

BILL ANALYSIS

Senate Research Center
83R18578 SLB-F

H.B. 2781
By: Fletcher (Campbell)
Natural Resources
5/16/2013
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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.

H.B. 2781 amends current law relating to rainwater harvesting and other water conservation initiatives.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Commission on Environmental Quality (TCEQ) is modified in SECTION 2 (Section 341.042, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to TCEQ in SECTION 3 (Section 341.042, Health and Safety Code) and SECTION 7 of this bill.

SECTION BY SECTION 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 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, and amends it as follows:

(b) Requires the Texas Commission on Environmental Quality (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 if a structure 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) 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 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. Provides that 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 TCEQ rule. Deletes existing text requiring TCEQ to work with the Texas Department of Health (TDH) 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. Deletes existing text 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 a public water supply system as an auxiliary water source 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 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. 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 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, and amends it as follows:

(b-5) Redesignates existing Subsection (b-3) as Subsection (b-5). 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 uses, rather than 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 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 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 under Section 35.008 (Procedures for Designation of Priority Groundwater Management Area; Consideration of Creation of New District or Addition of Land in Priority Groundwater Management Area to Existing District; Commission Order), 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. Provides 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 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.

SECTION 6. Amends Section 5.008(b), Property Code, to set forth the required language of a seller's disclosure notice.

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. Repealers: Sections 341.042(b-1) (relating to requiring TCEQ to work with TDH 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) and (b-2) (relating to requiring a person who installs and maintains rainwater harvesting systems that are connected to a public water supply system and are used for potable purposes to be licensed by the Texas State Board of Plumbing Examiners (TSBPE) as a master plumber or journeyman plumber and hold an endorsement issued by TSBPE as a water supply protection specialist), Health and Safety Code, as added by Chapter 1311 (H.B. 3391), Acts of the 82nd Legislature, Regular Session, 2011.

SECTION 9. Makes application of Section 5.008(b), Property Code, as amended by this Act, prospective.

SECTION 10. Effective date: September 1, 2013.