

LFC Requester:	Austin Davidson
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AGENCY BILL ANALYSIS - 2025 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}

Date Prepared: 02.25.2025 *Check all that apply:*
Bill Number: HB 311 s Original Correction
 Amendment Substitute

Sponsor: Rep. Nathan P. Small **Agency Name and Code** 430 – Public Regulation Commission
Short Title: Reclaimed Water Act **Number:** _____
Title: _____ **Person Writing** J. Bogatko
Phone: (505)490-2696 **Email** jerri.mares@prc.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(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						

(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:

House Agriculture, Acequias & Water Resources Committee Substitute

HB 311 substitute is comprised of 13 sections of new material pertaining to reclaimed water and is summarized as follows:

Section 1 provides that this act may be cited as the “Reclaimed Water Act”.

Section 2 provides operative definitions for the “Reclaimed Water Act”.

Paragraph A defines “authority” to mean a reclaimed water authority established pursuant to the proposed legislation.

Paragraph B defines “board” to mean a reclaimed water authority’s board of directors.

Paragraph C defines “county” to mean a county of any classification.

Paragraph D defines “customer” to mean a person or entity that purchases reclaimed water.

Paragraph E defines “department” to mean the department of environment.

Paragraph F defines “jurisdiction” to mean the area (1) governed by a municipality or county that has established an authority; and (2) that is covered by the actions of an authority.

Paragraph G defines “municipality” to mean an incorporated city, village or town.

Paragraph H defines “participating member” to mean a customer, reclaimed water producer, reclaimed water wholesaler or retail water supplier that chooses to participate in work overseen by the authority.

Paragraph I defines “reclaimed water” to mean any type of water, regardless of the source and including wastewater that has been treated mechanically or chemically, that can be used for nonpotable purposes once it meets water quality standards issued by the state.

Paragraph J defines “reclaimed water authority” to mean a nonprofit organization authorized pursuant to the Reclaimed Water Act.

Paragraph K defines “reclaimed water producer” to mean 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.

Paragraph L defines “reclaimed water wholesaler” to mean an entity that transports or distributes reclaimed water to customers or suppliers.

Paragraph M defines “retail water supplier” to mean an entity that provides retail water service, including a private water company, a public agency or a municipality or county.

Section 3 is styled “RECLAIMED WATER AUTHORITY – AUTHORIZATION TO CREATE” – and is comprised of 5 paragraphs that provide as follows:

Paragraph A states that upon request the department may authorize a municipality or county to create a reclaimed water authority to work with communities in the authority’s jurisdiction to promote the use of reclaimed water.

Paragraph B provides that a county’s or municipality’s request pursuant to this section shall include: (1) the name of the person submitting the request; (2) the name of the county or municipality making the request; (3) the names and addresses of all person who are proposed to serve on the authority’s board of directors; (4) the names and addresses of the persons who are proposed to serve as the authority’s officers; (5) the authority’s proposed business plan; (6) the proposed sources and volumes of reclaimed water that would be within the authority’s jurisdiction; and (7) the area that would be within the authority’s jurisdiction.

Paragraph C indicates that a request may be denied if the requester fails to provide the requisite information set forth in Paragraph B.

Paragraph D directs that the department shall approve or deny a request within 60 days of submission to the department.

Paragraph E states that the department shall not approve more than 10 requests to create an authority before July 1, 2026.

Section 4 is styled “ORGANIZATION - - BOARD OF DIRECTORS - - APPOINTMENT” – and is comprised of 4 paragraphs that provide as follows:

Paragraph A states that once approved, an authority may be organized as a nonprofit corporation in accordance with the Nonprofit Corporation Act and the Reclaimed Water Act with all associated and required filings being made with the secretary of state and state law.

Paragraph B specifies that the authority shall be governed by a board of directors, which shall consist of 6 members, five of whom are voting members, as follows: (1) the secretary of environment or the secretary’s designee, who shall serve in an advisory capacity and not as a voting member; and (2) voting members appointed by the mayor of the municipality or the governing body of the county in the authority’s jurisdiction, including (a) one economic development professional

with at least 3 years of experience; (b) at least one professional who has at least 3 years of experience working for a reclaimed water producer; (c) at least one professional who has at least 3 years of experience working for a reclaimed water wholesaler; (d) one member who has at least 3 years of experience working with or for a water retailer; and (e) at least one professional with at least 3 years of experience in a field related to environmental studies or environmental protection work.

