

LFC Requester:

Austin Davidson

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

[AgencyAnalysis.nmlegis.gov](https://www.legis.nm.gov/AgencyAnalysis) and email to billanalysis@dfa.nm.gov*(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}*Date Prepared: 2/7/2025

Check all that apply:

Bill Number: HB 311Original Correction Amendment Substitute Sponsor: Rep. Nathan P. SmallAgency Name
and CodeOffice of the State Engineer
550

Number:

Person Writing

Analysis: Nat Chakeres

Short

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Email Nathaniel.chakeres@oTitle: Reclaimed Water ActPhone: 4459: se.nm.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
N/A	N/A	N/A	N/A

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
N/A	N/A	N/A	N/A	N/A

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: If enacted, the Reclaimed Water Act (the Act) would allow counties and municipalities to form reclaimed water authority(ies) in municipal or county regions.

Section One would provide the short title of the act as the Reclaimed Water Act.

Section Two contains the definitions as used in the Act. These definitions include a definition of “reclaimed water” as “any type of water, regardless of the source and including wastewater that has been treated mechanically or chemically, that can be used once it meets water quality standards issued by the state.” It also defines a “reclaimed water producer” as “an entity that operates a water treatment facility that produces or generates reclaimed water, including midstream operators, desalination plant operators and municipal wastewater treatment facilities.”

Section Three outlines the procedure by which a county or municipality could request that the Economic Development Department (EDD) authorize the requesting county or municipality to form a reclaimed water authority (RWA). The information required in such a request is detailed in section three including the names and addresses of all proposed board members of the RWA and the sources and volumes of reclaimed water, as well as the proposed business plan of the RWA and the area under the proposed RWA’s jurisdiction.

Section Four describes the organization and governance of RWAs. This section would allow RWAs to organize as nonprofit corporations. Section four also details the compositions of the RWA’s board of directors. The Boards of Directors of RWAs would consist of a minimum of six members, five of which are voting members, and one non-voting member being either the secretary of EDD or their designee. The remaining members would be required to include a minimum of the following: one economic development professional, one professional who has worked for a reclaimed water producer, one who has worked for a reclaimed water wholesaler, a member who has worked with or for a water retailer, and one professional with experience with environmental studies or protection. The voting members would be appointed by the mayor or governing body of the municipality or county in the authority’s jurisdiction.

Section Five details the powers and authorities of an RWA pursuant to the Act, and specifies that RWAs would have the powers conferred upon domestic nonprofit corporations. RWAs could, *inter alia*, operate water treatment facilities, labs, and related equipment and vehicles; develop water quality plans; oversee public health and safety programs applicable to participating members within the authority’s jurisdiction; provide technical support to industries, counties, and municipalities; issue and collect fees and assessments; engage in research related to wastewater treatment; make grants; engage in community outreach regarding water treatment and environmental stewardship; perform inspections of reclaimed water; and assess fees, penalties and fines against reclaimed water producers, wholesalers, and suppliers conducting business with a reclaimed water authority.

Section Five would also establish duties to be performed pursuant to the policies established by that RWA board, including the following: forming relationships with producers, wholesalers, and consumers of reclaimed water; promoting uses for reclaimed water; fostering relationships with producers, wholesalers, and consumers of reclaimed water; recruiting business in water treatment in the jurisdiction; developing policies that promote use of reclaimed water; and providing quarterly reports to the EDD and the New Mexico Environment Department.

Section Six would provide that reclaimed water producers, wholesalers, suppliers, and customers who choose to become members of the RWA be subject to the RWA's policies and procedures.

Section Seven would allow the RWA's board and the participating members—on a majority vote—to construct new facilities and infrastructure, and contract with third parties to take possession of, store, transport, sell, or dispose of reclaimed water pursuant to state law.

