

HOUSE AGRICULTURE, ACEQUIAS AND WATER RESOURCES
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 311

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

AN ACT

RELATING TO WATER; ENACTING THE RECLAIMED WATER ACT; PROVIDING
A PROCESS FOR CREATION OF RECLAIMED WATER AUTHORITIES;
PROVIDING POWERS AND DUTIES OF AN AUTHORITY; PROVIDING FOR THE
USE, SALE AND PROVISION OF RECLAIMED WATER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Reclaimed Water Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Reclaimed Water Act:

A. "authority" means a reclaimed water authority
established pursuant to the Reclaimed Water Act;

B. "board" means a reclaimed water authority's
board of directors;

C. "county" means a county of any classification;

1 D. "customer" means a person or entity that
2 purchases reclaimed water;

3 E. "department" means the department of
4 environment;

5 F. "jurisdiction" means the area:
6 (1) governed by a municipality or a county
7 that has established an authority; and

8 (2) that is covered by the actions of an
9 authority;

10 G. "municipality" means an incorporated city,
11 village or town;

12 H. "participating member" means a customer,
13 reclaimed water producer, reclaimed water wholesaler or retail
14 water supplier that chooses to participate in work overseen by
15 an authority;

16 I. "reclaimed water" means any type of water,
17 regardless of the source and including wastewater that has been
18 treated mechanically or chemically, that can be used for
19 nonpotable purposes once it meets water quality standards
20 issued by the state;

21 J. "reclaimed water authority" means a nonprofit
22 organization authorized pursuant to the Reclaimed Water Act;

23 K. "reclaimed water producer" means an entity that
24 operates a water treatment facility that produces or generates
25 reclaimed water, including midstream operators, desalination

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1 plant operators and municipal wastewater treatment facilities;

2 L. "reclaimed water wholesaler" means an entity
3 that transports or distributes reclaimed water to customers or
4 suppliers; and

5 M. "retail water supplier" means an entity that
6 provides retail water service, including a private water
7 company, a public agency or a municipality or county.

8 SECTION 3. [NEW MATERIAL] RECLAIMED WATER AUTHORITY--
9 AUTHORIZATION TO CREATE.--

10 A. In response to a request from a municipality or
11 a county, the department may authorize a municipality or county
12 to create a reclaimed water authority to work with communities
13 in the authority's jurisdiction to promote the use of reclaimed
14 water.

15 B. A county's or municipality's request pursuant to
16 this section shall include:

- 17 (1) the name of the person submitting the
18 request;
- 19 (2) the name of the county or municipality
20 requesting authorization to create an authority;
- 21 (3) the names and addresses of all persons who
22 are proposed to serve on the authority's board of directors;
- 23 (4) the names and addresses of the persons who
24 are proposed to serve as the authority's officers;
- 25 (5) the authority's proposed business plan;

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1 (6) the proposed sources and volumes of
2 reclaimed water that would be within the authority's
3 jurisdiction; and

4 (7) the area that would be within the
5 authority's jurisdiction.

6 C. A request may be denied if the requester fails
7 to provide any of the information required pursuant to
8 Subsection B of this section.

9 D. The department shall approve or deny a request
10 within sixty days from the date the request is submitted to the
11 department.

12 E. The department shall not approve more than ten
13 requests to create an authority before July 1, 2026.

14 SECTION 4. [NEW MATERIAL] ORGANIZATION--BOARD OF
15 DIRECTORS--APPOINTMENT.--

16 A. Once approved by the department, an authority
17 may be organized as a nonprofit corporation in accordance with
18 the Nonprofit Corporation Act and the Reclaimed Water Act. The
19 authority shall file all documents required by the secretary of
20 state and by state law in relation to the authority's
21 organization as a nonprofit corporation and authority.

22 B. An authority shall be governed by a board of
23 directors. A board shall consist of six members, five of whom
24 are voting members, as follows:

25 (1) the secretary of environment or the

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1 secretary's designee, who shall serve as an advisor to the
2 board and not as a voting member; and

3 (2) the following voting members appointed by
4 the mayor or, if the authority is formed by a county, the
5 governing body of the county in the authority's jurisdiction:

6 (a) one economic development
7 professional with at least three years of experience;

8 (b) at least one professional who has at
9 least three years of experience working for a reclaimed water
10 producer;

11 (c) at least one professional who has at
12 least three years of experience working for a reclaimed water
13 wholesaler;

14 (d) one member who has at least three
15 years of experience working with or for a water retailer; and

16 (e) at least one professional with at
17 least three years of experience in a field related to
18 environmental studies or environmental protection work.

19 C. Upon creation of an authority, three members
20 shall be appointed to initial terms of two years and three
21 members shall be appointed to initial terms of one year.
22 Thereafter, members of the board shall be appointed to terms of
23 two years. When a vacancy occurs in any of the voting member
24 positions, the position shall be filled in accordance with the
25 provisions of Subsection B of this section.

