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HOUSE BILL 311

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

INTRODUCED BY

Nathan P. Small

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, PROVISION AND CERTIFICATION 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. "certified reclaimed water" means reclaimed

1 water that is certified by the water quality control commission
2 or the commission's delegate to indicate the water has been
3 treated to a sufficient quality that it is no longer regulated
4 as wastewater;

5 D. "county" means a county of any classification;

6 E. "customer" means a person or entity that
7 purchases reclaimed water;

8 F. "department" means the economic development
9 department;

10 G. "jurisdiction" means the area:

11 (1) governed by a municipality or a county
12 that has established an authority; and

13 (2) that is covered by the actions of an
14 authority;

15 H. "municipality" means an incorporated city,
16 village or town;

17 I. "participating member" means a customer,
18 reclaimed water producer, reclaimed water wholesaler or retail
19 water supplier that chooses to participate in work overseen by
20 an authority;

21 J. "reclaimed water" means any type of water,
22 regardless of the source and including wastewater that has been
23 treated mechanically or chemically, that can be used once it
24 meets water quality standards issued by the state;

25 K. "reclaimed water authority" means a newly

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1 created nonprofit organization authorized pursuant to the
2 Reclaimed Water Act;

3 L. "reclaimed water producer" means an entity that
4 operates a water treatment facility that produces or generates
5 reclaimed water, including midstream operators, desalination
6 plant operators and municipal wastewater treatment facilities;

7 M. "reclaimed water wholesaler" means an entity
8 that transports or distributes reclaimed water to customers or
9 suppliers; and

10 N. "retail water supplier" means an entity that
11 provides retail water service, including a private water
12 company, a public agency or a municipality or county.

13 SECTION 3. [NEW MATERIAL] RECLAIMED WATER AUTHORITY--
14 AUTHORIZATION TO CREATE.--

15 A. In response to a request from a municipality or
16 a county, the department may authorize a municipality or county
17 to create a reclaimed water authority to work with communities
18 in the authority's jurisdiction to promote the use of reclaimed
19 water.

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

22 (1) the name of the person submitting the
23 request;

24 (2) the name of the county or municipality
25 requesting authorization to create an authority;

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1 (3) the names and addresses of all persons who
2 are proposed to serve on the authority's board of directors;

3 (4) the names and addresses of the persons who
4 are proposed to serve as the authority's officers;

5 (5) the authority's proposed business plan;

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

9 (7) the area that would be within the
10 authority's jurisdiction.

11 C. A request may be denied if the requester fails
12 to provide any of the information required pursuant to
13 Subsection B of this section.

14 D. The department shall approve or deny a request
15 within sixty days from the date the request is submitted to the
16 department.

17 SECTION 4. [NEW MATERIAL] ORGANIZATION--BOARD OF
18 DIRECTORS--APPOINTMENT.--

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

25 B. An authority shall be governed by a board of

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1 directors. A board shall consist of at least six members, five
2 of whom are voting members, as follows:

3 (1) the secretary of economic development or
4 the secretary's designee, who shall serve as an advisor to the
5 board and not as a voting member; and

6 (2) the following voting members appointed by
7 the mayor or governing body of the municipality or county in
8 the authority's jurisdiction:

9 (a) one economic development
10 professional;

11 (b) at least one professional who has
12 worked for a reclaimed water producer;

13 (c) at least one professional who has
14 worked for a reclaimed water wholesaler;

15 (d) one member who has worked with or
16 for a water retailer; and

17 (e) at least one professional with
18 experience in environmental studies or environmental protection
19 work.

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

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1 provisions of Subsection B of this section.

2 D. A board shall:

3 (1) appoint a chair;

4 (2) elect other officers as the board deems
5 necessary;

6 (3) adopt bylaws for the board, in accordance
7 with the provisions of the Nonprofit Corporation Act, to govern
8 the conduct of the board in the performance of its duties; and

9 (4) hire or appoint a president who shall be
10 the chief administrative officer of the authority and be
11 responsible for its operations.

