

BILL ANALYSIS

C.S.H.B. 3391
By: Miller, Doug
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The use of harvested rainwater is typically restricted to nonpotable purposes such as landscape irrigation, laundry, and toilet flushing. Interested parties note that, with Texas facing limited water resources, it is critical that both potable and nonpotable harvested rainwater be recognized as a desirable and sustainable water resource. The parties see a need to promote the use of rainwater harvesting for both potable and nonpotable purposes at public and private facilities in Texas in order to acknowledge the viability, sustainability, and conservation of this natural resource. C.S.H.B. 3391 seeks to address these concerns.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 3 of this bill.

ANALYSIS

C.S.H.B. 3391 amends the Local Government Code to establish that each municipality and county is encouraged to promote rainwater harvesting at residential, commercial, and industrial facilities through incentives such as the provision at a discount of rain barrels or rebates for water storage facilities. The bill requires the Texas Water Development Board (TWDB) to ensure that training on rainwater harvesting is available for the members of the permitting staffs of municipalities and counties at least quarterly. The bill requires each member of the permitting staff of each county and municipality located wholly or partly in an area designated by the Texas Commission on Environmental Quality (TCEQ) as a priority groundwater management area whose work relates directly to permits involving rainwater harvesting and each member of the permitting staff of each county and municipality with a population of more than 100,000 whose work relates directly to permits involving rainwater harvesting to receive appropriate training regarding rainwater harvesting standards and their relation to permitting at least once every five years. The bill establishes that members of the permitting staffs of counties and municipalities not located wholly or partly in an area designated by TCEQ as a priority groundwater management area whose work relates directly to permits involving rainwater harvesting and members of the permitting staffs of counties and municipalities with a population of 100,000 or less whose work relates directly to permits involving rainwater harvesting are encouraged to receive the training. The bill authorizes the TWDB to provide appropriate training by seminars or by videotape or functionally similar and widely available media without cost. The bill prohibits a municipality or county from denying a building permit solely because the facility will implement rainwater harvesting but authorizes a municipality or county to require that a rainwater harvesting system comply with the minimum state standards established for such a system. The bill establishes that each school district is encouraged to implement rainwater harvesting at facilities of the district.

C.S.H.B. 3391 amends the Finance Code to authorize financial institutions to consider making loans for developments that will use harvested rainwater as the sole source of water supply.

C.S.H.B. 3391 amends the Government Code to require procedural standards adopted under provisions relating to state energy conservation office (SECO) design standards to require that on-site reclaimed system technologies, including rainwater harvesting, condensate collection, or cooling tower blow down, or a combination of those system technologies, for potable, in addition to nonpotable, indoor use and landscape watering be incorporated into the design and construction of each new state building with a roof measuring at least 10,000 square feet and any other new state building for which the incorporation of such systems is feasible. The bill requires such procedural design standards to require that rainwater harvesting system technology for potable and nonpotable indoor use and landscape watering be incorporated into the design and construction of each new state building with a roof measuring at least 50,000 square feet that is located in an area of Texas in which the average annual rainfall is at least 20 inches and establishes that such a required procedural standard applies to such a building unless the state agency or institution of higher education constructing the building determines that compliance with those standards is impractical and notifies SECO of the determination and provides to SECO documentation supporting the determination or the state agency or institution of higher education provides SECO evidence that the amount of rainwater that will be harvested from one or more existing buildings at the same location is equivalent to the amount of rainwater that could have been harvested from the new building had rainwater harvesting system technology been incorporated into its design and construction.

C.S.H.B. 3391 amends the Health and Safety Code to require TCEQ by rule to provide that if a structure is connected to a public water supply system and has a rainwater harvesting system, the structure must have appropriate cross-connection safeguards and removes provisions requiring the rule to provide that the rainwater harvesting system be for indoor use and used only for nonpotable indoor purposes. The bill requires TCEQ to develop rules regarding the installation and maintenance of rainwater harvesting systems that are used for indoor potable purposes and connected to a public water supply system and requires the rules to contain criteria that are sufficient to ensure that safe sanitary drinking water standards are met and that harvested rainwater does not come into communication with a public water supply system's drinking water at a location off of the property on which the rainwater harvesting system is located.

C.S.H.B. 3391 requires a person who intends to connect a rainwater harvesting system to a public water supply system for use for potable purposes to give written notice of that intention to the municipality in which the rainwater harvesting system is located or the owner or operator of the public water supply system before connecting the rainwater harvesting system to the public water supply system. The bill prohibits a municipality or the owner or operator of a public water supply system from being held liable for any adverse health effects allegedly caused by the consumption of water collected by a rainwater harvesting system that is connected to a public water supply system and is used for potable purposes if the municipality or the public water supply system is in compliance with the sanitary standards for drinking water adopted by TCEQ and applicable to the municipality or public water supply system.

C.S.H.B. 3391 amends the Property Code to include in the written notice a seller of residential real property comprising not more than one dwelling unit located in Texas is required to give to the purchaser of the property language disclosing whether the seller is aware of any rainwater harvesting system connected to the property's public water supply that is able to be used for indoor potable purposes. The bill makes this change in law applicable only to a transfer of property that occurs on or after the bill's effective date.