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- 1 D. A board shall:
- 2 (1) appoint a chair;
- 3 (2) elect other officers as the board deems
- 4 necessary;
- 5 (3) adopt bylaws for the board, in accordance
- 6 with the provisions of the Nonprofit Corporation Act, to govern
- 7 the conduct of the board in the performance of its duties;
- 8 (4) hire or appoint a president who shall be
- 9 the chief administrative officer of the authority and be
- 10 responsible for its operations; and
- 11 (5) provide a report once every six months to
- 12 the regional water planning entity with jurisdiction over the
- 13 area in which the authority is located and to the interstate
- 14 stream commission that identifies potential local reclaimed
- 15 water sources and potential uses for reclaimed water.

16 SECTION 5. ~~[NEW MATERIAL]~~ AUTHORITY POWERS AND DUTIES.--

- 17 A. An authority shall have the powers conferred
- 18 upon a domestic nonprofit corporation by the Nonprofit
- 19 Corporation Act and, pursuant to the Reclaimed Water Act, the
- 20 authority may:
- 21 (1) sue and be sued in the authority's
- 22 corporate name;
- 23 (2) seek and work with vendors, customers or
- 24 participants who sell, give, purchase, take or provide funding;
- 25 (3) apply for and obtain federal and state

1 funding and loans;

2 (4) purchase, take, store, receive, acquire,
3 own, hold, dispose of, use and otherwise deal in and with
4 property, including intangible personal property, intellectual
5 property, technological innovations and reclaimed or untreated
6 water;

7 (5) operate and maintain lawfully permitted
8 water treatment facilities, desalination plants, laboratories,
9 water transportation equipment and vehicles and water storage
10 equipment and facilities;

11 (6) provide technical support and consultation
12 services to industries, municipalities and counties regarding
13 water treatment;

14 (7) sell, convey, pledge, exchange, transfer
15 or otherwise dispose of the authority's assets and properties
16 for consideration and upon terms and conditions the authority
17 shall determine;

18 (8) incur liabilities or borrow money at rates
19 of interest the authority may determine;

20 (9) execute all contracts and other
21 instruments the board deems necessary in the exercise of the
22 powers and duties provided in the Reclaimed Water Act;

23 (10) invest and reinvest the authority's funds
24 and receive and administer grants, contracts and private gifts;

25 (11) conduct activities and operations to

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1 exercise the powers provided in the Reclaimed Water Act;

2 (12) employ, set compensation for and
3 prescribe duties of officers and employees as the authority
4 deems necessary;

5 (13) enter into agreements with insurance
6 carriers to insure against any loss in connection with the
7 authority's operations;

8 (14) authorize retirement programs and other
9 benefits for officers and employees of the board;

10 (15) engage in research and development
11 activities to improve water and wastewater treatment
12 technologies and processes;

13 (16) make grants to promote reclaimed water
14 use; and

15 (17) engage in regional water planning and
16 community outreach and educational programs to raise awareness
17 about water conservation, pollution prevention and the
18 importance of environmental stewardship.

19 B. Pursuant to policies established by an
20 authority's board of directors and as directed by the board's
21 president, an authority shall:

22 (1) establish relationships with reclaimed
23 water producers, reclaimed water wholesalers and customers
24 throughout New Mexico to encourage the responsible use of
25 reclaimed water;

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1 (2) foster and promote uses for reclaimed
2 water that support the development of new industries and the
3 diversification of the state's economy;

4 (3) foster relationships among reclaimed water
5 producers, reclaimed water wholesalers and customers;

6 (4) work for communities within the
7 authority's jurisdiction to recruit businesses and jobs related
8 to the treatment, desalination and purification of reclaimed
9 water;

10 (5) develop policies and standards for the
11 authority that promote the use of reclaimed water and
12 frameworks for shared infrastructure projects for reclaimed
13 water;

14 (6) perform all actions required of an
15 authority pursuant to the Reclaimed Water Act;

16 (7) provide quarterly reports of the
17 authority's activities to the department and the economic
18 development department; and

19 (8) adopt policies and procedures to allow
20 reclaimed water producers, reclaimed water wholesalers, retail
21 water suppliers and customers to join an authority's
22 membership.

23 SECTION 6. [NEW MATERIAL] MEMBERSHIP OF AN AUTHORITY.--

24 Reclaimed water producers, reclaimed water wholesalers, retail
25 water suppliers and customers who choose to become members of a

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1 reclaimed water authority shall be subject to the policies and
2 procedures adopted by the reclaimed water authority.

3 SECTION 7. [NEW MATERIAL] INFRASTRUCTURE AND
4 FACILITIES.--Upon a majority vote of a board and an authority's
5 participating members, the authority may:

6 A. adopt rules for the administration of the
7 authority;

8 B. construct and operate facilities and
9 infrastructure; and

10 C. contract with third parties to allow the
11 authority or its contractors to take possession of and acquire,
12 store, transport, sell or dispose of reclaimed water in
13 accordance with applicable state law.

14 SECTION 8. [NEW MATERIAL] APPLICATION OF OTHER LAW.--

15 A. A reclaimed water authority shall be subject to
16 all applicable laws and rules governing:

17 (1) water rights issued by the office of the
18 state engineer;

19 (2) transportation and handling of water; and

20 (3) water quality, including rules issued by
21 the department and the energy, minerals and natural resources
22 department.

