

CHAPTER 161

WATER AND IRRIGATION

HOUSE BILL 16-1005

BY REPRESENTATIVE(S) Esgar and Danielson, Arndt, Becker K., Buckner, Court, Duran, Fields, Foote, Ginal, Hamner, Kraft-Tharp, Lee, Lontine, Melton, Mitsch Bush, Moreno, Pabon, Pettersen, Priola, Rankin, Rosenthal, Singer, Tyler, Williams, Winter, Young, Hullinghorst;
also SENATOR(S) Merrifield, Aguilar, Carroll, Donovan, Garcia, Heath, Hill, Jahn, Johnston, Jones, Kefalas, Kerr, Newell, Roberts, Steadman, Todd.

AN ACT

CONCERNING THE USE OF RAIN BARRELS TO COLLECT PRECIPITATION FROM A RESIDENTIAL ROOFTOP FOR NONPOTABLE OUTDOOR USES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** article 96.5 to title 37 as follows:

ARTICLE 96.5
Rooftop Precipitation Collection

37-96.5-101. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DETERMINES THAT, PURSUANT TO SECTIONS 5 AND 6 OF ARTICLE XVI OF THE STATE CONSTITUTION, WATER IS CONSIDERED THE PROPERTY OF THE PUBLIC, IS DEDICATED TO THE USE OF THE PEOPLE, IS SUBJECT TO THE DOCTRINE OF PRIOR APPROPRIATION, AND MUST BE ADMINISTERED IN ACCORDANCE WITH THE PRIORITY SYSTEM ESTABLISHED IN ARTICLE 92 OF THIS TITLE.

(2) THE GENERAL ASSEMBLY DECLARES THAT NOTHING IN THIS ARTICLE IS INTENDED TO INFRINGE UPON OR IMPAIR THE DOCTRINE OF PRIOR APPROPRIATION.

(3) THE GENERAL ASSEMBLY FURTHER DECLARES THAT THE USE OF A RAIN BARREL DOES NOT CONSTITUTE A WATER RIGHT.

37-96.5-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(1) "RAIN BARREL" MEANS A STORAGE CONTAINER WITH A SEALABLE LID THAT IS:

- (a) LOCATED ABOVEGROUND OUTSIDE OF A RESIDENTIAL HOME; AND
- (b) USED FOR COLLECTING PRECIPITATION FROM A DOWNSPOUT OF A ROOFTOP.

(2) "SINGLE-FAMILY RESIDENCE" MEANS A PRIVATE RESIDENCE THAT IS A SEPARATE BUILDING OR AN INDIVIDUAL RESIDENCE THAT IS PART OF A ROW OF RESIDENCES JOINED BY COMMON SIDEWALLS.

37-96.5-103. Small-capacity rooftop precipitation collection permitted.

(1) PRECIPITATION FROM A ROOFTOP MAY BE COLLECTED IF:

(a) NO MORE THAN TWO RAIN BARRELS WITH A COMBINED STORAGE CAPACITY OF ONE HUNDRED TEN GALLONS OR LESS ARE UTILIZED;

(b) PRECIPITATION IS COLLECTED FROM THE ROOFTOP OF A BUILDING THAT IS USED PRIMARILY AS A SINGLE-FAMILY RESIDENCE OR A MULTI-FAMILY RESIDENCE WITH FOUR OR FEWER UNITS;

(c) THE COLLECTED PRECIPITATION IS USED FOR OUTDOOR PURPOSES INCLUDING IRRIGATION OF LAWNS AND GARDENS; AND

(d) THE COLLECTED PRECIPITATION IS USED ON THE RESIDENTIAL PROPERTY ON WHICH THE PRECIPITATION IS COLLECTED.

(2) A PERSON SHALL NOT USE PRECIPITATION COLLECTED UNDER THIS ARTICLE FOR DRINKING WATER OR INDOOR HOUSEHOLD PURPOSES.

(3) THE STATE ENGINEER MAY CURTAIL RAIN BARREL USAGE PURSUANT TO SECTION 37-92-502 (2) (a).

37-96.5-104. Information on state engineer's website. (1) THE STATE ENGINEER, TO THE EXTENT PRACTICABLE WITHIN EXISTING RESOURCES, SHALL PROVIDE INFORMATION ON THE STATE ENGINEER'S WEBSITE ON THE PERMITTED USE OF RAIN BARRELS TO COLLECT PRECIPITATION FROM RESIDENTIAL ROOFTOPS, INCLUDING A DESCRIPTION OF THE LIMITATIONS SET FORTH IN SECTION 37-96.5-103.