Paragraph C provides that upon creation of an authority, 3 members shall be appointed to initial terms of 2 years and three members shall be appointed to initial terms of 1 year. Thereafter, members of the board shall be appointed to terms of 2 years. When there is a vacancy in any of the voting member positions, the position shall be filled in accordance with the provisions of Paragraph B.

Paragraph D specifies that a board shall: (1) appoint a chair; (2) elect other officers as the board deems necessary; (3) adopt bylaws for the board in accordance with the Nonprofit Corporation Act; (4) hire or appoint a president who shall be the chief administrative officer of the authority and be responsible for its operations; and (5) provide a report once every 6 months to the regional water planning entity with jurisdiction over the area in which the authority is located and to the interstate stream commission that identifies potential reclaimed water sources and potential uses for reclaimed water.

Section 5 is styled “AUTHORITY POWERS AND DUTIES” – and provides as follows:

Paragraph A states that an authority shall have the powers conferred upon a domestic nonprofit corporation by the Nonprofit Corporation Act and, pursuant to the Reclaimed Water Act, the authority may: (1) sue and be sued in the authority’s corporate name; (2) seek and work with vendors, customers or participants who sell, give, purchase, take or provide funding; (3) apply for and obtain federal and state funding and loans; (4) purchase, take, store, receive, etc. property, including intangible personal property, intellectual property, technological innovations and reclaimed or untreated water; (5) operate and maintain lawfully permitted water treatment facilities, desalination plants, laboratories, water transportation equipment and vehicles and water storage equipment and facilities; (6) provide technical support and consultation services to industries, municipalities and counties regarding water treatment; (7) sell, convey, pledge, exchange, transfer or otherwise dispose of the authority’s assets and properties for consideration and upon terms and conditions the authority shall determine; (8) incur liabilities or borrow money at rates or interest the authority may determine; (9) execute all contracts and other instruments the board deems necessary in the exercise of the powers and duties provided in the Reclaimed Water Act; (10) invest and reinvest the authority’s funds and receive and administer grants, contracts and private gifts; (11) conduct activities and operations to exercise the powers provided in the Reclaimed Water Act; (12) employ, set compensation for and prescribe duties of officers and employees as the authority deems necessary; (13) enter into agreements of insurance carriers to insure against any loss in connection with the authority’s operations; (14) authorize retirement programs and other benefits for officers and employees of the board; (15) engage in research and development activities to improve water

and wastewater treatment technologies and processes; (16) make grants to promote reclaimed water use; and (17) engage in regional water planning and community outreach and educational programs to raise awareness about water conservation, pollution prevention and the importance of environmental stewardship.

Paragraph B states that pursuant to the policies established by an authority's board of directors and as directed by the board's president, an authority shall: (1) establish relationships with reclaimed water producers, reclaimed water wholesalers and customers throughout New Mexico to encourage the responsible use of reclaimed water; (2) foster and promote uses for reclaimed water that support the development of new industries and the diversification of the state's economy; (3) foster relationships among reclaimed water producers, reclaimed water wholesalers and customers; (4) work for communities within the authority's jurisdiction to recruit businesses and jobs related to the treatment, desalination and purification of reclaimed water; (5) develop policies and standards for the authority to promote the use of reclaimed water and frameworks for shared infrastructure projects for reclaimed water; (6) perform all actions required of an authority pursuant to the Reclaimed Water Act; (7) provide quarterly reports of the authority's activities to the department and the economic development department; and (8) adopt policies and procedures to allow reclaimed water producers, reclaimed water wholesalers, retail water suppliers and customers to join an authority's membership.

Section 6 is styled "MEMBERSHIP OF AN AUTHORITY" – and states that reclaimed water producers, reclaimed water wholesalers, retail water suppliers and customers who choose to become members of a reclaimed water authority shall be subject to the policies and procedures adopted by the reclaimed water authority.

Section 7 is styled "INFRASTRUCTURE AND FACILITIES" and provides that upon a majority vote of the board and an authority's participating members, the authority may: (A) adopt rules for the administration of the authority; (B) construct and operate facilities and infrastructure; and (C) contract with third parties to allow the authority or its contractors to take possession of and acquire, store, transport, sell or dispose of reclaimed water in accordance with applicable state law.

