

<b>LFC Requester:</b>	<b>Laird Graeser</b>
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**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

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*{Analysis must be uploaded as a PDF}*

**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** January 31, 2024  
**Bill No:** HB 291

**Sponsor:** Reps. Gurrola, Cates, Herrera and Chavez  
**Short Title:** Allow Water Reuse Requirements

**Agency Name and Code Number:** Regulation and Licensing Department-420  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
None	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

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

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	183.5	183.5		367	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: HB 291 adds a new section to Chapter 3 of the Municipalities Act. The new section delegates authority to communities, counties and municipalities to adopt ordinances for the water harvesting and storage or water recycling reuse. The state engineer’s office is required to promulgate rules necessary to carry out the provisions of HB 291. Agricultural water users or agricultural water rights owners are excluded.

HB 291 adds a new section to the Income Tax Act titled “water harvesting income tax credit.” The new section allows independent taxpayers who purchase and install a permitted rainwater or storm water catchment after January 1, 2024, and before December 31, 2034, in a residence or business, a tax credit against the taxpayer’s tax liability of up to twenty percent of the purchase and installation costs of the system, but not to exceed \$5,000. Eligible water harvesting systems under the water harvesting income tax credit must be permitted by the Regulation and Licensing Department (RLD) and the tax credit is claimed in the taxable year in which the taxpayer purchases and installs a water harvesting system.

HB 291 limits the maximum aggregate of two million dollars in water harvesting income tax credits per year. The Taxation and Revenue Department shall issue a numbered document for identification, date of issuance and amount of the tax credit allowed. The document may be submitted by the applicant with the taxpayer’s income tax return or may be sold, exchanged or otherwise transferred to another taxpayer. The portion of a water harvesting income tax credit that exceeds a taxpayer’s tax liability in the taxable year may be carried forward for a maximum of ten consecutive table years.

HB 291 requires that prior to July 1, 2024, the RLD, in consultation with the State Engineer’s Office, adopt rules establishing procedures to provide certification of water harvesting systems that would qualify for the water harvesting income tax credit. The rules would require technical specifications and requirements relating to safety, code and standards compliance, minimum and maximum sizes, system applications and lists of eligible components.

HB 291 requires the Taxation and Revenue Department to compile an annual report on the water harvesting income tax credit to include number of taxpayers approved by the department to receive the tax credit, the aggregate amount of the tax credits approved and any other information necessary to evaluate the effectiveness of the tax credit.

HB 291 defines “rainwater or storm water catchment system” to mean a system that is designed to provide for the collection of rainwater, storm water or untreated wastewater that has not come into contact with toilet waste for use a potable or non-potable water.

HB 291 adds a new section to the Construction Industries Licensing Act (“CILA) requiring the Construction Industries Division (CID) of the RLD to adopt rules on or before January 1, 2025, for the following:

- (1) the design, construction, installation and inspection of rainwater and storm water catchment systems that conform with generally recognized national standards; and
- (2) a person to become certified to design, construction, install or inspect a rainwater or storm water catchment system that conforms with generally recognized national standards, including qualifying certification programs.

HB 291 requires the Construction Industries Commission to adopt rules as follows:

- (1) require a permit prior to the construction or installation of a rainwater or storm water catchment system, including a reasonable fee for the issuance of a permit; and
- (2) establish wage standards for a person who designs, constructs, installs or inspects a rainwater or storm water catchment system.

HB 291 requires the CID to further perform the following duties:

- (1) adopt rules for the monitoring of the use of rainwater and storm water catchment systems that are permitted by the Construction Industries Commission;
- (2) prepare a report of best practices for the operation of a rainwater and storm water catchment system and post it on the CID’s website; and
- (3) develop a list of entities that meet the CID’s standards for providing certification to design, construct, install or inspect a rainwater or storm water system.

HB 291 adds a new section to the Environmental Improvement Act that allows persons responsible for the management of a publicly owned building or facility to apply to the department for matching funds to construct or install a rainwater or storm water catchment system for the publicly owned building or facility. Except for a project established by a labor agreement, the project awarded matching funds shall:

- (1) pay wages to a person who designs, constructs, installs or inspects a rainwater or storm water catchment systems developed by the construction industries commission;
- (2) use workers who are certified to design, construct, install or inspect a rainwater or storm water catchment system; and
- (3) maintain a workforce with fifteen percent registered with an apprenticeship program.

## **FISCAL IMPLICATIONS**

### *FISCAL IMPACT to the RLD in FY24:*

Recognizing the very short timeline provided by Section 2, subsection (J) of the bill for the RLD to develop and adopt the very detailed and specific rules establishing procedures to provide certification of water harvesting systems for the purposes of obtaining a water harvesting tax credit (July 2, 2024) and further recognizing that the RLD currently does not staff with the training or experience necessary to carry out those tasks, the only viable alternative for the RLD to be able to perform this duty by the required time-frame would be for the RLD to enter into what would likely be multiple contracts for professional services with qualified experts and/or professional associations. Assuming the RLD is able to locate such properly qualified experts and convince them to take on these duties under the proscribed timeframe, that still means that the RLD would require significant funding in the current fiscal year (FY24) in order to have rules ready for promulgation in less than five (5) months. The RLD's best estimate is that at least three (3) contracts for professional services would have to be extended, with each contract being for the amount of up to sixty thousand dollars (\$60,000.00), for a total necessary appropriation for this single part of HB291's requirements of not less than one hundred eighty thousand dollars (\$180,000.00) in FY24. Additionally, the RLD would be required to conduct a public rulemaking hearing process before June 30, 2024, which, in light of the complexity of the rules contemplated, would necessitate the hiring of a professional hearing officer and a court reporter, which would carry an anticipated cost of three thousand five hundred dollars (\$3,500.00) also necessary to be appropriated in FY24.

