

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
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, other
17 than fresh water, that has been treated mechanically or
18 chemically, that can be used for nonpotable purposes and that
19 meets water quality standards issued by the state;

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

22 K. "reclaimed water producer" means an entity that
23 operates a water treatment facility that produces or generates
24 reclaimed water, including midstream operators, desalination
25 plant operators and municipal wastewater treatment facilities;

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

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

7 N. "secretary" means the secretary of environment.

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;

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

6 (8) a statement explaining why creation of the
7 authority is in the public interest.

8 C. A request may be denied if:

9 (1) the requester fails to provide any of the
10 information required pursuant to Subsection B of this section;
11 or

12 (2) the department determines that creation of
13 the authority is not in the public interest.

14 D. The department shall:

15 (1) require a requester to:

16 (a) provide public notice of the
17 submission of a request pursuant to this section and the intent
18 to establish an authority; and

19 (b) provide for receipt of public
20 comments on the notice for thirty days from the date the public
21 notice is made;

22 (2) approve or deny a request within sixty
23 days of the end of a public comment period provided for in this
24 subsection; and

25 (3) not approve more than ten requests to

1 create an authority before July 1, 2026.

2 SECTION 4. [NEW MATERIAL] ORGANIZATION--BOARD OF
3 DIRECTORS--APPOINTMENT.--

4 A. Once approved by the department, an authority
5 may be organized as a nonprofit corporation in accordance with
6 the Nonprofit Corporation Act and the Reclaimed Water Act. The
7 authority shall file all documents required by the secretary of
8 state and by state law in relation to the authority's
9 organization as a nonprofit corporation and authority.

10 B. An authority shall be governed by a board of
11 directors. A board shall consist of ten members, nine of whom
12 are voting members, as follows:

13 (1) the secretary or the secretary's designee,
14 who shall serve as an advisor to the board and not as a voting
15 member; and

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

19 (a) one economic development
20 professional with at least three years of experience;

21 (b) at least one professional who has at
22 least three years of experience working for a reclaimed water
23 producer;

24 (c) at least one professional who has at
25 least three years of experience working for a reclaimed water

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1 wholesaler;

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

4 (e) at least two professionals with at
5 least three years of experience in a field related to
6 environmental studies or environmental protection work; and

7 (f) up to three at-large members who
8 represent local government, tribal government, community water
9 systems, acequias or community ditches, depending on the types
10 of stakeholders available in the city or county in the
11 authority's jurisdiction.

12 C. Upon creation of an authority, five voting
13 members shall be appointed to initial terms of two years and
14 four voting members shall be appointed to initial terms of one
15 year. Thereafter, members of the board shall be appointed to
16 terms of two years. When a vacancy occurs in any of the voting
17 member positions, the position shall be filled in accordance
18 with the provisions of Subsection B of this section.

19 D. A board shall:

- 20 (1) appoint a chair;
- 21 (2) elect other officers as the board deems
22 necessary;
- 23 (3) adopt bylaws for the board, in accordance
24 with the provisions of the Nonprofit Corporation Act, to govern
25 the conduct of the board in the performance of its duties;

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1 (4) hire or appoint a president who shall be
2 the chief administrative officer of the authority and be
3 responsible for its operations; and

4 (5) provide a report once every six months to
5 the regional water planning entity with jurisdiction over the
6 area in which the authority is located and to the interstate
7 stream commission that identifies potential local reclaimed
8 water sources and potential uses for reclaimed water.

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

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

14 (1) sue and be sued in the authority's
15 corporate name;

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

18 (3) apply for and obtain federal and state
19 funding and loans;

20 (4) purchase, take, store, receive, acquire,
21 own, hold, dispose of, use and otherwise deal in and with
22 property, including intangible personal property, intellectual
23 property, technological innovations and reclaimed or untreated
24 water; provided, however, that the acquisition of property does
25 not include acquisition of water rights or treated municipal

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1 effluent;

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

6 (6) provide technical support and consultation
7 services to industries, municipalities and counties regarding
8 water treatment;

9 (7) sell, convey, pledge, exchange, transfer
10 or otherwise dispose of the authority's assets and properties
11 for consideration and upon terms and conditions the authority
12 shall determine;

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

15 (9) execute all contracts and other
16 instruments the board deems necessary in the exercise of the
17 powers and duties provided in the Reclaimed Water Act;

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

20 (11) conduct activities and operations to
21 exercise the powers provided in the Reclaimed Water Act;

22 (12) employ, set compensation for and
23 prescribe duties of officers and employees as the authority
24 deems necessary;

25 (13) enter into agreements with insurance

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1 carriers to insure against any loss in connection with the
2 authority's operations;

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

5 (15) engage in research and development
6 activities to improve water and wastewater treatment
7 technologies and processes;

8 (16) make grants to promote reclaimed water
9 use; and

10 (17) engage in regional water planning and
11 community outreach and educational programs to raise awareness
12 about water conservation, pollution prevention and the
13 importance of environmental stewardship.

