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HOUSE BILL 85

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Brian F. Egolf

FOR THE SCIENCE, TECHNOLOGY AND TELECOMMUNICATIONS COMMITTEE

AN ACT

RELATING TO PUBLIC LANDS; AMENDING SECTIONS OF THE GEOTHERMAL RESOURCES ACT TO PROVIDE FOR CONDITIONS OF LEASES OF GEOTHERMAL RESOURCES TO SUSTAIN THE RESOURCE AND FOR TERMS BASED ON FAIR MARKET VALUE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 19-13-2 NMSA 1978 (being Laws 1967, Chapter 158, Section 2) is amended to read:

"19-13-2. DEFINITIONS.--As used in the Geothermal Resources Act:

A. "geothermal resources" means the natural heat of the earth in excess of two hundred fifty degrees, or the energy in whatever form below the surface of the earth present in, resulting from, ~~or~~ created by or which may be extracted from this natural heat in excess of two hundred fifty degrees, and

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1 all minerals in solution or other products obtained from  
2 naturally heated fluids, brines, associated gases and steam in  
3 whatever form found below the surface of the earth, but  
4 excluding oil, hydrocarbon gas and other hydrocarbon substances  
5 and excluding the heating and cooling capacity of the earth not  
6 resulting from the natural heat of the earth in excess of two  
7 hundred fifty degrees, as may be used for the heating and  
8 cooling of buildings through an on-site geexchange heat pump  
9 or similar on-site system;

10 B. "commissioner" means the commissioner of public  
11 lands;

12 C. "state lands" includes all land owned by the  
13 state, all land owned by school districts, beds of navigable  
14 rivers and lakes, submerged lands and lands in which mineral  
15 rights have been reserved to the state;

16 D. "lease" means a lease for the extraction and  
17 removal of geothermal resources from state lands; and

18 E. "well" means any well for the discovery of  
19 geothermal resources or any well on lands producing geothermal  
20 resources or reasonably presumed to contain geothermal  
21 resources."

22 SECTION 2. Section 19-13-3 NMSA 1978 (being Laws 1967,  
23 Chapter 158, Section 3) is amended to read:

24 "19-13-3. ADMINISTRATION OF ACT.--Administration of the  
25 Geothermal Resources Act shall be based on the principle of

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1 multiple use of state land and resources and shall allow  
2 coexistence of other leases on the same lands for deposits of  
3 other minerals, and the existence of leases issued pursuant to  
4 the Geothermal Resources Act shall not preclude other uses of  
5 the land covered thereby. Geothermal resources may be  
6 administered as a renewable energy resource, in which case any  
7 leases for and regulations of a geothermal resource as a  
8 renewable energy resource shall require that the geothermal  
9 resource not be diminished beneath applicable natural seasonal  
10 fluctuations in the measurable quantity, quality or temperature  
11 of any area classified as a known geothermal resources field.

12 However, operations under other leases or for other uses shall  
13 not unreasonably interfere with or endanger operations under  
14 any lease issued pursuant to the Geothermal Resources Act, nor  
15 shall operations under leases issued pursuant to the Geothermal  
16 Resources Act unreasonably interfere with or endanger  
17 operations under any lease issued pursuant to any other law.

18 The Geothermal Resources Act shall not be construed to  
19 supersede the authority ~~[which]~~ that any state department or  
20 agency has with respect to the management, protection and  
21 utilization of the state lands and resources under its  
22 jurisdiction."

23 SECTION 3. Section 19-13-7 NMSA 1978 (being Laws 1967,  
24 Chapter 158, Section 7, as amended) is amended to read:

25 "19-13-7. LEASES--TERMS--RENTALS AND ROYALTIES.--

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1           A. Each lease issued pursuant to the Geothermal  
2 Resources Act shall provide for the following base rentals  
3 [~~and~~], royalties and percentage rentals with respect to  
4 geothermal resources produced [~~saved and~~] or sold from the  
5 lands included within the lease:

6                   (1) a [~~royalty of ten percent, except as~~  
7 ~~provided in Paragraph (4) of this subsection, of the gross~~  
8 ~~revenue, exclusive of charges approved by the commissioner made~~  
9 ~~or incurred with respect to transmission or other services or~~  
10 ~~processes, received from the sale or use of steam, brines or~~  
11 ~~hot water from which no minerals have been extracted and~~  
12 ~~associated gases or any other form of heat or energy derived~~  
13 ~~from production under the lease at the point of delivery to the~~  
14 ~~purchaser thereof; provided, however, as to new leases issued~~  
15 ~~and old leases stipulated pursuant to Section 19-13-11.1 NMSA~~  
16 ~~1978 after the effective date of this act, which leases~~  
17 ~~embraced land then classified as being in a "known geothermal~~  
18 ~~resource field", the royalty shall be at a rate of not less~~  
19 ~~than ten percent nor more than fifteen percent, the exact~~  
20 ~~amount thereof to be set by the commissioner either by rule or~~  
21 ~~regulation or in the posted notice of sale required for the~~  
22 ~~sale of leases at public auction] base lease rent to be charged  
23 under each lease based upon fair market value at the time of  
24 leasing as determined by the commissioner;~~

25                   (2) a royalty or percentage rent to be charged

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1 as a percentage of gross revenue derived from the production,  
2 sale or use of geothermal resources, or the energy produced  
3 therefrom, under the lease as determined by the commissioner  
4 based on fair market value of the geothermal resource or use of  
5 the geothermal resource at the time of leasing. The  
6 commissioner may require an escalation of the royalty or  
7 percentage rent over time; and

8 [~~(2)~~] (3) a royalty of [~~not less than two~~  
9 ~~percent nor more than five percent of~~] the gross revenue  
10 received from the sale of mineral products or chemical  
11 compounds recovered from geothermal fluids [~~in the first~~  
12 ~~marketable form as to each such mineral product or chemical~~  
13 ~~compound for the primary term of the lease~~], if any, based on  
14 fair market value of the mineral product as determined by the  
15 commissioner, except that as to any by-product or minerals  
16 covered by other mineral leasing statutes administered by the  
17 commissioner or rules or regulations of the commissioner, the  
18 rate of royalty for such mineral or by-product shall be the  
19 same as the then-existing rate of royalty under leases  
20 currently being issued by the commissioner.

21 [~~(3)~~] ~~a royalty of eight percent of the net~~  
22 ~~revenue received from the operation of an energy-producing~~  
23 ~~plant on the leased land;~~

24 [~~(4)~~] ~~a royalty of not less than two percent nor~~  
25 ~~more than ten percent of the gross revenue received from the~~

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1 ~~operation of the geothermal resources for recreational, space~~  
2 ~~heating or health purposes;~~

3 ~~(5) an annual rental, payable in advance, of~~  
4 ~~one dollar (\$1.00) an acre or fraction thereof for each year of~~  
5 ~~the lease;~~

6 ~~(6) if, after the discovery of geothermal~~  
7 ~~resources in commercial quantities, the total royalties paid~~  
8 ~~during any calendar year do not equal or exceed a sum equal to~~  
9 ~~two dollars (\$2.00) an acre for each acre or fraction thereof~~  
10 ~~then included in the lease, the person holding the lease shall,~~  
11 ~~within sixty days after the end of the year, pay such sum as is~~  
12 ~~necessary to equal the minimum royalty of two dollars (\$2.00)~~  
13 ~~an acre;~~

14 ~~(7) the royalties specified pursuant to this~~  
15 ~~section shall be subject to renegotiation after twenty years~~  
16 ~~from the effective date of a lease and at ten-year intervals~~  
17 ~~thereafter; however, the new royalty rate shall not vary more~~  
18 ~~than fifty percent from the previous royalty rate, and in no~~  
19 ~~event shall the total royalty be less than five percent nor~~  
20 ~~more than twenty-two and one-half percent. At any time, upon~~  
21 ~~good cause shown, the commissioner may reduce the royalty on~~  
22 ~~any lease; and~~

23 ~~(8) except for royalties on minerals, royalties~~  
24 ~~and rentals may be negotiated at other rates than that provided~~  
25 ~~in this section where the surface has heretofore been sold with~~

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1 ~~minerals reserved; provided, however, a public hearing shall be~~  
2 ~~held thereon before any such rates are approved by the~~  
3 ~~commissioner.~~