Section Eight would make an RWA subject to all applicable laws and rules governing water rights, transportation of water, and water quality, including rules issued by EMNRD, OSE, and NMED. It would require that use of reclaimed water not impair existing water rights. It would provide that an RWA is not a state entity or state agency and is not a public body or political subdivision as related to personnel, procurement, gross receipts tax, buying or selling property, or capital outlays, per diem, and mileage. It would provide that the board is subject to the Open Meetings and Inspection of Public Records Acts, with the exception of any information on pricing the board designates as confidential would not be subject to the IPRA. It would also grant RWA, its board, officers and directors, and employees immunity as provided under the Tort Claims Act, and would provide that a director, president, or other officer shall not be personally liable for damages resulting from a negligent act or omission of an employee of an RWA or board or a negligent act or omission of another director or officer of the RWA, unless the director or officer failed to perform a duty that resulted in the damages and that breach or failure of duty constitutes willful misconduct or recklessness.

Section Nine would provide an RWA's duties related to identifying reclaimed water markets. These duties include identifying all potential uses and customers for reclaimed water within the RWA's jurisdiction, as well as potential sources of reclaimed water.

Section Nine also would provide that if no RWA is established in a county or municipality, that a retail water supplier that serves an area shall identify all potential uses and customers for reclaimed water within the supplier's service area, as well as potential sources of reclaimed water. It would also provide that reclaimed water producers and wholesalers may provide potential uses within a supplier's service area. Finally, it would provide that information regarding potential customers, sources, and uses be disclosed to the EDD within 30 days.

Section Ten would detail the oversight role of an RWA. This would include requiring the RWA to facilitate communication among producers, wholesalers, suppliers and customers. An RWA would also have the ability to assist negotiations, including mediating, transactions regarding the reclaimed water, and assist in establishing rates not overseen by the Public Regulation Commission (PRC). The Water Quality Control Commission (WQCC) may also authorize an RWA to do the following: establish water quality standards no less stringent than WQCC standards, oversee enforcement of the standards established under WQCC

authorization, and oversee water quality for reclaimed water in the RWA's jurisdiction.

Section Eleven would provide that IPRA applies to any information submitted under Section 9. It would also allow a producer or customer to request an RWA to facilitate an agreement for reclaimed water supply, allow a producer or wholesaler to request an RWA enter into an agreement with a potential customer, and, if no response to a written request is received in 30 days, the producer or wholesaler may ask an RWA to facilitate an agreement. Finally, the RWA would be required to post a list of suppliers, wholesalers, producers, and customers within the RWA's jurisdiction quarterly.

Section Twelve would require that a water supplier who receives a request from a customer for an agreement to provide reclaimed water pursuant to Section Eleven enter into an agreement to provide reclaimed water to the customer if reclaimed water is available, and the supplier may delegate the obligation by written agreement with a producer or wholesaler. It would provide that if a reclaimed water producer or wholesaler is able and willing to provide reclaimed water requested by the customer, the retail supplier shall have 120 days to give a written offer to the requesting customer. It would further provide that if an RWA determines reclaimed water is available to serve a customer of a retail supplier, the retail supplier shall provide a written offer to the requesting customer.

Section Thirteen would provide that the price of reclaimed water shall be reported to the RWA with jurisdiction, or to the DED if no RWA exists. It would provide that rates are established by contract, and the required elements of such a contract would be provided by this section, but reclaimed water services and rates prior to July 31, 2025, would not be subject to this subsection.

Section Fourteen would provide that a regulated water utility may request the PRC to establish rates for delivery of reclaimed water, and would require the PRC to enable retail water suppliers to promote the sale of reclaimed water.

Section Fifteen would provide that reclaimed water does not need to be certified, that any person may request the WQCC to adopt standards for certification of reclaimed water, and that the WQCC shall issue standards for certification of reclaimed water following notice and hearing. The section also would provide that when a batch of reclaimed water is shown to meet WQCC standards, it is no longer subject to the rules applying to wastewater or produced water. The requirements of WQCC described in this section would be additional powers and duties of the WQCC, and apply to reclaimed water generally, not only discharged water.