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

13 A. An authority shall have the powers conferred
14 upon a domestic nonprofit corporation by the Nonprofit
15 Corporation Act and, pursuant to the Reclaimed Water Act, the
16 authority may:

17 (1) sue and be sued in the authority's
18 corporate name;

19 (2) seek and work with vendors, customers or
20 participants who sell, give, purchase, take or provide funding;

21 (3) apply for and obtain federal and state
22 funding and loans;

23 (4) purchase, take, store, receive, acquire,
24 own, hold, dispose of, use and otherwise deal in and with
25 property, including intangible personal property, intellectual

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1 property, technological innovations and reclaimed or untreated
2 water;

3 (5) operate and maintain lawfully permitted
4 water treatment facilities, desalination plants, laboratories,
5 water transportation equipment and vehicles and water storage
6 equipment and facilities;

7 (6) develop and implement water quality
8 management plans;

9 (7) oversee public health and safety programs
10 applicable to participating members within the authority's
11 jurisdiction;

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

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

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

21 (11) issue and collect fees and assessments;

22 (12) execute all contracts and other
23 instruments the board deems necessary in the exercise of the
24 powers and duties provided in the Reclaimed Water Act;

25 (13) invest and reinvest the authority's funds

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1 and receive and administer grants, contracts and private gifts;

2 (14) conduct activities and operations to
3 exercise the powers provided in the Reclaimed Water Act;

4 (15) employ, set compensation for and
5 prescribe duties of officers and employees as the authority
6 deems necessary;

7 (16) enter into agreements with insurance
8 carriers to insure against any loss in connection with the
9 authority's operations;

10 (17) authorize retirement programs and other
11 benefits for officers and employees of the board;

12 (18) engage in research and development
13 activities to improve water and wastewater treatment
14 technologies and processes;

15 (19) make grants to promote reclaimed water
16 use;

17 (20) engage in community outreach and
18 educational programs to raise awareness about water
19 conservation, pollution prevention and the importance of
20 environmental stewardship; and

21 (21) perform inspections of reclaimed water;
22 inspect water quality; and assess fees, penalties and fines
23 against reclaimed water producers, reclaimed water wholesalers,
24 and retail water suppliers conducting business with a reclaimed
25 water authority.

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1 B. Pursuant to policies established by an
2 authority's board of directors and as directed by the board's
3 president, an authority shall:

4 (1) establish relationships with reclaimed
5 water producers, reclaimed water wholesalers and customers
6 throughout New Mexico to encourage the responsible use of
7 reclaimed water;

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

11 (3) foster relationships among reclaimed water
12 producers, reclaimed water wholesalers and customers;

13 (4) work for communities within the
14 authority's jurisdiction to recruit businesses and jobs related
15 to the treatment, desalination and purification of reclaimed
16 water;

17 (5) develop policies and standards for the
18 authority that promote the use of reclaimed water and
19 frameworks for shared infrastructure projects for reclaimed
20 water;

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

23 (7) provide quarterly reports of the
24 authority's activities to the department and the department of
25 environment; and

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1 (8) adopt policies and procedures to allow
2 reclaimed water producers, reclaimed water wholesalers, retail
3 water suppliers and customers to join an authority's
4 membership.

5 SECTION 6. [NEW MATERIAL] MEMBERSHIP OF AN AUTHORITY.--
6 Reclaimed water producers, reclaimed water wholesalers, retail
7 water suppliers and customers who choose to become members of a
8 reclaimed water authority shall be subject to the policies and
9 procedures adopted by the reclaimed water authority.

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

13 A. construct and operate facilities and
14 infrastructure; and

15 B. contract with third parties to allow the
16 authority or its contractors to take possession of and acquire,
17 store, transport, sell or dispose of reclaimed water in
18 accordance with applicable state law.

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

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

- 22 (1) water rights;
23 (2) transportation and handling of water; and
24 (3) water quality, including rules issued by
25 the energy, minerals and natural resources department, the

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1 office of the state engineer and the department of environment.

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

4 C. An authority is separate and apart from the
5 state and shall not be deemed an agency, public body or
6 political subdivision of the state for purposes of application
7 of law relating to personnel, procurement of goods and
8 services, gross receipts tax, disposition or acquisition of
9 property, capital outlays or per diem and mileage.

