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FISCAL IMPACT REPORT

SPONSOR	House Agriculture, Acequia and Water Resources Committee	LAST UPDATED	3/1/2025
		ORIGINAL DATE	2/8/2025
SHORT TITLE	Reclaimed Water Act	BILL NUMBER	CS/House Bill 311/HAAWCS
		ANALYST	Davidson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMED	No fiscal impact	\$280	\$280	\$560	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)

Regulations and Licensing Department (RLD)

New Mexico Attorney General (NMAG)

New Mexico State University (NMSU)

Agency Analysis was Solicited but Not Received From

Economic Development Department (EDD)

SUMMARY

Synopsis of HAAWC Substitute for House Bill 311

The House Agriculture, Acequias and Water Committee substitute for House Bill 311 (HB311) proposes to create the Reclaimed Water Act, allowing municipalities or counties to request permission from the Environment Department (NMED) to create reclaimed water authorities (RWAs). 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 limits NMED to be able to only create up to 10 RWAs, with the deadline being July 1, 2026, and stipulates An RWA must report every six months to the regional water planning entity with jurisdiction over the RWA and to the Interstate Stream Commission.

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. 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.

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

FISCAL IMPLICATIONS

Analysis from the Environment Department (NMED) notes HB311 could require NMED to hire two additional FTE at an annual cost of \$140 thousand to monitor and analyze the quarterly RWA reports.

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.

The Office of the State Engineer (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.

OSE analysis further expresses concern the bill's definition of reclaimed water could encompass all water in the state, and should be specified to not cause confusion or create potential issues.

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 bill refers to rules issued by NMED and the Energy, Minerals and Natural Resources Department (EMNRD); however, the WQCC issues water quality rules that NMED and EMNRD implements, consistent with the Water Quality Act. NMED does not have rulemaking authority under the Water Quality Act.

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