4 ~~B. Royalty payments shall be made pursuant to~~  
5 ~~Paragraphs (1) and (2) of Subsection A of this section for all~~  
6 ~~geothermal resources used and not sold by a person holding a~~  
7 ~~lease, with the gross revenue therefrom to be determined as~~  
8 ~~though the geothermal resources had been sold to a third person~~  
9 ~~at the then-prevailing market price in the same market area and~~  
10 ~~under the same marketing conditions; provided, however, that no~~  
11 ~~royalties shall be payable for steam used by a person holding a~~  
12 ~~lease in the production of any geothermal resources subject to~~  
13 ~~the payment of royalties pursuant to Paragraphs (1) and (2) of~~  
14 ~~Subsection A of this section.~~

15 ~~G.]~~ B. The commissioner shall have the authority in  
16 leasing lands pursuant to the Geothermal Resources Act to  
17 prescribe a development program. In prescribing the program,  
18 the commissioner shall consider all applicable economic  
19 factors, including market conditions and the cost of drilling  
20 for, producing, processing and utilizing [of] geothermal  
21 resources."

22 SECTION 4. Section 19-13-11 NMSA 1978 (being Laws 1967,  
23 Chapter 158, Section 11, as amended) is amended to read:

24 "19-13-11. LEASES--DURATION.--

25 A. Any lease entered into pursuant to the Geothermal

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1 Resources Act shall be for a primary term of five years and so  
2 long thereafter as geothermal resources are being produced or  
3 utilized or are capable of being produced or utilized in  
4 commercial quantities from such lands or from lands unitized  
5 therewith, subject to continued payment of [~~annual~~] rentals as  
6 provided in Section 19-13-7 NMSA 1978. If the lessee fails to  
7 produce or utilize geothermal resources or to discover  
8 geothermal resources capable of being produced or utilized in  
9 commercial quantities from the lands or from lands unitized  
10 therewith during the initial five-year term, the lessee may  
11 continue the lease in full force and effect as to the portion  
12 held by [~~him~~] the lessee for a secondary term of five years and  
13 so long thereafter as geothermal resources are being produced  
14 or utilized or are capable of being produced or utilized in  
15 commercial quantities from such lands or from lands unitized  
16 therewith by continued payment each year, in advance, of  
17 [~~annual~~] rentals at the rate [~~of five dollars (\$5.00) per acre~~  
18 annually] set by the lease. Provided that if for any reason  
19 beyond the control of the lessee production or utilization of  
20 geothermal resources in commercial quantities [~~shall cease~~  
21 ceases] or if the capability to so produce is temporarily lost  
22 after the secondary term has expired, the producing lessee may,  
23 with the written permission of the commissioner [~~of public~~  
24 lands], continue such lease as to the acreage held by [~~him~~] the  
25 lessee in effect from year to year for an additional period not

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1 to exceed three years by continued payment of ~~[annual]~~ rentals  
2 as provided in the lease at the rate provided in the secondary  
3 term of the lease.

4 B. If commercial production or capability of  
5 commercial production ~~[be had]~~ occurs during the primary term  
6 and thereafter ceases before the primary term would have  
7 expired, the lease shall be deemed to be a "nonproducing or  
8 incapable of producing lease" from that date, and the lessee  
9 shall have the unexpired portion of the primary term and any  
10 subsequent terms within which to resume such production or  
11 capability of production. If commercial production or  
12 capability of commercial production ~~[is had]~~ occurs during the  
13 primary term and ceases during the secondary term, the lease  
14 shall be deemed to be a "nonproducing or incapable of producing  
15 lease" from that date and, upon payment of rentals as provided  
16 in Subsection A of this section, the lessee shall have the  
17 unexpired portion of the secondary term within which to resume  
18 such production or capability of production. When such  
19 production or capability of production is resumed, the term of  
20 the lease shall continue so long thereafter as geothermal  
21 resources are being produced or utilized or are capable of  
22 being produced or utilized in commercial quantities from the  
23 leased land or from land unitized therewith. In such cases,  
24 the rental rate for the lease or the portion thereof shall be  
25 the rental rate provided in the term or portion of the term in

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which such production or capability of production is resumed."

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