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## FISCAL IMPACT REPORT

**LAST UPDATED** \_\_\_\_\_

**SPONSOR** Small **ORIGINAL DATE** 2/8/2025

**BILL**

**SHORT TITLE** Reclaimed Water Act **NUMBER** House Bill 311

**ANALYST** Davidson

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>NMED</b>	No fiscal impact	\$1,920.0 to \$19,200.0	\$1,920.0 to \$19,200.0	\$3,840.0 to \$38,400.0	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

Agency Analysis Received From  
 Office of the State Engineer (OSE)  
 New Mexico Environment Department (NMED)

Agency Analysis was Solicited but Not Received From  
 Economic Development Department (EDD)  
 Regulations and Licensing Department (RLD)  
 New Mexico Attorney General (NMAG)

## SUMMARY

### Synopsis of House Bill 311

House Bill 311 (HB311) would create the Reclaimed Water Act, allowing the creation of reclaimed water authorities (RWA). RWAs would act as nonprofit organizations responsible for working with a community that has requested an RWA to promote, facilitate, and organize the use of reclaimed water.

The bill authorizes RWAs to purchase, take, store, receive, acquire, own, hold, dispose of, use and otherwise deal in and with property, including intangible personal property, intellectual property, technological innovations and reclaimed or untreated water. RWAs could develop and implement water quality management plans, oversee public health and safety programs applicable to participating members within the authority's jurisdiction, perform inspections of reclaimed water; inspect water quality, and assess fees, penalties and fines against reclaimed water producers, reclaimed water wholesalers, and retail water suppliers conducting business with a reclaimed water authority. In addition, RWAs could construct and operate facilities and infrastructure and 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.

House Bill 311 adds language that would allow the Water Quality Control Commission to authorize a RWA the ability to “establish water quality standards no less stringent than water standards already established by the commission; oversee enforcement of standards established pursuant to this subsection; and oversee water quality for reclaimed water located within the jurisdiction of the authority.”

The effective date of this bill is July 1, 2025.

## **FISCAL IMPLICATIONS**

HB311 grants wide-ranging powers to RWAs without providing clear guidelines as to who will regulate the entity or providing additional fiscal resources to entities, such as the Economic Development Department (who must authorize the establishment of an RWA). This may result in significant fiscal impacts to affected agencies that must monitor and regulate RWAs.

Analysis from the Environment Department (NMED) notes HB311 could require NMED to hire 1 additional FTE at an annual cost of \$140 thousand to monitor and analyze the quarterly RWA reports. However, this likely significantly underestimates the increase in workload represented by the creation of multiple RWAs. The bill does not specify which agencies would be monitoring RWAs; however, all public water systems are regulated by NMED’s Drinking Water Bureau, and it is likely the regulation of RWA’s will fall to NMED.

Currently, New Mexico has roughly 1,000 public water systems. If each water system was paired with an RWA, effectively doubling the number of systems NMED’s Drinking Water Bureau currently regulates, the bureau may need to double in size to accommodate the new regulatory burden. The minimum in the fiscal impact estimate assumes a minimum of 10 percent of existing public water systems and the communities they serve would request and create a paired RWA, requiring the Drinking Water Bureau to increase its budget by 10 percent. The upper limit reflects the cost if 100 percent of water system create an RWA. The LFC analysis uses the Drinking Water Bureau’s FY25 operating budget to estimate the potential recurring increase needed.

## **SIGNIFICANT ISSUES**

Communities in the state already use reclaimed water to some extent; for example, the city of Santa Fe uses reclaimed water to supplement the city’s water needs for soccer fields, golf courses, livestock watering, and landfills. The city also deposits reclaimed water in the Santa Fe River.

HB311’s definition of reclaimed water conflicts with existing definitions used by state entities. The state currently defines reclaimed water as “domestic wastewater that has been treated to the specified levels for the defined uses set forth in this guidance document and other applicable local, state, or federal regulations,” which differs from HB311’s definition of reclaimed water. Specifically, the state defines reclaimed water as “domestic wastewater,” while HB311 defines it as, “any type of water, regardless of the source and including wastewater.” HB311’s definition of reclaimed water which RWA could regulate is beyond the scope of what current water systems or what the water quality act allows water systems to work with, creating potential for RWA’s

being vested with authority beyond current statute.