### *FISCAL IMPACT to the RLD in FY25:*

Similar to the fiscal impact to the RLD for FY24, Section 3 of HB291, beginning at subsection (A), continues to impose highly involved and complicated rulemaking responsibilities on the CID that must be completed not later than January 1, 2025. Again, recognizing the RLD/CID's lack of staff with expertise on the matters assigned to the CID by the bill, the only reasonable method by which the RLD would be able to obtain the resources necessary to accomplish the required rulemaking tasks would be to contract with outside experts or organizations under professional services contracts. Here again, the RLD's best estimate is that at least three (3) contracts for professional services would have to be extended, with each contract being for the amount of up to sixty thousand dollars (\$60,000.00), for a total necessary appropriation for this single part of HB291's requirements of not less than one hundred eighty thousand dollars (\$180,000.00) in FY25. Additionally, the RLD would be required to conduct a public rulemaking hearing process before December 31, 2024, which, in light of the complexity of the rules contemplated, would again necessitate the hiring of a professional hearing officer and a court reporter, which would carry an anticipated cost of three thousand five hundred dollars (\$3,500.00) also necessary to be appropriated in FY25.

### *ADDITIONAL FISCAL IMPACT of Note:*

The RLD further notes that it is unclear from the text of HB291 how the Environment Department is expected to fund the "matching funds" requirement under Section 4 of the bill in light of the fact that HB291 does not contain a provision for any appropriation of funds.

## **SIGNIFICANT ISSUES**

Section 3 of HB 291 imposes new requirements and duties on the CID and the Construction Industries Commission (the Commission) that are clearly outside of the current expertise and training of the CID and may be beyond the knowledge level of members of the Commission.

The scope of duties and responsibilities set for the CID and the Commission under the Construction Industries Act, NMSA 1978, Section 60-13-1 through 56 (“CILA”) do not include the range of technical expertise that would be required of the CID and the Commission to carry out the mandates of the bill. Currently the CID and the Commission adopt codes for the minimum requirements for the installation of construction projects, issues permits, and inspects projects to determine whether the project meets the building code.

HB 291 tasks the CID with adopting rules for the “design, construction, installation and inspection of rainwater and storm water catchment systems that conform with generally recognized national standards. Currently there are no existing national standards under the Uniform Plumbing Code for the design, construction, installation and inspection of rainwater and storm water catchment systems for potable water. Further, the CID does not approve design systems. Similarly, the CID does not certify persons to design rainwater systems, or any other construction systems. Construction design is generally in the purview of engineers. Installation standards, if not by adopted code, are determined by manufacturers.

HB 291 requires the Commission to adopt rules for permitting and inspection and to establish wage standards for persons who design, construct, install or inspect a rainwater or storm water catchment system. It is the authority of the trade bureaus of the CID, pursuant to §60-13-33(D) NMSA 1978, to recommend rules and regulations and submit them to the Commission for approval, with approved rules then promulgated by the CID. The CID cannot dictate salaries employers pay their employees. Minimum wage requirements are adopted through state or federal law.

HB 291 requires the CID to adopt rules for the monitoring of rainwater and storm water catchment systems, prepare a report of best practices for the operation of a rainwater and storm catchment system and develop a list of entities that meet the CID’s standards for providing certification to design, construct, install or inspect a rainwater or storm water catchment system. The CID was established to adopt codes for construction, issue permits and inspect construction projects to ensure the construction meets minimum code requirements. The CID does not monitor the operations of any construction. That may fall under the Environment Department. The CID does not determine best practices in designing and operating construction projects. That may fall under the Engineer Licensing Board. The CID does not develop lists of recommended entities who meet the CID’s standards for providing certification to design, construct, install or inspect a rainwater or storm water catchment system due to liability risks. [Note: See concern below regarding potential conflict with the Anti-Donation Clause of the New Mexico constitution.]

HB 261 requirements under Section 4 designates the Commission as responsible for determining wage standards. The Commission does not determine wage standards. Minimum wages requirements are adopted through state or federal law.

## **PERFORMANCE IMPLICATIONS**

See “Fiscal Impact” section, above.

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

## **TECHNICAL ISSUES**

Section 2 requires the Regulation and Licensing Department to adopt rules for certifying water harvesting systems. Requirements for the Construction Industries Division of the RLD and the Construction Industries Commission to adopt rules should be located under the CILA.

Section 2 requires the rules to be adopted in conjunction with the Environment Department by July 1, 2024. The rulemaking process generally takes a year to complete - five (5) months is an unworkably short of time to prepare proposed rules of the complexity mandated and to then complete the rulemaking process. [See the “Fiscal Impact” section, above, regarding the necessity for hiring outside experts in order to have any reasonable chance to meet the required deadlines.]

HB 291 requires the Division to adopt rules on or before January 1, 2025. Even if there were national standards that could be proposed for adoption, the rulemaking process generally takes at least six (6) months after the trade bureau task force has reviewed and amended the national standards and presented the proposed rules to the Commission for a hearing. The review of the national standards by the Division and a TAC team generally requires at least six (6) months before the proposed rules are ready for presenting to the Commission for a hearing. [Again, see the “Fiscal Impact” section, above, regarding the necessity for hiring outside experts in order to have any reasonable chance to meet the required deadlines.]

## **OTHER SUBSTANTIVE ISSUES**

### **ALTERNATIVES**

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

### **AMENDMENTS**