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

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

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1 personally liable for any damages resulting from:

2 (1) any negligent act or omission of an
3 employee of the authority or board;

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

6 (3) any action taken as a director or officer
7 or a failure to take any action as a director or officer unless
8 the director or officer has breached or failed to perform the
9 duties of the director's or officer's office and the breach or
10 failure to perform constitutes willful misconduct or
11 recklessness.

12 SECTION 9. ~~[NEW MATERIAL]~~ IDENTIFICATION OF RECLAIMED
13 WATER MARKETS--RETAIL WATER SUPPLIERS--DUTIES.--

14 A. An authority shall identify:

15 (1) within the authority's jurisdiction:

16 (a) potential uses for reclaimed water;
17 and

18 (b) potential customers for reclaimed
19 water service; and

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

22 B. If a municipality or county has not established
23 an authority, a retail water supplier that serves the area in
24 which the municipality or community is located shall identify:

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

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1 (a) potential uses for reclaimed water;

2 and

3 (b) potential customers for reclaimed
4 water service; and

5 (2) potential sources of reclaimed water.

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

13 D. Information obtained by an authority or a retail
14 water supplier pursuant to this section shall be disclosed to
15 the department within thirty days of the discovery of the
16 information.

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

19 A. An authority shall help facilitate communication
20 among customers, reclaimed water producers, reclaimed water
21 wholesalers and retail water suppliers within the authority's
22 jurisdiction.

23 B. An authority may:

24 (1) assist with negotiation of commercial
25 transactions among the parties listed in Subsection A of this

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1 section and may serve as a mediator in those negotiations;

2 (2) upon request of a participating member,
3 assist with establishing rates for reclaimed water with respect
4 to transactions that occur within the authority's jurisdiction
5 and in areas that are not overseen by the public regulation
6 commission; and

7 (3) with a majority vote from its board of
8 directors and participating members, issue policies and
9 procedures that allow for inspections of reclaimed water or
10 create policies and procedures governing the handling, storage,
11 transportation or disposal of reclaimed water.

12 C. The water quality control commission may
13 authorize an authority to:

14 (1) establish water quality standards no less
15 stringent than water standards already established by the
16 commission;

17 (2) oversee enforcement of standards
18 established pursuant to this subsection; and

19 (3) oversee water quality for reclaimed water
20 located within the jurisdiction of the authority.

21 SECTION 11. [NEW MATERIAL] DETERMINATIONS OF AVAILABILITY
22 OF RECLAIMED WATER.--

23 A. Upon request of a customer, retail water
24 supplier, reclaimed water producer or reclaimed water
25 wholesaler, the department shall provide for the requester's

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1 inspection any information submitted to the department pursuant
2 to Section 9 of the Reclaimed Water Act.

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

8 C. A reclaimed water producer or reclaimed water
9 wholesaler that, pursuant to Section 9 of the Reclaimed Water
10 Act, has identified a potential use or potential customer that
11 is within the service territory or jurisdiction of a retail
12 water supplier or customer may, in writing, request a retail
13 water supplier or customer to enter into an agreement to
14 provide reclaimed water to the potential customer. If the
15 retail water supplier or customer has not responded to the
16 request to enter into an agreement within thirty days, the
17 reclaimed water producer or reclaimed water wholesaler may
18 request that the authority assist with facilitating an
19 agreement.

20 D. An authority shall post and update at least
21 quarterly a list of retail water suppliers, customers,
22 reclaimed water producers and reclaimed water wholesalers
23 within the authority's jurisdiction that have expressed
24 interest in providing or using reclaimed water.

25 SECTION 12. [NEW MATERIAL] AGREEMENTS TO PROVIDE

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1 RECLAIMED WATER.--

2 A. A retail water supplier that receives a request
3 from a customer pursuant to Subsection C of Section 11 of the
4 Reclaimed Water Act shall enter into an agreement to provide
5 reclaimed water if it is available or can be made available to
6 the supplier for sale to the customer; provided, however, that
7 the supplier may delegate this obligation to a reclaimed water
8 producer or a reclaimed water wholesaler in a written agreement
9 between the supplier and the producer or wholesaler.