FISCAL IMPLICATIONS

None identified

SIGNIFICANT ISSUES

HB 311, as proposed, would create novel new bodies – RWAs – that would be hybrids between nonprofit corporations and government agencies. Some of the duties of these agencies are more typical of nonprofit corporations – namely, seeking and making grants and engaging in educational outreach. Other duties would be more coercive regulatory duties. RWAs could assess “fees and

assessments,” although the bill does not specify who those fees or assessments would be assessed against, for what purpose they would be assessed, or how high those fees or assessments would be. More coercive still, RWAs would have the authority to perform inspections of reclaimed water and “assess fees, penalties and fines against reclaimed water producers, reclaimed water wholesalers, and retail water suppliers conducting business with a [RWA].” Again, these fees, penalties, and fines are not limited in the bill. The bill would appear to allow for an RWA to coerce reclaimed water producers or wholesalers or retail water suppliers into entering contracts by threatening fines and penalties. While that is likely not the intent of the bill, there is nothing in the bill to prevent this from occurring.

The market for commercial water is not a regulated market like the market for, say, electricity. Parties who wish to buy or sell water usually have the freedom to negotiate those contracts as they see fit. Sections 11 and 12 of the bill, however, lay out a highly structured and formalized process for the negotiation of contracts for reclaimed water that bears some similarity to highly regulated utilities markets, including mandatory offer and response periods and the reporting of prices to the RWA. These sections also appear to provide, under certain circumstances, that sellers of reclaimed water would be compelled to enter into contracts if the RWA deems that the water is “available.” It is not clear to the OSE that this level of regulation of the commercial water market is necessary or desirable. While some state involvement may be warranted – for example, providing financial incentives to make reclaimed water affordable or creating a clearinghouse where potential sellers and buyers can interact - heavy regulation of the manner in which contracts may be formed would likely have the perverse effect of dampening the market by increasing transaction costs considerably.

The definition of “reclaimed water” is written in such a manner that it could include all water, because it does not require that the “reclaimed water” be the byproduct of some other process or activity.

Section 9 of the bill would provide that, “if a municipality or county has not established an authority, a retail water supplier that serves the area in which the municipality or community is located *shall* identify” potential sources, uses, and customers of reclaimed water. This language would appear to require retail water suppliers to identify these potential sources, uses, and customers and report that information to the EDD. This is an unusual mandate to impose on these private entities, and to the extent any of that information is a trade secret, it would require those entities to disclose those trade secrets. The bill does not mention any consequences for retail water sellers who do not make these disclosures. Thus, it is not clear that many of them would comply if they thought it would be against their interest to do so.

There is ambiguity in how the board members of RWAs would be appointed. The Act provides that voting members would be appointed “by the mayor or governing body of the municipality or county in the authority’s jurisdiction.” But many jurisdictions may have multiple municipalities, and all jurisdictions containing a municipality also contain a county. It is unclear which local government body would hold the appointment power. Furthermore, with respect to municipalities, the Act states that the appointment would be by the mayor or governing body. Municipalities have both mayors *and* governing bodies. The Act is not clear on when a mayor may make the appointment, and when the governing body may do so.

The bill is silent about how the operations of RWAs would be funded. They might be funded by the “fees and assessments” they could levy, but that is not spelled out in the bill. Particularly if RWAs are tasked with such duties as inspecting reclaimed water for water quality purposes, their

operating expenses could be significant.

Finally, RWAs would be excluded from government procurement rules and rules regarding per diem and mileage. Given that RWAs would exert significant governmental authority under their current iteration, and that their boards would be appointed by local governments, these exclusions could result in abuse or misuse of public funds.

PERFORMANCE IMPLICATIONS

None identified

ADMINISTRATIVE IMPLICATIONS

None identified

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None identified

TECHNICAL ISSUES

The definition of reclaimed water, discussed above, is overly broad, and would encompass all water in the state.

OTHER SUBSTANTIVE ISSUES

None identified

ALTERNATIVES

None identified

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Would-be sellers and purchasers of reclaimed water would continue to rely on the existing marketplace to sell and buy reclaimed water.

AMENDMENTS

None