

HOUSE BILL 289

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

James G. Townsend

This document incorporates committee amendments adopted during standing committee(s) consideration of this measure. It is a tool to show the amendments in context and is not to be used for introduction, amendment or substitution.

AN ACT

RELATING TO NATURAL RESOURCES; PROVIDING FOR THE DEVELOPMENT, REGULATION AND CONSERVATION OF GEOTHERMAL RESOURCES; REPEALING THE GEOTHERMAL RESOURCES CONSERVATION ACT AND ENACTING THE GEOTHERMAL RESOURCES DEVELOPMENT ACT; REQUIRING GEOTHERMAL PERMITS; PROVIDING POWERS AND DUTIES; PRESCRIBING CIVIL PENALTIES AND REMEDIES.

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

**SECTION 1.** [NEW MATERIAL] SHORT TITLE.--Sections 1 through 11 of this act may be cited as the "Geothermal Resources Development Act".

**SECTION 2.** [NEW MATERIAL] FINDINGS AND PURPOSE.--The legislature finds that the people of New Mexico have a direct interest in the development of geothermal resources and that the state should exercise its power and jurisdiction through the division to require that geothermal resources be explored,

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developed and produced in such a manner as to safeguard life, health, property, natural resources and the public welfare and to encourage maximum economic recovery.

**SECTION 3. [NEW MATERIAL] DEFINITIONS.**--As used in the Geothermal Resources Development Act:

A. "correlative rights" means the opportunity afforded, insofar as is practicable, to each owner or leaseholder in a geothermal reservoir to produce the owner's or leaseholder's just and equitable share of the geothermal resources within such reservoir, being an amount, so far as can be practicably determined and so far as can be practicably obtained without waste, substantially in the proportion that the recoverable geothermal resources of such ownership or lease interest bear to the total recoverable geothermal resources in the reservoir and, for such purpose, to use the owner's or leaseholder's just and equitable share of the natural heat or energy in the reservoir;

B. "division" means the energy conservation and management division of the energy, minerals and natural resources department;

C. "geothermal reservoir" means an underground reservoir containing geothermal resources, whether the fluids in the reservoir are native to the reservoir or flow into or are injected into the reservoir;

D. "geothermal resources" means the natural heat of

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the earth in excess of two hundred fifty degrees Fahrenheit, or the energy, in whatever form, below the surface of the earth present in, resulting from, created by or that may be extracted from this natural heat in excess of two hundred fifty degrees Fahrenheit, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases and steam, in whatever form, found below the surface of the earth, but excluding oil, hydrocarbon gas and other hydrocarbon substances and excluding the heating and cooling capacity of the earth not resulting from the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit, as may be used for the heating and cooling of buildings through an on-site geo-exchange heat pump or similar on-site system; and

E. "person" means an individual or other legal entity, including federal, state or local governments or their agents or instrumentalities.

**SECTION 4. [NEW MATERIAL] EXCLUSION--INCIDENTAL LOSS OR EXTRACTION OF HEAT--LIMITED EXCEPTION.--**

A. A permit from the state engineer is not required for the use of ground water over two hundred fifty degrees Fahrenheit as incident to the development of geothermal resources permitted pursuant to the Geothermal Resources Development Act when:

(1) the use does not require any diversion of ground water; or

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(2) all diverted ground water is reinjected as soon as practicable into the same ground water source from which it was diverted, resulting in no new depletions to the source; provided that:

(a) the division shall provide to the state engineer all information available to the division regarding the proposed diversion and reinjection and shall request the opinion of the state engineer as to whether existing ground water rights sharing the same ground water source may be impaired; and

(b) if the state engineer determines that the information provided is sufficient to render an opinion and it is the opinion of the state engineer that any existing ground water rights may be impaired, the division, upon receipt of the opinion of the state engineer, shall require the owner or operator to submit to the division a plan of replacement with regard to any existing ground water rights that are likely to be impaired.

B. In response to a request for opinion pursuant to Subsection A of this section, the determination by the state engineer as to whether the information provided is sufficient to render an opinion or the issuance by the state engineer of an opinion shall not constitute a decision, act or refusal to act under Section 72-2-16 NMSA 1978.

C. No ground water right is established through the .203513.1 Amendments in Context

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use of ground water as allowed in Subsection A of this section.

D. As used in this section, "plan of replacement" means a detailed plan for the replacement of water, which may include:

- (1) the furnishing of a substitute water supply;
- (2) the modification of existing water supply facilities;
- (3) the drilling of replacement wells;
- (4) the assumption of additional operating costs;
- (5) the procurement of documentation establishing a waiver of protection by owners of affected water rights;
- (6) artificial recharge; or
- (7) any other means to avoid impairment of water rights.