23 B. The use of reclaimed water by an authority shall
24 not impair any existing water rights.

25 C. An authority is separate and apart from the

1 state and shall not be deemed an agency, public body or
2 political subdivision of the state for purposes of application
3 of law relating to gross receipts tax, disposition or
4 acquisition of property and capital outlays.

5 D. An authority and its board shall be subject to
6 the Open Meetings Act and the Inspection of Public Records Act;
7 provided, however, that information obtained by the authority
8 or its board related to pricing may be designated and marked as
9 confidential by the party that submits the information, and if
10 the pricing information is designated and marked confidential,
11 the pricing information shall not be subject to inspection
12 pursuant to the Inspection of Public Records Act.

13 E. An authority or a board and the authority's or
14 board's officers, directors and employees shall be granted
15 immunity from liability for any tort as provided in the Tort
16 Claims Act and may enter into agreements with insurance
17 carriers to insure against a loss in connection with the
18 authority's operations even though the loss may be included
19 among losses covered by the risk management fund of New Mexico.
20 A director, the president or another officer shall not be
21 personally liable for any damages resulting from:

22 (1) any negligent act or omission of an
23 employee of the authority or board;

24 (2) any negligent act or omission of another
25 director or officer of the authority or board; or

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1 (3) any action taken as a director or officer
2 or a failure to take any action as a director or officer unless
3 the director or officer has breached or failed to perform the
4 duties of the director's or officer's office and the breach or
5 failure to perform constitutes willful misconduct or
6 recklessness.

7 SECTION 9. [NEW MATERIAL] IDENTIFICATION OF RECLAIMED
8 WATER MARKETS--RETAIL WATER SUPPLIERS--DUTIES.--

9 A. An authority shall identify:

10 (1) within the authority's jurisdiction:

11 (a) potential uses for reclaimed water;

12 and

13 (b) potential customers for reclaimed
14 water service; and

15 (2) within a reasonable time from the date the
16 authority is organized, potential sources of reclaimed water.

17 B. If a municipality or county has not established
18 an authority, a retail water supplier that serves the area in
19 which the municipality or community is located may identify and
20 disclose to the department:

21 (1) within the supplier's service area:

22 (a) potential uses for reclaimed water;

23 and

24 (b) potential customers for reclaimed
25 water service; and

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1 (2) potential sources of reclaimed water.

2 C. Reclaimed water producers and reclaimed water
3 wholesalers may identify potential uses for reclaimed water and
4 assist a retail water supplier in identifying potential
5 customers for reclaimed water service within the supplier's
6 service area. Information obtained pursuant to this subsection
7 shall be disclosed to the department within thirty days of the
8 discovery of the information.

9 SECTION 10. [NEW MATERIAL] OVERSIGHT BY A RECLAIMED WATER
10 AUTHORITY.--

11 A. An authority shall help facilitate communication
12 among customers, reclaimed water producers, reclaimed water
13 wholesalers and retail water suppliers within the authority's
14 jurisdiction.

15 B. An authority may:

16 (1) assist with negotiation of commercial
17 transactions among the parties listed in Subsection A of this
18 section and may serve as a mediator in those negotiations; and

19 (2) with a majority vote from its board of
20 directors and participating members, issue policies and
21 procedures that allow for inspections of reclaimed water or
22 create policies and procedures governing the handling, storage,
23 transportation or disposal of reclaimed water.

24 SECTION 11. [NEW MATERIAL] DETERMINATIONS OF AVAILABILITY
25 OF RECLAIMED WATER.--

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1 A. Upon request of a customer, retail water
2 supplier, reclaimed water producer or reclaimed water
3 wholesaler, the department shall provide for the requester's
4 inspection any information submitted to the department pursuant
5 to Section 9 of the Reclaimed Water Act.

6 B. A retail water supplier or customer that has
7 identified a potential use or potential customer pursuant to
8 Section 9 of the Reclaimed Water Act may request that the
9 authority help facilitate an agreement for reclaimed water
10 supply.

11 C. An authority shall post and update at least
12 quarterly a list of retail water suppliers, customers,
13 reclaimed water producers and reclaimed water wholesalers
14 within the authority's jurisdiction that have expressed
15 interest in providing or using reclaimed water.

16 SECTION 12. [NEW MATERIAL] RECLAIMED WATER RATES--
17 SUPPLIERS REGULATED BY THE PUBLIC REGULATION COMMISSION.--

18 A. This section applies only to a retail water
19 supplier that is regulated by the public regulation commission.

20 B. A regulated water utility may request the public
21 regulation commission to establish the rate or rates for the
22 delivery of reclaimed water, with the objective of providing,
23 where practicable, a reasonable economic incentive for a
24 customer to purchase reclaimed water in place of other water
25 sources.

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1 C. When setting rates in accordance with Subsection
2 B of this section, the public regulation commission shall set
3 rates with primary consideration given to enabling retail water
4 suppliers to promote the sale of reclaimed water in a manner
5 that allows for reclaimed water activities to increase within
6 the state.

7 **SECTION 13. EFFECTIVE DATE.**--The effective date of the
8 provisions of this act is July 1, 2025.

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