve at least LEED Silver certification, which requires at least 50 points. If the project design team and either the DES, public school district, or other applicable agency determine the LEED Silver standard to be infeasible for any project, they must determine if another standard is feasible. If LEED standards are not followed, the agency or school district must report the reasons to the DES.

Standards for K-12 School Construction.

School district major facility projects may meet either LEED standards or Washington Sustainable School Design Protocol (WSSP). The WSSP is modeled after the Collaborative for High Performance Schools (CHPS) Green Building Protocol and contains both required and optional water-efficient landscaping standards. At the project team and agency's discretion, athletic fields, vegetated playgrounds, and food gardens are eligible for exclusion from school projects under the LEED standards. Similarly, athletic fields are eligible for exclusion from school projects under the WSSP standards.

Summary of Substitute Bill:

Condominium unit owners' associations and homeowner's associations (Associations) 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 the Department of Ecology, Associations 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.

Associations 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" includes, but is not limited to, the use of any noninvasive vegetation adapted to arid or dry conditions, stone or gravel, or artificial turf or plants. "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.

Major facility projects may receive water-efficient landscaping credits from either LEED, other nationally recognized consensus standard, or the WSSP. Elements of state-funded major facility projects that are eligible to be excluded from the project design under LEED or WSSP standards, including athletic fields, are not required to be designed and constructed to earn all possible water-efficient landscaping credits.

Substitute Bill Compared to Original Bill:

Associations may not restrict the installation of wildfire ignition resistant landscaping in addition to drought resistant landscaping. Definitions are provided for "drought resistant landscaping" and "wildfire resistant landscaping."

Additional options are added for how state-funded major facility projects may receive water-efficient landscaping credits. Elements of state-funded major facility projects that are eligible to be excluded from the project design under LEED or WSSP standards are not required to be designed and constructed to earn all possible water-efficient landscaping credits.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This was a request from a constituent who is very concerned about the environment. She did some landscaping that she thought was beautiful yet sensitive to the environment. She learned that it was not consistent with her Association's rules and spent a great deal of time negotiating with her Association. This bill is not intended to impact schools or sports fields.

In 2015 the Governor declared statewide drought and many municipalities called for voluntary water conservation by residents. During this time, some people who wanted to reduce their water use reported to the Department of Ecology that their Associations still required them to water their lawns adequately. This would help ensure that local Association bylaws do not conflict with guidance to reduce water use. Washington has not yet seen many instances of conflicts between residents and Associations rise to litigation; however, there has been litigation between homeowners and Associations in other states.

Outdoor water use accounts for about one-third of domestic water use; however, water use is the greatest during the late summer. The provisions in this bill are voluntary and support property rights. Not all Associations enforce strict covenants, but some do. This bill would allow homeowners more flexibility in how they manage their lands.

(Opposed) None.

(Other) There is concern that section 4 of the bill may impact the installation of school sportsfields or require schools to use artificial turf instead of grass fields.

Persons Testifying: (In support) Representative Orwall, prime sponsor; Carrie Sessions, Department of Ecology; and Bruce Wishart, Sierra Club and Center for Environmental Law and Policy.

(Opposed) None.

(Other) Charlie Brown, Schools Coalition.

Persons Signed In To Testify But Not Testifying: None.