**SECTION 5. [NEW MATERIAL] GENERAL DUTIES, JURISDICTION AND AUTHORITY OF THE DIVISION.--**

A. The division shall regulate the exploration, development and production of geothermal resources on public and private land for the purposes of conservation; protection of correlative rights; protection of life, health, property, natural resources, the environment and the public welfare; and encouraging maximum economic recovery of the geothermal

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resources. The division may require persons seeking to explore, develop or produce geothermal resources to obtain permits from the division.

B. The division has jurisdiction over all matters relating to the exploration, development and production of geothermal resources. It has jurisdiction, authority and control of all persons, matters and things necessary or proper to enforce effectively the provisions of the Geothermal Resources Development Act, including making investigations and inspections of geothermal projects, facilities and wells.

C. The division may limit and allocate production of geothermal resources as needed to prevent waste whenever the total amount of geothermal resources that may be produced from a geothermal reservoir is limited. The division shall allocate and distribute the allowable production, insofar as is practicable, to afford each ownership or lease interest in a geothermal reservoir the opportunity to produce its just and equitable share of the geothermal resources in the reservoir.

D. The division shall have exclusive authority to regulate injection into geothermal wells pursuant to the Geothermal Resources Development Act and shall have exclusive authority over matters related to the protection of natural resources, property, health and public welfare as they relate to geothermal injection wells.

**SECTION 6. [NEW MATERIAL] RULES.--**

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A. The division ~~may~~shall promulgate and enforce rules providing for the exploration, development and production of geothermal resources and to accomplish the purposes of the Geothermal Resources Development Act and that are reasonably necessary to carry out the purposes of that act whether or not indicated or specified in any section of that act.

B. The rules shall include, at minimum, provisions to:

(1) protect the environment against damage resulting from the exploration, development or production of geothermal resources;

(2) prevent waste of natural resources, including geothermal resources, in connection with the exploration, development or production of geothermal resources;

(3) ensure proper casing to prevent geothermal resources, water or other fluids from escaping from the strata in which they are found into other strata;

(4) prevent the premature cooling of any geothermal reservoir from the exploration, development or production of geothermal resources;

(5) protect the general public against injury or damage resulting from the exploration, development or production of geothermal resources;

(6) protect correlative rights against infringement resulting from the exploration, development or

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production of geothermal resources;

(7) regulate disposal of geothermal resources or the residue of geothermal resources or the disposal of nondomestic waste from the exploration, development or production of geothermal resources and direct the surface or subsurface disposal of such in a manner that will afford reasonable protection against contamination of all fresh water and water of present or probable future value for domestic, commercial, agricultural or stock purposes and will afford reasonable protection to human life and health and to the environment;

(8) regulate the permitting of geothermal projects, facilities and wells, and provide for public notice and comment, and opportunity for hearing;

(9) where sufficient information is available, define and, from time to time as is necessary, redefine the horizontal and vertical limits of geothermal reservoirs;

(10) permit and regulate the injection of fluids into geothermal reservoirs;

(11) require geothermal projects, facilities and wells to be drilled, installed, developed, operated or produced in a manner so as to prevent environmental injury to neighboring leases or properties and to afford reasonable protection to human life and health and to the environment;

(12) require persons applying for permits to



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explore, develop or produce geothermal resources to demonstrate that they have the right to produce the geothermal resources through ownership, leases, permits or other documentation;

(13) require geothermal projects, facilities and wells to be operated efficiently;

(14) require financial assurance in the form of a surety bond, cash bond or letter of credit for geothermal projects, facilities and wells, as may be applicable, in amounts to be established by the division;

(15) require owners or operators of geothermal projects, facilities or wells to keep or cause records to be maintained and submitted to the division; and

(16) require abandoned geothermal projects, facilities and wells to be reclaimed, including requiring wells to be plugged in a manner to confine all fluids in the strata in which they are found and to prevent them from escaping into other strata.

**SECTION 7. [NEW MATERIAL] ACCESS TO PROPERTY.**--Employees or agents of the division, on proper identification, may enter public or private property to inspect and investigate conditions in relation to the exploration, development or production of geothermal resources, to monitor compliance with the Geothermal Resources Development Act or a rule, permit or order of the division, or to examine and copy, during reasonable business hours, those records or memoranda of the

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business being investigated; provided, however, that any inspection or investigation on private property shall be at reasonable times and upon notice to the private landowner. Employees or agents acting under the authority of this section shall observe the business's safety, internal security and fire protection rules.