NMED notes House Bill 311 partly defines reclaimed water as water that meets the state’s water quality standards, but the bill does not identify which water quality standards. Nor does the bill state if new water quality standards need to be created or what these new standards would do differently to the state’s current standards. NMED analysis also expressed concern regarding the bill’s use of “standards for certification” and the bill’s ambiguity on what the standards for certification are.

NMED also raises concerns the broad authority granted to the authority for establishing quality standards has the potential to duplicate or complicate regulatory work done by NMED, particularly because the bill authorizes a second agency, the Economic Development Department, to make decisions concerning the creation and regulation of RWAs. Traditionally, creating a new water utility would fall under the jurisdiction of NMED.

NMED further notes House Bill 311 creates a pathway for new reuse permits, which fall under the purview of NMED, not under EDD or an RWA, and the bill has the potential to create confusion regarding regulation and implementation. NMED further expresses concerns regarding the bill potentially creating a scenario where a municipal wastewater treatment plant would be regulated by “different entities with very different authorities and goals.”

In addition, NMED indicates the certification process outlined in HB311 is unclear:

The process of certification included in Section 2(C), Section 15(A), (C), and (D) is unclear throughout the bill and does not impose any indication of what standards should be used to create the certification process or what the intended outcome of the certification process should be. Additionally, Section 15(D) includes reference to a batch process for certification, rather than a continuous treatment process as is typical for a water treatment system.

NMED notes House Bill 311 gives the Water Quality Control Commission (WQCC) the ability to transfer authority for establishing, enforcing, and overseeing water quality to a reclaimed water authority, although the Water Quality Act only allows the WQCC to empower constituent agencies. NMED further notes transferring authority to an RWA would also vest it with the ability to assess fines, and it is unclear what enforcement, inspection, and oversight powers the bill intends to create.

The Office of the State Engineer (OSE) also expresses concern about the bill’s provision authorizing RWAs to assess fees without clarity on what “would be assessed against, for what purpose they would be assessed, or how high those fees or assessments would be.” OSE further notes the bill may unintentionally give RWAs authority to coerce reclaimed water retailers into contracts with an RWA through the authority to assess fees.

OSE notes the creation of a more regulated market for reclaimed water anticipated under HB311, similar to the regulation and purchasing of electricity, could have the opposite of its intended effect:

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.

OSE notes the House Bill 311 provision compelling reclaimed water retailers in municipalities and counties who have not created an RWA to identify potential sources and uses for more reclaimed water is uncommon and could be difficult to enforce:

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.

House Bill 311 state's RWAs can apply for state and federal funding, though does not specify if this would be through the traditional budget process, and leaves open the option for RWA operations to be funded through fees and assessments. OSE analysis states RWAs would be excluded from government procurement rules and rules regarding per diem mileage, and due to RWAs exerting significant governmental authority, their exclusion from these rules could result in abuse or misuse of public funds.

## TECHNICAL ISSUES

NMED analysis notes:

The definition of reclaimed water includes reference to establishment of water quality standards by the state and potentially by a reclaimed water authority which the WQA only authorizes the WQCC to do. The WQA and WQCC regulations do not regulate or control water or wastewater categorically, making this bill's statements about water no longer being regulated as wastewater unclear and problematic.

OSE analysis expresses concern the bill's definition of reclaimed water could encompass all water in the state. Further, OSE analysis notes issues with the bill's discussion of water quality and the entity's tasked with managing it;

Section 8.A(3) states that a RWA is subject to water quality rules "issued by the energy, minerals and natural resources department, the office of the state engineer and the department of environment." However, under state law, water quality rules are issued by the Oil Conservation Commission and the Water Quality Control Commission, not the three agencies listed in the bill. Specifically, the OSE does not have authority over water quality.

## ALTERNATIVES

House Bill 311's tasking of the Economic Development Department with authorizing the creation of a reclaimed water authority is inconsistent with current state practice, with such authority traditionally falling under the jurisdiction NMED. Amending the bill to vest the creation and oversight of reclaimed water authorities with NMED would make the bill consistent with current state practice.