

# FINAL BILL REPORT

## HB 1165

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**C 9 L 20**  
Synopsis as Enacted

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

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

**House Committee on Rural Development, Agriculture, & Natural Resources**  
**House Committee on Capital Budget**  
**Senate Committee on Agriculture, Water, Natural Resources & Parks**

### **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. Condominium unit owners' associations (COAs) may, among other things, adopt and amend bylaws, rules, and regulations. Condominiums created after July 1, 2018, are governed by the Washington Uniform Common Interest Ownership (WUCIO) Act.

Homeowner's associations (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.

The WUCIO Act, enacted in 2018, governs common interest communities (CICs) created after July 1, 2018.

A CIC is real estate described in a declaration (the instrument that creates 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. The term includes:

- condominiums created after July 1, 2018;
- cooperatives: a CIC in which the real estate is owned by an association, and each member is entitled to exclusive possession of a unit by virtue of the member's ownership interest in the association and by a proprietary lease;

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- leasehold CIC: a CIC in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the CIC or reduce its size;
- miscellaneous communities: a CIC in which units are lawfully created in a manner not inconsistent with state statutes governing plats and subdivisions and that is not a condominium, cooperative, or plat community; and
- plat communities: a CIC in which units have been created by subdivision or short subdivision as both are defined by statute and in which the boundaries of units are established pursuant to that chapter.

#### 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, 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) standards. 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 project design for the purpose of attaining the LEED standards. Similarly, athletic fields are eligible for exclusion from school projects for the purpose of attaining the WSSP standards.

#### 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 may

issue orders to address a drought after obtaining input from certain state and federal agencies, and receiving written approval from the Governor.

**Summary:**

Condominium unit owners' associations (COAs), homeowner's associations (HOAs), and common interest communities (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 the Department of 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.

Condominium owners' associations, 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 or 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 Leadership in Energy and Environmental Design (LEED) Rating System, other nationally recognized consensus standards, or Washington Sustainable School Design Protocol (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.

**Votes on Final Passage:**

House	93	4
Senate	46	2

**Effective:** June 11, 2020