

- SUBJECT:** Promoting rainwater harvesting for potable and nonpotable purposes
- COMMITTEE:** Natural Resources — committee substitute recommended
- VOTE:** 11 ayes — Ritter, T. King, Beck, Creighton, Hopson, Keffer, Larson, Lucio, Martinez Fischer, D. Miller, Price
- 0 nays
- WITNESSES:** For — John Kight; (*Registered, but did not testify:* Carole Baker; Stanley Briers, Texas Plumbing, Air Conditioning, and Mechanical Contractors; Laura Matz, Texas Community Association Advocates; David Weinberg, Texas League of Conservation Voters; C.E. Williams, Panhandle Groundwater Conservation District)
- Against — Michael Maurer, Sr.
- On — Elston Johnson, Texas Commission on Environmental Quality
- BACKGROUND:** The Health and Safety Code standards for harvested rainwater require 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 and the rainwater must be used only for nonpotable indoor purposes.
- DIGEST:** CSHB 3391 would remove the requirement that a rainwater harvesting system, on a structure that was also connected to a public water supply, be used only for nonpotable indoor purposes. The bill also would add the promotion of rainwater harvesting for potable and nonpotable purposes at public and private facilities — including residential, commercial, and industrial buildings — to the state’s public policy of conserving and developing natural resources.
- Loans for developments that use harvested rainwater.** CSHB 3391 would allow financial institutions to consider making loans for developments that used harvested rainwater as the sole source of water supply.

Rainwater harvesting on new state buildings. The bill would require that rainwater harvesting system technology for both potable and nonpotable indoor use and landscape watering be incorporated into the design and construction of each new state building with a roof of at least 10,000 square feet and each new state building with a roof of at least 50,000 square feet that was in an area with an average annual rainfall of at least 20 inches. The provision also would apply to any other new state building for which it was feasible.

No liability for city or operator of a public water supply system. The Texas Commission on Environmental Quality (TCEQ) would be required to develop rules on the installation and maintenance of rainwater harvesting systems used for indoor potable purposes and connected to a public water supply system. The rules would have to contain criteria sufficient to ensure that safe sanitary drinking water standards were met and that the harvested rainwater did not come into contact with a public drinking water supply off the property where the rainwater harvesting system was located.

A person who intended to connect a rainwater harvesting system to a public water supply system for potable use would first have to give written notice to the public water supply system operator or the city where the system would be located.

A city or public water supply system operator could not be held liable for any adverse health effects allegedly caused by the consumption of water collected by a rainwater harvesting system that was connected to a public water supply and used for potable purposes if the city or the public water supply system was in compliance with sanitary standards.

Incentives for rainwater harvesting. CSHB 3391 would encourage cities and counties to promote rainwater harvesting at residential, commercial, and industrial facilities through incentives such as discounts on rain barrels or rebates for water storage facilities.

Training for permitting staff of cities and counties. The Texas Water Development Board (TWDB) would be required to ensure that training on rainwater harvesting was available for members of permitting staffs of cities and counties at least quarterly. TWDB could provide appropriate training without cost.

The bill would require rainwater harvesting permitting staff in a county or city located in a priority groundwater management area and permitting staff in a county or city with a population of more than 100,000 to receive appropriate training regarding harvesting standards and how they related to permitting at least every five years. All others would be encouraged to receive the training.

A city or county would be prohibited from denying a building permit solely because the facility implemented rainwater harvesting, but could require any system to comply with minimum state standards.

School districts would be encouraged to implement rainwater harvesting at facilities in the district.

Seller's disclosure notice. CSHB 3391 would amend the seller's disclosure notice in the Property Code to include whether the property had a rainwater harvesting system connected to its public water supply that could be used for indoor potable purposes. This would apply only to a transfer of property that occurred on or after September 1, 2011.

Property owners' association guidelines. A property owners' association would not be required to permit a rain barrel or rainwater harvesting system to be installed in or on property that was owned by it, owned in common by its members, or located between the front of the property owner's home and an adjoining or adjacent street.

A property owners' association also would not be required to permit a barrel or system that was a different color from what would be consistent with the property owner's home or that displayed any language or content not typically displayed.

A property owners' association would be allowed to regulate the size, type, shielding of, and materials used to construct a rain barrel or other device located on the side of a house or any other visible location if the restriction did not prohibit the economic installation of the device and there was sufficient area to install the device.

TWDB report. If TWDB received an appropriation to provide matching grants to political subdivisions for rainwater harvesting demonstration projects, it would have to submit a report to the lieutenant governor and

the speaker by December 1, 2012, regarding the projects that had been provided grants.

Effective date. The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

The development, management, and preservation of water resources throughout Texas has become a major priority as the state faces significant population growth and increased demand on the water supply. Recently, legislation was enacted to further water conservation efforts that are critical to meeting future water demands, including legislation that would provide citizens who harvested rainwater responsibly a wider range of indoor use and applications. 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. By promoting the use of rainwater harvesting, CSHB 3391 would acknowledge the viability and sustainability of this resource.

The use of rainwater for drinking water would not pose a risk to public health. The sophisticated filtering systems available today make the rainwater clean and safe for drinking. Also, the cross-connection safeguard protects the public water supply from potential contamination due to backflow. The bill would provide further protections by requiring TCEQ to adopt rules on the installation and maintenance of rainwater harvesting systems used for indoor potable purposes and connected to a public water supply system, as well as rules to ensure safe sanitary drinking water standards. The bill also would remove the liability of the public water supply system for contamination by harvested rainwater as long as the public water supply system was in compliance with sanitary standards.

While there may be concerns that the average homeowner does not have the expertise to install or adequately maintain a rainwater harvesting system for safe use of drinking water, the people who use these systems are neither unsophisticated nor without the necessary funds to set up a system properly. The systems typically are expensive and would likely be taken very seriously by their operators. Modern rainwater harvesting systems are sufficiently sophisticated to require very little maintenance.

**OPPONENTS
SAY:**

Although there is a need to use every water resource available to conserve the public water supply, the use of rainwater harvesting systems for drinking water could pose a risk to public health. There is no reason to risk

public health using anything other than a public water supply if a public water supply is available.

Installation of rainwater harvesting systems for potable and nonpotable purposes on state or commercial buildings would be less risky because there would likely be a budget and a dedicated staff for the maintenance and care of the system. However, CSHB 3391 also would promote the use of rainwater as drinking water by private citizens. This is a serious potential public health problem. While the cross-connection safeguard protects the public water supply from backflow from rainwater harvesting systems, it does not protect the individual on site. Many residential users obtain a rainwater harvesting system as a novelty and do not fully understand how to care for it properly.

A restriction on rainwater use for drinking water on residential properties may be necessary to protect public health. Alternatively, a service contract should be required to ensure that a rainwater harvesting system for drinking water was installed and maintained according to certain standards and specifications, as is required with septic tanks.

Although the requirement to incorporate rainwater harvesting system technology into the design and construction of state buildings would apply only to new state buildings, it could substantially increase the future construction costs for the state.

NOTES:

A similar bill, HB 3372 by T. King, which would remove the requirement that a rainwater harvesting system be used only for nonpotable indoor purposes, passed the House unanimously on April 20 and was referred to the Senate Natural Resources Committee on April 27.

According to the fiscal note, CSHB 3391 would not have a significant fiscal implication for the state.