

# HOUSE BILL REPORT

## HB 2485

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### 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, Dent, Blake, Buys and Wylie.

#### **Brief History:**

##### **Committee Activity:**

Agriculture & Natural Resources: 1/17/18, 1/24/18 [DPS].

#### **Brief Summary of Substitute Bill**

- Specifies that condominium and homeowners' associations may not prohibit a homeowner or resident from taking certain water-efficient or wildfire ignition-resistant landscaping measures.
- Prohibits condominium and homeowners' associations from penalizing a homeowner or resident for taking certain water-efficient or wildfire ignition-resistant landscaping measures during a state-issued drought condition order.
- Requires state-funded buildings to be designed and constructed, to the extent practicable and economically feasible, 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 state-funded major facility projects that are eligible for exclusion from the project design for the purpose of achieving water-efficient landscaping credits under the Leadership in Energy and Environmental Design or the WSSP standards are exempt.

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass.  
Signed by 13 members: Representatives Blake, Chair; Chapman, Vice Chair; Buys, Ranking

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*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 Member; Dent, Assistant Ranking Minority Member; Fitzgibbon, Lytton, Orcutt, Pettigrew, Robinson, Schmick, Springer, Stanford and 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.

#### Condominiums and Homeowners' 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.

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

#### Firewise.

The Firewise Communities Program (Firewise) is a public education program focused on wildfire preparedness. Firewise is a product of the National Fire Protection Association, co-sponsored by the United States Forest Service, the Department of the Interior, and the National Association of State Foresters. Firewise emphasizes collaboration between individuals, neighborhoods, and local governments to reduce the risk of wildfire in areas susceptible to such disasters. In order to be recognized as a Firewise community, a city, town, or neighborhood in an area susceptible to brush, grass, or forest fire must:

- obtain a wildfire risk assessment in writing from the state forest agency or a fire department;
- form a board or committee and create an action plan based on the risk assessment;
- conduct a Firewise Day event;
- invest at least \$2 per capita per year in Firewise actions which include volunteer hours, loaned equipment, or hired contractors for clean-up work as well as cash spent; and
- complete an application and submit it to the state Firewise liaison.

Communities must renew their status each year.

#### 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 all new state agency major facility projects, including 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 Kindergarten-Grade Twelve 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 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.

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### **Summary of Substitute Bill:**

Condominium unit owners' associations and homeowners' associations (Associations) may not prohibit the use of drought-resistant or wildfire ignition resistant landscaping, or the establishment and maintenance of a fire buffer. 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 lawn 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" means the use of any noninvasive vegetation adapted to arid or dry conditions, or stone or gravel. "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, and Firewise methods developed by the National Fire Protection Association.

To the extent practicable and economically feasible, state-funded major facility projects must be designed and constructed to acquire all possible water-efficient landscaping credits under a nationally recognized consensus standard, or the WSSP. State-funded 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 for the purpose of meeting LEED standards, other nationally recognized consensus standards, or the WSSP standards are not required to be designed and constructed to earn all possible water-efficient landscaping credits.

**Substitute Bill Compared to Original Bill:**

The substitute bill adds that state major facility projects must be designed and constructed, to the extent practicable and economically feasible, to achieve water-efficient landscaping credits. Additionally, neither Firewise methods nor the establishment and maintenance of a 200 foot fire buffer may be restricted or prohibited by a homeowner or condominium owners association, nor in the design or construction of state major facility projects.

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**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 idea came from a conservation sensitive constituent who went through an extended battle to make some simple changes to her landscaping. There should be a balance between allowing homeowners to use landscaping techniques that conserve resources while respecting the rules of a homeowners' association. This bill allows a homeowner to voluntarily employ water-efficient landscaping techniques. The bill also tries to make sure the state is meeting LEED standards. This bill would remove barriers for landowners and the state to employ water-efficient landscaping. 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. Conflicts between landowners and homeowners' associations have not yet risen to litigation; however, similar conflicts have in other states. There are sometimes differences between drought-resistant and wildfire ignition resistant landscaping, so it was important to have a definition of wildfire ignition resistant landscaping. The Department of Natural Resources has a publication about wildfire resistant landscaping that is easy to find.

(Opposed) None.

**Persons Testifying:** Representative Orwall, prime sponsor; Kraig Stevenson, International Code Council; and Carrie Sessions, Department of Ecology.

**Persons Signed In To Testify But Not Testifying:** None.