C.S.H.B. 3391 removes a rain barrel, rain harvesting device, or any other appurtenance from the list of devices or appurtenances for which provisions relating to prohibitions on certain restrictive covenants do not restrict a property owners' association's regulation of the requirements for or the location of such devices or appurtenances if the restriction does not prohibit the economic installation of the device or appurtenance on the property owner's property where there is reasonably sufficient area to install the device or appurtenance.

C.S.H.B. 3391 establishes that provisions relating to prohibitions on certain restrictive covenants do not, among other things, require a property owners' association to permit a rain barrel or rainwater harvesting system to be installed in or on property if the property is owned by the property owners' association, owned in common by the members of the property owners' association, or located between the front of the property owner's home and an adjoining or adjacent street or if the barrel or system is of a color other than a color consistent with the color scheme of the property owner's home or displays any language or other content that is not typically displayed by such a barrel or system as it is manufactured. The bill establishes that such provisions do not restrict a property owners' association from regulating the size, type, and shielding of, and the materials used in the construction of, a rain barrel, rainwater harvesting device, or other appurtenance that is located on the side of a house or at any other location that is visible from a street, another lot, or a common area if the restriction does not prohibit the economic installation of the device or appurtenance on the property owner's property and there is a reasonably sufficient area on the property owner's property in which to install the device or appurtenance.

C.S.H.B. 3391 amends the Water Code to establish that it is the public policy of the state to provide for the conservation and development of the state's natural resources, including, among other things, the promotion of rainwater harvesting for potable and nonpotable purposes at public and private facilities in Texas, including residential, commercial, and industrial buildings.

C.S.H.B. 3391 requires the Texas Water Development Board, if the 82nd Legislature makes an appropriation to the TWDB to provide matching grants to political subdivisions of the state for rainwater harvesting demonstration projects, to provide, not later than December 1, 2012, a report to the lieutenant governor and the speaker of the house of representatives regarding the projects for which the TWDB has provided grants, including a description of each project and the amount of the grant provided for each project.

C.S.H.B. 3391 makes conforming changes.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3391 contains a provision not included in the original requiring the Texas Commission on Environmental Quality (TCEQ) to develop rules regarding the installation and maintenance of rainwater harvesting systems that are used for indoor potable purposes and connected to a public water supply system and requiring the rules to contain certain criteria. The substitute contains a provision not included in the original requiring a person who intends to connect a rainwater harvesting system to a public water supply system for use for potable purposes to give written notice of that intention to the municipality in which the rainwater harvesting system is located or the owner or operator of the public water supply system before connecting the rainwater harvesting system to the public water supply system. The substitute contains a provision not included in the original prohibiting a municipality or the owner or operator of a public water supply system from being held liable for any adverse health effects allegedly caused by the consumption of water collected by a rainwater harvesting system that is connected to a public water supply system and is used for potable purposes if the municipality or the public water supply system is in compliance with the sanitary standards for drinking water adopted by TCEQ and applicable to the municipality or public water supply system.

C.S.H.B. 3391 omits a provision included in the original requiring each municipality or county that has adopted impervious cover or density restrictions to consider the use in a development of harvested rainwater as an on-site water supply source in determining whether to grant the development a credit against or exemption from the restrictions.

C.S.H.B. 3391 contains specifications and conforming changes not included in the original, in a provision requiring each member of the permitting staff of each county and municipality located wholly or partly in an area designated by TCEQ as a priority groundwater management area and each member of the permitting staff of each county and municipality with a population of more than 100,000 to receive rainwater harvesting training at least once every five years, specifying that the members required to receive the training are members whose work relates directly to permits involving rainwater harvesting and specifying that the training is appropriate training regarding rainwater harvesting standards and their relation to permitting.

C.S.H.B. 3391 contains an authorization not included in the original, in a provision prohibiting a municipality or county from denying a building permit solely because the facility will implement rainwater harvesting, providing that a municipality or county may require that a rainwater harvesting system comply with the minimum state standards established for such a system.

C.S.H.B. 3391 contains provisions not included in the original, in a written notice a seller of residential real property comprising not more than one dwelling unit located in Texas is required to give to the purchaser of the property, adding to that notice language disclosing whether the seller is aware of any rainwater harvesting system connected to the property's public water supply that is able to be used for indoor potable purposes. The substitute contains a provision not included in the original making that change in law applicable only to a transfer of property that occurs on or after the substitute's effective date.

C.S.H.B. 3391 differs from the original, in a provision establishing that provisions relating to prohibitions on certain restrictive covenants do not require a property owners' association to permit a rain barrel or rainwater harvesting system to be installed in or on property if one of several conditions holds, by including, as such a condition, the property being located between the front of the property owner's home and an adjoining street, in addition to an adjacent street, whereas the original does not include an adjoining street in that condition. The substitute differs from the original, in the same provision, by omitting the condition that the barrel or system is of a color other than the original manufacturer's color, whereas the original provides for such a condition.

C.S.H.B. 3391 contains a provision not included in the original establishing that provisions relating to prohibitions on certain restrictive covenants do not restrict a property owners' association from regulating the size, type, and shielding of, and the materials used in the construction of, a rain barrel, rainwater harvesting device, or other appurtenance that is located on the side of a house or at any other location that is visible from a street, another lot, or a common area if the restriction does not prohibit the economic installation of the device or appurtenance on the property owner's property and there is a reasonably sufficient area on the property owner's property in which to install the device or appurtenance.