

BILL ANALYSIS

C.S.H.B. 2781
By: Fletcher
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas has a history of promoting the use of rainwater, beginning more than a decade ago with the exclusion of rainwater collection equipment from the state sales tax. Efforts to promote the use of rainwater by private citizens was also advanced by recently enacted legislation allowing individual rainwater harvesting systems to be used within a dwelling serviced by a public water supply. A significant feature of this legislation was the indemnification of the public water supply from liability arising from waterborne illnesses at such a dwelling. However, interested parties contend that, because the task of rulemaking related to rainwater treatment for those dwellings was assigned to the Texas Commission on Environmental Quality (TCEQ), this made the implementation of rainwater harvesting unworkable for most homeowners, as the required tests administered by TCEQ could cost tens of thousands of dollars per dwelling per year.

The parties assert that treatment of rainwater for potable use has been practiced for hundreds of years and that modern treatment allows the quality of the water in some cases to surpass the quality of water supplied by the public water supply. However, outside of a public water supply service area, these rainwater systems are considered private water systems. The differences between public water supply and private water are well articulated in state rules and regulations, with a requirement that all public water supplies be protected by appropriate cross-connection control devices when rainwater is used for potable purposes in areas serviced by public water supply.

C.S.H.B. 2781 seeks to address these and other issues by establishing provisions relating to rainwater harvesting and other water conservation initiatives.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTIONS 2 and 7 of this bill.

ANALYSIS

SECTION 1. Amends Section 447.004(c-1), Government Code, as follows:

(c-1) Requires that the procedural standards adopted under this section require that:

(1) on-site reclaimed system technologies, including rainwater harvesting, condensate collection, or cooling tower blow down, or a combination of those system technologies, for potable and nonpotable indoor and outdoor water use, rather than indoor use and landscaping watering, be incorporated into the design and construction of:

(A) each new state building with a roof area measuring at least 10,000 square feet; and

(B) any other new state building for which the incorporation of such systems is feasible; and

(2) rainwater harvesting system technology for potable and nonpotable indoor and outdoor water use, rather than indoor use and landscape watering, be incorporated into the design and construction of each new state building with a roof area measuring at least 50,000 square feet that is located in an area of this

state in which the average annual rainfall is at least 20 inches.

SECTION 2. Reenacts and amends Section 341.042(b), Health and Safety Code, as amended by Chapters 1311 (H.B. 3391) and 1240 (S.B. 1073), Acts of the 82nd Legislature, Regular Session, 2011, as follows:

(b) Requires TCEQ by rule to provide that if a structure has a rainwater harvesting system and uses a public water supply for an auxiliary water source, rather than is connected to a public water supply system and has a rainwater harvesting system for indoor use, the structure is required to have appropriate cross-connection safeguards.

SECTION 3. Amends Sections 341.042(b-1), (b-2), and (b-3), Health and Safety Code, as added by Chapter 1240 (S.B. 1073), Acts of the 82nd Legislature, Regular Session, 2011, as follows:

(b-1) Requires that a privately owned rainwater harvesting system with a capacity of more than 500 gallons that has an auxiliary water supply to have a backflow prevention assembly or an air gap installed at the storage facility for the harvested rainwater to ensure physical separation between the rainwater harvesting system and the auxiliary water supply. Considers a rainwater harvesting system that meets the requirements of this subsection to be connected to a public water supply system only for purposes of compliance with minimum water system capacity requirements as determined by TCEQ rule.

Strikes a provision requiring TCEQ to work with the department 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. Strikes a provision requiring that the rules contain criteria that are sufficient to ensure that safe sanitary drinking water standards are met; and 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.

(b-3) Requires a person who intends to use, rather than connect a rainwater harvesting system to, a public water supply system as an auxiliary water source, rather than 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, rather than before connecting the rainwater harvesting system to the public water supply system. Authorizes the public water supply system used as an auxiliary water source to be connected only to the water storage tank and prohibits the system from being connected to the plumbing of a structure.

SECTION 4. Redesignates and amends Section 341.042(b-3), Health and Safety Code, as added by Chapter 1311 (H.B. 3391), Acts of the 82nd Legislature, Regular Session, 2011, as Section 341.042(b-5), Health and Safety Code, to read as follows:

(b-5) A municipality or the owner or operator of a public water supply system may not be held liable for any adverse health effects allegedly caused by the consumption of water collected by a rainwater harvesting system that uses, rather than is connected to, a public water supply system or an auxiliary water source, rather than a public water supply system alone, 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.