10 B. If a reclaimed water producer or a reclaimed
11 water wholesaler provides a customer of a retail water supplier
12 with a written statement that the producer or wholesaler is
13 able to and will provide reclaimed water to the retailer, the
14 retail water supplier shall, within one hundred twenty days
15 from the date on which the retail water supplier receives the
16 written statement from the customer by certified mail, return
17 receipt requested, submit a written offer to the customer that
18 includes rates and conditions pursuant to Subsection C of
19 Section 13 of the Reclaimed Water Act.

20 C. If an authority makes a determination that there
21 is available reclaimed water to serve a customer of a retail
22 water supplier, the retail water supplier, not later than one
23 hundred twenty days from the date on which the retail water
24 supplier receives a copy of that determination from the
25 customer by certified mail, return receipt requested, shall

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1 submit a written offer to the customer.

2 SECTION 13. [NEW MATERIAL] RECLAIMED WATER RATES--PARTIES
3 NOT REGULATED BY THE PUBLIC REGULATION COMMISSION.--

4 A. The price charged per barrel of reclaimed water
5 sold shall be reported to a designated official appointed by
6 the authority in the jurisdiction in which it was sold or to
7 the department, if there is no authority in the jurisdiction,
8 within sixty days following the sale. The report shall be made
9 using a form approved by the authority or the department.

10 B. The rates and conditions for reclaimed water
11 service shall be established by contract between a retail water
12 supplier and its customer.

13 C. A contract executed as provided in Subsection B
14 of this section shall include:

- 15 (1) the source of the reclaimed water;
- 16 (2) treatment and transportation costs for the
17 water;
- 18 (3) the method of conveying the reclaimed
19 water;
- 20 (4) a schedule for delivery of the reclaimed
21 water;
- 22 (5) the terms of service;
- 23 (6) the rate for the reclaimed water,
24 including the per-unit cost for that water; and
- 25 (7) the costs necessary to provide service and

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1 the basis for determining those costs.

2 D. This section does not apply to reclaimed water
3 services or reclaimed water service rates established before
4 July 31, 2025 or any amendments to those rates for the duration
5 of the contract pursuant to which those rates were established.

6 SECTION 14. [NEW MATERIAL] RECLAIMED WATER RATES--
7 SUPPLIERS REGULATED BY THE PUBLIC REGULATION COMMISSION.--

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

10 B. A regulated water utility may request the public
11 regulation commission to establish the rate or rates for the
12 delivery of reclaimed water, with the objective of providing,
13 where practicable, a reasonable economic incentive for a
14 customer to purchase reclaimed water in place of other water
15 sources.

16 C. When setting rates in accordance with Subsection
17 B of this section, the public regulation commission shall set
18 rates with primary consideration given to enabling retail water
19 suppliers to promote the sale of reclaimed water in a manner
20 that allows for reclaimed water activities to increase within
21 the state.

22 SECTION 15. [NEW MATERIAL] CERTIFIED RECLAIMED WATER.--

23 A. There shall be no requirement that reclaimed
24 water be certified.

25 B. Any person may submit a request to the water

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1 quality control commission to adopt standards and procedures
2 for the certification of reclaimed water.

3 C. Upon receipt of a request provided for in
4 Subsection B of this section, following an opportunity for
5 notice and hearing, the water quality control commission shall
6 issue standards and procedures for the certification of
7 reclaimed water. The standards and procedures shall ensure
8 that certified reclaimed water is in sufficient condition to no
9 longer require oversight or regulation necessary for wastewater
10 or produced water.

11 D. When a batch of reclaimed water is shown to meet
12 the standards established by the water quality control
13 commission for certified reclaimed water, the reclaimed water
14 will no longer be subject to state laws and rules applicable to
15 wastewater or produced water.

16 E. The duties of the water quality control
17 commission described in this section are in addition to the
18 powers and duties described in the Water Quality Act and shall
19 apply to reclaimed water generally and not only circumstances
20 that involve the discharge of water.

21 SECTION 16. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2025.

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