

LFC Requester:

Laird Graeser

AGENCY BILL ANALYSIS
2024 REGULAR SESSION

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SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original Amendment
Correction Substitute

Date 1/31/24

Bill No: HB 291

Sponsor: Representatives: Yanira Gurrola,
Kathleen Cates, Susan K. Herrera,
and. Eleanor Chávez
Short Title: Allow Water Use
Requirements

Agency Name and Code Number: Office of the State Engineer
550
Person Writing: Jerri Pohl
Phone: 505-827-7848 **Email:** Jerri.pohl@ose.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
NFI	\$2,000,000	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
NFI	NFI	NFI	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$150	\$75	\$75	\$300	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None
Duplicates/Relates to Appropriation in the General Appropriation Act; None

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: This bill would allow counties and municipalities to require water harvesting, recycling, and reuse; create a water harvesting tax credit; create standards for design, construction, installation and inspection of rainwater and storm water catchment; require permitting; and provide matching funds for rainwater and storm water catchment systems in public buildings and facilities.

Section 1: This section allows a county or municipality to adopt ordinances to require water harvesting, storage, water recycling and reuse. It also requires that the state engineer promulgate rules necessary to carry out the provision of this section. It excludes Agricultural water users or agricultural water from subsection A of section 1.

Section 2: This section allows a taxpayer to apply for a tax credit up to twenty percent of cost for the installation of a rainwater or storm catchment system installed after January 2, 2024, and before December 31, 2024. The tax credit shall not exceed \$5,000 per taxpayer. This section would require the Regulation and Licensing Department, in consultation with the Office of the State Engineer, to adopt rules establishing procedures to provide certification of water harvesting systems for the purposes of obtaining a water harvesting income tax credit.

Section 3: This section amends the Construction Industries Licensing Act to adopt rules for the design, construction, installation, and inspection of water harvesting systems.

Section 4: This section amends the Environmental Improvement Act to award matching funds for the installation of water harvesting systems in publicly owned buildings or facilities.

FISCAL IMPLICATIONS

A rule making required by Sections 1 and 2 will require at least one FTE the first year, and one-half FTE thereafter for consultation and field visits on foreseen complaints.

SIGNIFICANT ISSUES

Section 1 adds a new section of Chapter 3 NMSA 1978. Subsection A allows a county or municipality to adopt an ordinance to require water reuse and recycling. Water reuse and recycling is not defined nor mentioned anywhere else in the bill.

Section 2, subsection A creates a new section of the Income Tax Act to offer tax credits for

individuals and businesses for up to 20% of the purchase and installation of a system. As rainwater is only permitted to be captured from rooftops, this bill should be amended to state this clarification. Allowing stormwater catchment could interfere with existing state water law and negatively impact other water right owners.

Section 2, subsection E should clarify this is only for rooftop rainwater capture systems to avoid conflict with existing water law.

Section 2, subsection M defines rainwater or storm water catchment system to also include untreated wastewater that has not come into contact with toilet water waste for potable or non-potable water. Untreated wastewater must never be commingled into rainwater capture due to bacterial growth and possible PFAS contamination from soaps, shampoos, and other sources. It is recommended that “untreated wastewater” be stricken from the definition and rules be made specific to the reuse of gray water. Including untreated wastewater would be contrary to NMED rules.

PERFORMANCE IMPLICATIONS

None

ADMINISTRATIVE IMPLICATIONS

Section 1, subsection B requires the state engineer to promulgate rules to carry out the provisions of this section. Rules are necessary because in some areas of the state the collection of storm water may adversely impact other water right owners, violate interstate compacts, or inhibit the state’s efforts to support endangered species. The collection of water is a delicate balance between water conservation and the prior appropriation doctrine. While the OSE supports the intent of the bill, this rulemaking (as well as the rulemaking in Section 2, subsection J) would be an unfunded mandate and would negatively affect the agency’s ability to carry out its other mandated missions.

Section 2, subsection C allows for a credit not to exceed \$5,000 for a ‘system’ permitted by the regulation and licensing department. The OSE is the agency with jurisdiction over the appropriation of surface waters within the state (including stormwater), as well as the agency that permits dams and impoundments. This bill may create a dual jurisdictional impoundment and confusion over who is the primary regulatory agency. This issue would be mitigated if, as described above, the section were clarified to only cover water catchment from rooftops.

Section 2, subsection M; Section 3, subsection D and Section 4, subsection D; define rainwater or storm water catchment system to also include untreated wastewater that has not come into contact with toilet water waste for potable or non-potable water. Untreated wastewater must never be commingled into rainwater capture due to bacterial growth and possible PFAS contamination from soaps, shampoos, and other sources. It is recommended that “untreated wastewater” be stricken from the definition and rules be made specific to the reuse of gray water. Including untreated wastewater would be contrary to NMED rules.

Section 3, subsection C(1) requires the construction industries division to develop by rule a system to monitor the use of rainwater catchment systems. This should be done in consultation with the OSE as it has jurisdiction over water use in the state.

Section 4, subsection A allows application to the department for matching funds for projects

including storm water capture. As previously stated, it is recommended that “untreated wastewater” be stricken from the definition and rules be made specific to the reuse of gray water. Including untreated wastewater would be contrary to NMED rules.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None

TECHNICAL ISSUES

None

OTHER SUBSTANTIVE ISSUES

Section 1, Subsection C may be addressed in regional water planning efforts if some incentives are put in place for voluntary cooperation from the agricultural industry. In order to make a meaningful impact on the state’s water supply, water conservation efforts should target all water use sectors.

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Counties or municipalities will not be expressly allowed to require water harvesting systems. However, they will retain the discretion to encourage them. For instance, the Santa Fe County Sustainable Land Development Code (§7.13.11.2.3) requires that lawns of non-native grasses be watered with harvested water or gray water.

Additionally, if this bill is not enacted the tax credit for water harvesting system purchase and installation will not be available.

AMENDMENTS

Section 2, subsection M, Section 3 Subsection D, and Section 4, subsection D, define rainwater or storm water catchment system to also include untreated wastewater that has not come into contact with toilet water waste for potable or non-potable water. Untreated wastewater must never be commingled into rainwater capture due to bacterial growth and possible PFAS contamination from soaps, shampoos, and other sources. It is recommended that “untreated wastewater” be stricken from the definition and rules be made specific to the reuse of gray water. Including untreated wastewater would be contrary to NMED rules.