SECTION 5. Amends Section 580.004(b), Local Government Code, as follows:

(b) Requires the Texas Water Development Board to ensure that training on rainwater harvesting is available for the members of the permitting staffs of municipalities and counties at least quarterly. Requires that 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 as a priority groundwater management area under Section 35.008, Water Code, 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 10,000, rather 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. Encourages members of the permitting staffs of counties and municipalities not located wholly or partly in an area designated by the Texas Commission on Environmental Quality as a priority groundwater management area under Section 35.008, Water Code, whose work relates directly to permits involving rainwater harvesting and members of the permitting staffs of counties and municipalities with a population of 10,000, rather than 100,000, or less whose work relates directly to permits involving rainwater harvesting to receive the training. Authorizes the Texas Water Development Board to provide appropriate training by seminars or by videotape or functionally similar and widely available media without cost.

SECTION 6. Amends Section 5.008(b), Property Code, as follows:

(b) Requires that the seller's disclosure notice be executed and, at a minimum, read substantially similar to a prescribed form listed in existing law. Provides that the form allow for an indication as to whether the seller is aware of any rainwater harvesting system located on the property that is larger than 500 gallons and that uses a public water supply as an auxiliary water source, rather than any rainwater harvesting system connected to the property's public water supply that is able to be used for indoor potable purposes.

SECTION 7. Requires TCEQ, not later than January 1, 2014, to adopt rules to implement Section 341.042, Health and Safety Code, as amended by this Act.

SECTION 8. Repeals Sections 341.042(b-1) and (b-2), Health and Safety Code, as added by Chapter 1311 (H.B. 3391), Acts of the 82nd Legislature, Regular Session, 2011.

SECTION 9. Provides that Section 5.008(b), Property Code, as amended by this Act, applies only to a transfer of property that occurs on or after the effective date of this Act. Provides that a transfer of property that occurs before the effective date of this Act is governed by the law applicable to the transfer immediately before that date, and the former law is continued in effect for that purpose. Provides that, for the purposes of this section, a transfer of property occurs before the effective date of this Act if the contract binding the purchaser to purchase the property is executed before that date.

SECTION 10. Provides for the effective date of this Act.

EFFECTIVE DATE

This Act takes effect September 1, 2013.

COMPARISON OF ORIGINAL TO SUBSTITUTE

INTRODUCED

HOUSE COMMITTEE REPORT

SECTION 1. Section 447.004(c-1), Government Code, is amended to read as follows:

SECTION 1. Same as introduced.

(c-1) The procedural standards adopted under this section must require that:

(1) on-site reclaimed system technologies, including rainwater harvesting, condensate collection, or cooling tower blow down, or a combination of those system technologies, for potable and nonpotable indoor and outdoor water use [~~and landscape watering~~] be incorporated into the design and construction of:

(A) each new state building with a roof area measuring at least 10,000 square feet; and

(B) any other new state building for which

the incorporation of such systems is feasible; and

(2) rainwater harvesting system technology for potable and nonpotable indoor and outdoor water use [~~and landscape watering~~] be incorporated into the design and construction of each new state building with a roof area measuring at least 50,000 square feet that is located in an area of this state in which the average annual rainfall is at least 20 inches.

SECTION 2. Section 341.042(b), Health and Safety Code, as amended by Chapters 1311 (H.B. 3391) and 1240 (S.B. 1073), Acts of the 82nd Legislature, Regular Session, 2011, is reenacted and amended to read as follows:

(b) The commission by rule shall provide that if a structure [~~is connected to a public water supply system and~~] has a rainwater harvesting system [~~for indoor use~~], the structure must have appropriate cross-connection safeguards.

SECTION 3. Sections 341.042(b-1), (b-2), and (b-3), Health and Safety Code, as added by Chapter 1240 (S.B. 1073), Acts of the 82nd Legislature, Regular Session, 2011, are amended to read as follows:

(b-1) A privately owned rainwater harvesting system with a capacity of more than 500 gallons that has an auxiliary water supply shall have a backflow prevention assembly installed at the storage facility for the harvested rainwater to ensure physical separation between the rainwater harvesting system and the auxiliary water supply.

~~[The commission shall work with the department 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. The rules must contain criteria that are sufficient to ensure that:~~

~~[(1) safe sanitary drinking water standards are met; and~~

~~[(2) 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.]~~

SECTION 2. Section 341.042(b), Health and Safety Code, as amended by Chapters 1311 (H.B. 3391) and 1240 (S.B. 1073), Acts of the 82nd Legislature, Regular Session, 2011, is reenacted and amended to read as follows:

(b) The commission by rule shall provide that if a structure [~~is connected to a public water supply system and~~] has a rainwater harvesting system and uses a public water supply for an auxiliary water source [~~for indoor use~~], the structure must have appropriate cross-connection safeguards.