Section 8 is styled "APPLICATION OF OTHER LAW" – and specifies the following:

Paragraph A states that a reclaimed water authority shall be subject to all applicable laws and rules governing: (1) water rights issued by the office of the state engineer; (2) transportation and handling of water; and (3) water quality, including rules issued by the department and the energy, minerals and natural resources department.

Paragraph B states that the use of reclaimed water by an authority shall not impair any existing water rights.

Paragraph C states that an authority is separate and apart from the state and shall not be deemed an agency, public body or political subdivision of the state for purposes of application of law relating to gross receipts tax, disposition or

acquisition of property or capital outlays.

Paragraph D makes an authority and its board subject to the Open Meetings Act and the Inspection of Public Records Act; provided that pricing information may be deemed confidential.

Paragraph E brings an authority or a board and the authority's or board's officers, directors and employees under the auspices of the Tort Claims Act, and further provides that a director, the president or another officer shall not be personally liable for any damages resulting from the negligence of an employee or another director or officer or any action taken or not taken as a director or officer unless such action or inaction breached the duties of the director's or officer's office and the same constitutes willful misconduct or recklessness.

Section 9 is styled "IDENTIFICATION OF RECLAIMED WATER MARKETS - - RETAIL WATER SUPPLIERS - - DUTIES".

Paragraph A states that an authority shall identify: (1) within the authority's jurisdiction: (a) potential uses for reclaimed water; and (b) potential customers for reclaimed water service; and (2) within a reasonable time from the date the authority is organized, potential sources of reclaimed water.

Paragraph B specifies 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 may identify and disclose to the department: (1) within the supplier's service area: (a) potential uses for reclaimed water; and (b) potential customers for reclaimed water service; and (2) potential sources of reclaimed water.

Paragraph C states that reclaimed water producers and reclaimed water wholesalers may identify potential uses for reclaimed water and assist a retail water supplier in identifying potential customers for reclaimed water service within the supplier's service area. Information obtained pursuant to this subsection shall be disclosed to the department within thirty days of the discovery of the information.

Section 10 is styled "OVERSIGHT BY A RECLAIMED WATER AUTHORITY".

Paragraph A states that an authority shall help facilitate communication among customers, reclaimed water producers, reclaimed water wholesalers and retail water suppliers within the authority's jurisdiction.

Paragraph B provides that an authority may: (1) assist with negotiation of commercial transactions among the parties listed in Subsection A of this section and may serve as a mediator in those negotiations; and (2) with a majority vote from its board of directors and participating members, issue policies and procedures that allow for inspections of reclaimed water or create policies and procedures governing the handling, storage, transportation or disposal of reclaimed water.

Section 11 is styled “DETERMINATIONS OF AVAILABILITY OF RECLAIMED WATER”.

Paragraph A states that upon request of a customer, retail water supplier, reclaimed water producer or reclaimed water wholesaler, the department shall provide for the requester’s inspection any information submitted to the department pursuant to Section 9 of the Reclaimed Water Act.

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

Paragraph C states that an authority shall post and update at least quarterly a list of retail water suppliers, customers, reclaimed water producers and reclaimed water wholesalers within the authority’s jurisdiction that have expressed interest in providing or using reclaimed water.

Section 12 is styled “RECLAIMED WATER RATES - - SUPPLIERS REGULATED BY THE PUBLIC REGULATION COMMISSION”.

Paragraph A states that this section applies only to a retail water supplier that is regulated by the public regulation commission.

Paragraph B provides that a regulated water utility may request the public regulation commission to establish the rate or rates for the delivery of reclaimed water, with the objective of providing, where practicable, a reasonable economic incentive for a customer to purchase reclaimed water in place of other water sources.

Paragraph C states that when setting rates in accordance with Subsection B of this section, the public regulation commission shall set rates with primary consideration given to enabling retail water suppliers to promote the sale of reclaimed water in a manner that allows for reclaimed water activities to increase within the state.

Section 13 provides that the effective date of the provisions of this act is July 1, 2025.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

The setting of rates is currently regulated under NMSA 1978 62-8-1 et seq. Specifically, 62-8-7.1 provides for the rate setting of small water utilities. It is unclear how this bill’s directive for the Commission to give “primary consideration” and build an economic incentive into rates fits into this statutory scheme

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo.

AMENDMENTS

None.