14 B. Pursuant to policies established by an
15 authority's board of directors and as directed by the board's
16 president, an authority shall:

17 (1) establish relationships with reclaimed
18 water producers, reclaimed water wholesalers and customers
19 throughout New Mexico to:

20 (a) encourage the responsible use of
21 reclaimed water in compliance with all applicable state and
22 federal laws; and

23 (b) promote reclaimed water testing and
24 characterization;

25 (2) foster and promote uses for reclaimed

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1 water that support the development of new industries and the
2 diversification of the state's economy;

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

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

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

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

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

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

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

23 Reclaimed water producers, reclaimed water wholesalers, retail
24 water suppliers and customers who choose to become members of
25 an authority shall be subject to the policies and procedures

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1 adopted by the authority.

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

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

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

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

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

14 A. An authority shall be subject to all applicable
15 laws and rules governing:

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

18 (2) transportation and handling of water; and

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

22 B. The use of reclaimed water by an authority shall
23 not impair any existing water rights. An authority shall
24 obtain a permit from the office of the state engineer if it
25 will use municipal reclaimed water in a way that affects return

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1 flows.

2 C. An authority is separate and apart from the
3 state and shall not be deemed an agency, public body or
4 political subdivision of the state for purposes of application
5 of law relating to gross receipts tax, disposition or
6 acquisition of property and capital outlays.

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

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

24 (1) any negligent act or omission of an
25 employee of the authority or board;

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

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

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

11 A. An authority shall identify:

12 (1) within the authority's jurisdiction:

13 (a) potential uses for reclaimed water;

14 and

15 (b) potential customers for reclaimed
16 water service; and

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

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

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

24 (a) potential uses for reclaimed water;

25 and

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1 (b) potential customers for reclaimed
2 water service; and

3 (2) potential sources of reclaimed water.

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

11 SECTION 10. [NEW MATERIAL] OVERSIGHT BY THE DEPARTMENT
12 AND BY A RECLAIMED WATER AUTHORITY--APPEALS.--

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

17 B. An authority shall comply with water quality
18 standards set by the water quality control commission and with
19 all department permitting and reporting requirements.

20 C. The department may revoke approval of an
21 authority if the authority fails to meet applicable water
22 quality standards or fails to comply with any provision of the
23 Reclaimed Water Act.

24 D. A person who is affected by the department's
25 revocation of approval of an authority may appeal to the

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1 secretary for relief. The secretary shall hold a hearing on
2 the appeal, and a transcript shall be made of the hearing. The
3 secretary shall issue a decision on an appeal in the form of an
4 order that may be appealed to the court of appeals.

5 E. An appeal of an order by the secretary shall be
6 upon the transcript made at the hearing provided for in
7 Subsection D of this section and shall be filed with the court
8 of appeals within thirty days of the date the order is issued.
9 The appellant may request the court to issue a stay of the
10 department's revocation action pending the court's decision on
11 the appeal. A stay may be granted upon a hearing and a showing
12 of good cause by the appellant.

13 F. The court of appeals shall set aside an order by
14 the secretary only if the court finds the order is:

15 (1) arbitrary, capricious or an abuse of
16 discretion;

17 (2) not supported by substantial evidence in
18 the record; or

19 (3) not otherwise in accordance with law.

20 G. An authority may:

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

24 (2) with a majority vote from its board of
25 directors and participating members, issue policies and

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1 procedures that allow for inspections of reclaimed water.

2 SECTION 11. [NEW MATERIAL] DETERMINATIONS OF AVAILABILITY
3 OF RECLAIMED WATER.--

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

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

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

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

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

23 B. A regulated water utility may request the public
24 regulation commission to establish the rate or rates for the
25 delivery of reclaimed water, with the objective of providing,

1 where practicable, a reasonable economic incentive for a
2 customer to purchase reclaimed water in place of other water
3 sources.

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

10 SECTION 13. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2025.

underscored material = new
~~[bracketed material]~~ = delete