

# The New Landscape of Rainwater Harvesting in Texas

by Kristen O. Fancher

Texas continues to set the standard for rainwater harvesting policy across the nation and is considered to be one of the few western states on the cutting edge of this type of conservation method. The Texas Legislature passed multiple bills during the 2011 legislative session that amend existing law on rainwater harvesting to further encourage, promote, and develop statewide rainwater harvesting policy. In particular, House Bill 3391, passed during the 2011 regular session, requires new government buildings that have a roof size of at least 50,000 square feet and that will be located in an area of the state that receives at least 20 inches of average annual rainfall per year to incorporate rainwater harvesting systems for water supply for both indoor and outdoor use. The bill also encourages school districts to utilize rainwater harvesting systems at district facilities.

One of the main changes is that state law now prevents cities and counties from denying building permits simply because a rainwater harvesting system is used or is included in the design of the building. A city or county can only deny a permit if the rainwater harvesting system does not meet minimum state construction or design standards. Property Owners' Associations ("POAs") are also limited in how they can regulate rainwater harvesting. POAs cannot prohibit outright the use of rainwater harvesting systems, but POAs can regulate the size, type, and appearance of rainwater harvesting systems that are visible from a street, another lot, or from a common area.

Another change is that the Texas Health and Safety Code no longer prohibits the use of rainwater harvesting systems for indoor potable, or drinkable, uses. The new law also requires a person who intends to connect a rainwater harvesting system to a public water supply system to obtain the consent of the city or owner/operator of the public water system where the rainwater harvesting system is located before connecting the rainwater harvesting system to a public water supply. The law makes clear that a city or the owner/operator of a public water supply system

is not liable for any adverse health effects caused by the consumption of water collected by a rainwater harvesting system that is connected to the public water supply and used for potable purposes, as long as the municipality or the public water system is in compliance with state drinking water standards.

The Texas Commission on Environmental Quality ("TCEQ") is required to implement the new laws by developing rules that regulate the installation and maintenance of rainwater harvesting systems to be used for indoor potable purposes. TCEQ has held stakeholder meetings to receive input, and is currently in the process of developing these rules. TCEQ currently plans to hold a formal public rulemaking hearing and comment period in August 2012. The Texas Water Development Board is also required to make training on rainwater harvesting available to the members of the permitting staffs of cities and counties on a quarterly basis.

Texas has historically led the nation in financial incentives for rainwater harvesting systems and continued its tradition by passing laws in 2011 that provide additional financial incentives for rainwater harvesting. The new laws encourage financial institutions to consider loaning money for developments where rainwater harvesting will be the sole source of water supply and also encourage cities and counties to promote rainwater harvesting by using incentives, including discounts on rain barrels or rebates for water storage facilities. While Texas law already provided some regulation of rainwater harvesting, the new laws, which became effective on September 1, 2011, further water conservation efforts and provide a wider range of uses, incentives, and regulation of this popular conservation tool.

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