(2) IF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT INFORMS THE STATE ENGINEER THAT IT HAS DEVELOPED BEST PRACTICES IN ACCORDANCE WITH SECTION 25-1.5-210, C.R.S., THE STATE ENGINEER SHALL, TO THE EXTENT PRACTICABLE WITHIN EXISTING RESOURCES, POST OR LINK TO THE DEPARTMENT'S BEST PRACTICES ON THE STATE ENGINEER'S WEBSITE.

37-96.5-105. Reporting. (1) ON OR BEFORE MARCH 1, 2019, AND ON OR BEFORE MARCH 1, 2022, THE STATE ENGINEER SHALL REPORT TO THE COMMITTEES OF REFERENCE IN EACH HOUSE OF THE GENERAL ASSEMBLY WITH JURISDICTION OVER AGRICULTURE ON WHETHER THE ALLOWANCE OF SMALL-SCALE RESIDENTIAL PRECIPITATION COLLECTION PURSUANT TO THIS ARTICLE HAS CAUSED ANY

DISCERNIBLE INJURY TO DOWNSTREAM WATER RIGHTS. THE STATE ENGINEER'S REPORT MAY CONTAIN THE FOLLOWING:

- (a) DATA RECEIVED FROM WATER PROVIDERS, WATER USERS, OR OTHER STAKEHOLDERS;
- (b) DATA RESULTING FROM A PRECIPITATION COLLECTION PILOT PROJECT OR OTHER RESEARCH; OR
- (c) ANY COMPLAINT OR REPORT OF INJURY.

SECTION 2. In Colorado Revised Statutes, **add 25-1.5-210** as follows:

25-1.5-210. Best practices for residential rooftop precipitation collection.

(1) WITH RESPECT TO THE USE OF A RAIN BARREL, AS DEFINED IN SECTION 37-96.5-102 (1), C.R.S., TO COLLECT PRECIPITATION FROM A RESIDENTIAL ROOFTOP PURSUANT TO SECTION 37-96.5-103, C.R.S., THE DEPARTMENT, TO THE EXTENT PRACTICABLE WITHIN EXISTING RESOURCES, SHALL DEVELOP BEST PRACTICES FOR:

- (a) NONPOTABLE USAGE OF THE COLLECTED PRECIPITATION; AND
- (b) DISEASE AND PEST VECTOR CONTROL.

(2) IF THE DEPARTMENT DEVELOPS BEST PRACTICES IN ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION, THE DEPARTMENT SHALL:

- (a) POST THE BEST PRACTICES ON THE DEPARTMENT'S WEBSITE; AND

(b) INFORM THE STATE ENGINEER OF THE BEST PRACTICES SO THAT THE STATE ENGINEER CAN EITHER POST OR LINK TO THE DEPARTMENT'S BEST PRACTICES ON THE STATE ENGINEER'S WEBSITE.

SECTION 3. In Colorado Revised Statutes, 38-33.3-106.5, **add (1) (j)** as follows:

38-33.3-106.5. Prohibitions contrary to public policy - patriotic and political expression - emergency vehicles - fire prevention - renewable energy generation devices - affordable housing - drought prevention measures - definitions. (1) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not prohibit any of the following:

(j) (I) THE USE OF A RAIN BARREL, AS DEFINED IN SECTION 37-96.5-102 (1), C.R.S., TO COLLECT PRECIPITATION FROM A RESIDENTIAL ROOFTOP IN ACCORDANCE WITH SECTION 37-96.5-103, C.R.S.

(II) THIS PARAGRAPH (j) DOES NOT CONFER UPON A RESIDENT OF A COMMON INTEREST COMMUNITY THE RIGHT TO PLACE A RAIN BARREL ON PROPERTY OR TO CONNECT A RAIN BARREL TO ANY PROPERTY THAT IS:

- (A) LEASED, EXCEPT WITH PERMISSION OF THE LESSOR;

(B) A COMMON ELEMENT OR A LIMITED COMMON ELEMENT OF A COMMON INTEREST COMMUNITY;

(C) MAINTAINED BY THE UNIT OWNERS' ASSOCIATION FOR A COMMON INTEREST COMMUNITY; OR

(D) ATTACHED TO ONE OR MORE OTHER UNITS, EXCEPT WITH PERMISSION OF THE OWNERS OF THE OTHER UNITS.

(III) A COMMON INTEREST COMMUNITY MAY IMPOSE REASONABLE AESTHETIC REQUIREMENTS THAT GOVERN THE PLACEMENT OR EXTERNAL APPEARANCE OF A RAIN BARREL.

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 12, 2016