



Legislative Council Staff

Research Note

Version: Final

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Bill Number

House Bill 16-1005

Sponsors

*Representatives Esgar and
Danielson
Senator Merrifield*

Short Title

*Residential Precipitation
Collection*

Research Analyst

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Status

This research note reflects the final version of the bill and becomes effective upon signature of the Governor, assuming no referendum is filed.

Summary

This bill allows the collection of precipitation from the roof of a home in up to two rain barrels with a combined storage capacity of 110 gallons or less if the following conditions are met:

- the building is a single-family residence or a multi-family residence with up to four units;
- the precipitation collected is used for outdoor purposes on the residential property where the precipitation is collected, including irrigation of lawns and gardens; and
- the precipitation must not be used for drinking water or indoor household purposes.

The State Engineer in the Department of Natural Resources (DNR) is required to provide information on its website on the permitted use of rain barrels for collecting precipitation from rooftops to the extent practicable within existing resources. On or before March 1, 2019 and on or before March 1, 2022, the State Engineer is required to report to the committees of the General Assembly with jurisdiction over agriculture on whether the use of rain barrels has caused any discernable injury to downstream water rights. The report may contain data from water providers, water users, or other stakeholders, data from a precipitation collection pilot project or other research, or any complaint or report of injury.

The Department of Public Health and Environment (DPHE) is required to develop best practices for nonpotable usage of collected precipitation and vector control (disease prevention)

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to the extent practicable within existing resources. The DPHE will post the best practices on its website and the State Engineer will either post the best practices on its website or include a link to the best practices.

The bill requires homeowners' associations to allow the use of rain barrels for collection of residential rooftop precipitation. A homeowners' association may impose reasonable aesthetic requirements on the placement or appearance of a rain barrel.

The bill also includes a legislative declaration stating that it is not the intent of the General Assembly to impede or infringe upon the rights established in the Prior Appropriation Doctrine.

Background

Precipitation collection, or rain harvesting, occurs when rainfall or snowmelt is collected from an impervious surface, such as a roof or paved area, and applied to a beneficial use. Colorado law currently allows for limited applications of rooftop precipitation collection.

Current law allows for the collection of precipitation from up to 3,000 square feet of the roof of a residence that is not connected to a domestic water system that serves more than three single-family dwellings. The collected water may be used for ordinary household purposes, fire protection, watering of animals and livestock, and irrigation of up to one acre of gardens and lawns. A property owner who seeks to collect rooftop precipitation must submit an application for a permit and pay a fee to the state engineer.

The law also authorizes a 10-year pilot program for the collection of precipitation from rooftops for nonpotable uses. The program can include up to 10 new residential or mixed-use developments that are to be selected by the Colorado Water Conservation Board (CWCB) and the State Engineer. The purpose of the program is to develop data and methods to measure local precipitation, native plant consumption, and ground water flow. The program will also evaluate precipitation collection designs and determine how to prevent injury to water right holders. Approved projects are required to operate according to a substitute water supply plan that is approved annually by the State Engineer. A substitute supply plan protects water rights from out of priority depletions to a stream. In 2015, the General Assembly passed House Bill 15-1016, which was recommended by the Interim Water Resources Review Committee. This bill expands the types of projects that are eligible for precipitation harvesting pilot projects to include the redevelopment of residential housing or mixed uses and new or redeveloped multi-building nonresidential property.

House Action

House Agriculture, Livestock, and Natural Resources Committee (February 22, 2016). At the hearing, representatives from the South Metro Water Association, Water Rights Association of the South Platte, and the Cattleman's Association testified against the bill. Two private citizens and representatives from Western Resources Advocates testified in support of the bill. Representatives from Colorado State University and the Colorado Water Conservation Board testified in a neutral position and answered technical questions from the committee.

The committee adopted amendments L.002 and L.005 and referred the bill, as amended, to the House Committee of the Whole. Amendment L.002 added a legislative declaration to the bill, which stated that the intent of the bill is not to infringe upon or impair the Doctrine of Prior Appropriation in Sections 5 and 6 of Article XVI of the Colorado Constitution. Amendment L.005

prohibits a resident of a common interest community from placing a rain barrel on or connecting a rain barrel to any property that is: leased; a common element of a common interest community; maintained by a unit owner's association for a common interest community; or attached to one or more other units. The resident may seek permission from the lessor of a unit or owners of other units in the common interest community to place or connect a rain barrel.

House Second Reading (February 29, 2016). The House adopted the House Agriculture, Livestock, and Natural Resources Committee report and Amendments No. 2 and No. 3. Amendment No. 2, which amended the committee report, clarified that the use of a rain barrel does not constitute a water right and gave the State Engineer authority to curtail the use of rain barrels. Amendment No. 3 required the State Engineer to report to the committees of the General Assembly with jurisdiction over agriculture on whether the use of rain barrels has caused any discernable injury to downstream water rights.

House third reading (March 4, 2016). The House passed the bill on third reading with no amendments.

Senate Action

Senate Agriculture, Natural Resources, and Energy Committee (March 24, 2016). At the hearing, representatives from Colorado State University discussed an in-depth analysis of the impact of rain barrels on surface runoff with the committee. Representatives from the Colorado Farm Bureau, Greeley Water, Conservation Colorado, Metropolitan State University, the Colorado Water Conservation Board, and private citizens spoke in support of the bill. The Deputy State Engineer discussed the authority of the State Engineer to regulate rain barrels that impact other water users, as well as the current regulation of wells that are exempt from water administration. The bill was laid over to a later date.

Senate Agriculture, Natural Resources, and Energy Committee (March 30, 2016). The committee referred the bill to the Committee of the Whole, with no amendments.

Senate second reading (March 31, 2016). The Senate passed the bill on second reading with no amendments.

Senate third reading (April 1, 2016). The Senate passed the bill on third reading with no amendments.

Relevant Research

Legislative Council Staff, *Water Resources Review Committee Final Report*, December 2014: <http://tinyurl.com/jjlbbbf>

Legislative Council Staff, *Water Resource Review Committee Final Report*, December 2015: <http://tinyurl.com/h5ednlo>

Legislative Council Staff, *Rainwater Harvesting in Colorado*, Issue Brief, August 2009: <http://tinyurl.com/jk5jaqz>

