

HOUSE BILL REPORT

HB 1165

As Passed Legislature

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:

Committee Activity:

Rural Development, Agriculture, & Natural Resources: 1/22/19, 1/29/19 [DP];
Capital Budget: 2/21/19, 2/26/19 [DP].

Floor Activity:

Passed House: 1/27/20, 93-4.
Passed Senate: 3/3/20, 46-2.
Passed Legislature.

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 (WSSP).
- Specifies that elements of projects eligible for exclusion from the project design for the purpose of achieving water-efficient landscaping credits under a nationally recognized consensus standard or WSSP standards do not need to be considered.

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.

HOUSE COMMITTEE ON RURAL DEVELOPMENT, AGRICULTURE, & NATURAL RESOURCES

Majority Report: Do pass. Signed by 14 members: Representatives Blake, Chair; Shewmake, Vice Chair; Chandler, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Chapman, Dye, Fitzgibbon, Kretz, Lekanoff, Orcutt, Pettigrew, Ramos, Schmick and Walsh.

Staff: Rebecca Lewis (786-7339).

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: Do pass. Signed by 13 members: Representatives Tharinger, Chair; Doglio, Vice Chair; Peterson, Vice Chair; Davis, Irwin, Leavitt, Lekanoff, Maycumber, Morgan, Riccelli, Santos, Sells and Stonier.

Minority Report: Do not pass. Signed by 9 members: Representatives DeBolt, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Steele, Assistant Ranking Minority Member; Corry, Dye, Eslick, Gildon, Jenkin and Walsh.

Staff: Steve Masse (786-7115).

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, each member of which is entitled by virtue of the member's ownership interest in the association and by a proprietary lease to exclusive possession of a unit;
- 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 chapter 58.17 RCW (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 in chapter 58.17 RCW and in which the boundaries of units are established pursuant to that chapter.

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.

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.

Summary of Bill:

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.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony (Rural Development, Agriculture, & Natural Resources):

(In support) This is the third year this bill has come before the committee and there has been a lot of hard work from many stakeholders to improve it. Originally, the idea came from an environmentally minded constituent who wanted to change her landscaping to conserve water. She and her homeowner's association went through an extended court battle regarding those landscaping choices. Some newer developments are built on very compact soil, and

lawns on top of that soil require more constant watering than usual. This bill is an attempt to find a balance between allowing homeowners to use water-efficient landscaping techniques that conserve resources while respecting the rules of a homeowner's association. This bill also encourages the state to use more low-water landscaping practices in the design of state-funded buildings. In 2015 there was a statewide drought order. Several municipalities called for voluntary water conservation, and members of the public reported to the Department of Ecology a desire to reduce their water use but were required to continue to water their lawns by their homeowners' associations.

(Opposed) None.

Staff Summary of Public Testimony (Capital Budget):

(In support) This will help homeowners that are part of an association to be able to place water resistant plants that should benefit the area and the state in the event of a drought situation.

(Opposed) None.

Persons Testifying (Rural Development, Agriculture, & Natural Resources): Representative Orwall, prime sponsor; Charlie Brown, International Code Council; Carrie Sessions, Department of Ecology; and Kristen Bryant and Sally Neary, Sierra Club.

Persons Testifying (Capital Budget): Representative Orwall, prime sponsor; Krystelle Purkey, Washington State Community Association Institute; and Kraig Stevenson, International Code Council.

Persons Signed In To Testify But Not Testifying (Rural Development, Agriculture, & Natural Resources): None.

Persons Signed In To Testify But Not Testifying (Capital Budget): None.