SECTION 3. Sections 341.042(b-1), (b-2), and (b-3), Health and Safety Code, as added by Chapter 1240 (S.B. 1073), Acts of the 82nd Legislature, Regular Session, 2011, are amended to read as follows:

(b-1) A privately owned rainwater harvesting system with a capacity of more than 500 gallons that has an auxiliary water supply shall have a backflow prevention assembly or an air gap installed at the storage facility for the harvested rainwater to ensure physical separation between the rainwater harvesting system and the auxiliary water supply. A rainwater harvesting system that meets the requirements of this subsection is considered connected to a public water supply system only for purposes of compliance with minimum water system capacity requirements as determined by commission rule.

~~[The commission shall work with the department 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. The rules must contain criteria that are sufficient to ensure that:~~

~~[(1) safe sanitary drinking water standards are met; and~~

~~[(2) 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.]~~

(b-2) A person may not connect a rainwater harvesting system to a public drinking water supply system [~~who installs and maintains rainwater harvesting systems that are connected to a public water supply system and are used for potable purposes must be licensed by the Texas State Board of Plumbing Examiners as a master plumber or journeyman plumber and hold an endorsement issued by the board as a water supply protection specialist~~].

(b-3) A person who intends to use [~~connect a rainwater harvesting system to~~] a public water supply system as an auxiliary water supply [~~for use for potable purposes~~] must 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~~].

SECTION 4. Section 341.042(b-3), Health and Safety Code, as added by Chapter 1311 (H.B. 3391), Acts of the 82nd Legislature, Regular Session, 2011, is redesignated as Section 341.042(b-5), Health and Safety Code, to read as follows:

(b-5) [(b-3)] A municipality or the owner or operator of a public water supply system may not be 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 the commission and applicable to the municipality or public water supply system.

SECTION 5. Section 580.004(b), Local Government Code, is amended to read as follows:

(b) The Texas Water Development Board shall ensure that training on rainwater harvesting is available for the members of the permitting staffs of municipalities and counties at least quarterly. 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 as a priority groundwater management area under Section 35.008, Water Code, whose work relates

No equivalent provision.

(b-3) A person who intends to use [~~connect a rainwater harvesting system to~~] a public water supply system as an auxiliary water source [~~for use for potable purposes~~] must 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 public water supply system used as an auxiliary water source may be connected only to the water storage tank and may not be connected to the plumbing of a structure.

SECTION 4. Section 341.042(b-3), Health and Safety Code, as added by Chapter 1311 (H.B. 3391), Acts of the 82nd Legislature, Regular Session, 2011, is redesignated as Section 341.042(b-5), Health and Safety Code, and amended to read as follows:

(b-5) [(b-3)] A municipality or the owner or operator of a public water supply system may not be held liable for any adverse health effects allegedly caused by the consumption of water collected by a rainwater harvesting system that uses [~~is connected to~~] a public water supply system or an auxiliary water source 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 the commission and applicable to the municipality or public water supply system.

SECTION 5. Same as introduced version.

directly to permits involving rainwater harvesting and each member of the permitting staff of each county and municipality with a population of more than 10,000 [~~100,000~~] whose work relates directly to permits involving rainwater harvesting must receive appropriate training regarding rainwater harvesting standards and their relation to permitting at least once every five years. Members of the permitting staffs of counties and municipalities not located wholly or partly in an area designated by the Texas Commission on Environmental Quality as a priority groundwater management area under Section 35.008, Water Code, whose work relates directly to permits involving rainwater harvesting and members of the permitting staffs of counties and municipalities with a population of 10,000 [~~100,000~~] or less whose work relates directly to permits involving rainwater harvesting are encouraged to receive the training. The Texas Water Development Board may provide appropriate training by seminars or by videotape or functionally similar and widely available media without cost.

SECTION 6. Section 5.008(b), Property Code, is amended.

SECTION 7. Not later than January 1, 2014, the Texas Commission on Environmental Quality shall adopt rules to implement Section 341.042, Health and Safety Code, as amended by this Act.

SECTION 8. Sections 341.042(b-1) and (b-2), Health and Safety Code, as added by Chapter 1311 (H.B. 3391), Acts of the 82nd Legislature, Regular Session, 2011, are repealed.

SECTION 9. Section 5.008(b), Property Code, as amended by this Act, applies only to a transfer of property that occurs on or after the effective date of this Act. A transfer of property that occurs before the effective date of this Act is governed by the law applicable to the transfer immediately before that date, and the former law is continued in effect for that purpose. For the purposes of this section, a transfer of property occurs before the effective date of this Act if the contract binding the purchaser to purchase the property is executed before that date.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.

SECTION 10. This Act takes effect September 1, 2013. SECTION 10. Same as introduced version.