**SECTION 8. [NEW MATERIAL] ADMINISTRATIVE PENALTY.--**

A. If a person violates the provisions of the Geothermal Resources Development Act or the rules promulgated pursuant to that act or an order or permit issued pursuant to that act, the division may assess the person a civil penalty of two thousand five hundred dollars (\$2,500) for each violation. In the case of a continuing violation, each day of violation shall constitute a separate violation.

B. In determining the amount of the penalty, the division shall consider the person's history of previous violations of the Geothermal Resources Development Act or the Geothermal Resources Act or the rules or permits issued pursuant to those acts, the seriousness of the violation, any hazard to the health or safety of the public or the environment and the demonstrated good faith of the person.

C. The division may assess a civil penalty only after the person charged with a violation has been given an opportunity for a public hearing.

D. After the public hearing is held, or the person

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has failed to participate in the public hearing, the division shall issue an order requiring that any penalty imposed be paid.

E. If the person fails to pay the civil penalty as ordered by the division, the division may file a civil suit to collect the penalty in the district court of the county in which the defendant resides or in which any defendant resides if there is more than one defendant or in the district court of any county in which the violation occurred.

**SECTION 9.** [NEW MATERIAL] APPEALS.--A person subject to a final decision of the division may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**SECTION 10.** [NEW MATERIAL] WATER RIGHTS OWNER--ACTION FOR IMPAIRMENT.--A water rights owner may bring a de novo action in the district court in which the water rights are located for damages or injunctive relief with respect to any claimed impairment of existing water rights due to the exploration, development or production of geothermal resources pursuant to the Geothermal Resources Development Act.

**SECTION 11.** [NEW MATERIAL] TRANSFER OF ADMINISTRATION OF RULES, ORDERS AND PERMITS.--All rules, orders, permits and administrative determinations of the oil conservation division of the energy, minerals and natural resources department or oil conservation commission issued pursuant to the Geothermal Resources Conservation Act that existed prior to the effective

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date of the Geothermal Resources Development Act shall be administered by the energy conservation and management division of the department and shall remain in full force and effect after that date until repealed or amended, unless in conflict with, prohibited by or inconsistent with the provisions of the Geothermal Resources Development Act.

**SECTION 12.** Section 9-5A-4 NMSA 1978 (being Laws 1987, Chapter 234, Section 4, as amended) is amended to read:

"9-5A-4. DIVISIONS--DUTIES.--In addition to the duties assigned to each division of the energy, minerals and natural resources department by the secretary of energy, minerals and natural resources:

A. the administrative services division shall provide clerical, recordkeeping and administrative support to the department in the areas of personnel, budget, procurement and contracting;

B. the energy conservation and management division shall plan, administer, review, provide technical assistance, maintain records, ~~and~~ monitor state and federal energy conservation and alternative energy technology programs and administer laws and regulations relating to geothermal resources;

C. the forestry division shall enforce and administer ~~all~~ laws and regulations relating to forestry on lands within the state;

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D. the mining and minerals division shall enforce and administer laws and regulations relating to mine safety, coal surface mine reclamation and abandoned mine lands reclamation;

E. the oil conservation division shall administer [the] laws and regulations relating to oil and gas [~~and geothermal~~] resources, except those laws specifically administered by another authority; and

F. the state [~~park and recreation~~] parks division shall develop, maintain, manage and supervise all state parks and state-owned or state-leased recreation areas."

**SECTION 13. TEMPORARY PROVISION--TRANSFER OF APPROPRIATIONS, MONEY AND RECORDS.--**On the effective date of this act, any appropriations, money and records of the oil conservation commission or the oil conservation division of the energy, minerals and natural resources department dedicated to its powers and duties under the Geothermal Resources Conservation Act are transferred to the energy conservation and management division of that department.

**SECTION 14. REPEAL.--**Sections 71-5-1 through 71-5-24 NMSA 1978 (being Laws 1975, Chapter 272, Sections 1 and 2, Laws 2003, Chapter 16, Section 2, Laws 1975, Chapter 272, Sections 3 through 17, Laws 1979, Chapter 326, Sections 1 through 5, Laws 1975, Chapter 272, Sections 18 through 21, Laws 2012, Chapter 50, Section 2, Laws 1975, Chapter 272, Section 22, Laws 1981,

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Chapter 362, Section 2 and Laws 1975, Chapter 272, Section 24,  
as amended) are repealed.

SECTION 15. EFFECTIVE DATE.--The effective date of the  
provisions of this act is July 1, 2016.

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