

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Townsend **ORIGINAL DATE** 2/7/16 289/aHEENC/aHFI#1/
LAST UPDATED 2/23/16 **HB** aSFI#1
SHORT TITLE Geothermal Resource Development and Regulation **SB** _____
ANALYST Armstrong

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$0.0	\$0.0	\$0.0	Recurring	EMNRD Operating Budget

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB223

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)
 Energy, Minerals and Natural Resources Department (EMNRD)
 Economic Development Department (EDD)
 Office of the State Engineer (OSE)

Responses Not Received From

General Services Department (GSD)

SUMMARY

Synopsis of Senate Floor Amendment

The Senate amended the bill to clarify that a water rights owner’s right to appeal is in addition to the right of appeal of applicants to the Energy Conservation and Management Division (ECMD).

Synopsis of House Floor Amendment

The House of Representatives amended the bill to allow the Energy Conservation and Management Division to govern the manner and procedures for hearings held pursuant to HB289.

Synopsis of House Energy, Environment and Natural Resources Committee Amendment

The House Energy, Environment and Natural Resources Committee amended the bill to require promulgation of regulations providing for the exploration, development, and production of geothermal resources and to accomplish the purposes of the bill. The committee also amended the bill to require public notice and comment and a hearing in rulemaking.

Synopsis of Bill

House Bill 289, the Geothermal Resources Development Act, repeals and replaces the existing Geothermal Resources Conservation Act. The bill shifts the authority to regulate the development and conservation of geothermal resources from EMNRD's Oil Conservation Division (OCD) to the Energy Conservation and Management Division (ECMD). It grants ECMD the authority to promulgate regulations governing geothermal resources and provides for administrative penalties for violations, with appeals to district court. The bill also allows for actions in district court for water rights owners claiming damage from geothermal resource exploration, development, or production.

The effective date of this bill is July 1, 2016.

FISCAL IMPLICATIONS

According to EMNRD's analysis, enactment of HB289 would not impact the agency's overall operating budget. However, HB289 includes a provision to transfer any appropriations, money, and records dedicated or related to geothermal regulation and oversight from the Oil Conservation Division (OCD) to the Energy Conservation and Management Division (ECMD).

SIGNIFICANT ISSUES

According to EMNRD analysis, the current statute contains sections that appear to be modeled on the Oil and Gas Act, but many of these sections are unique to New Mexico and are not found in other states with geothermal statutes. Additionally, HB289 provides clarification by replacing the existing standard for "low-temperature thermal reservoir" from "a temperature which is less than boiling at the altitude of occurrence" with a clear delineation of 250°F within the definition of "geothermal resources." Further, the agency notes ECMD is better equipped to promote geothermal energy because it already provides technical assistance to the renewable energy industry in development and operations in New Mexico. Finally, there are 132 rules regulating geothermal resources yet many of these rules are not applicable to geothermal development because they copy oil and gas rules. EMNRD analysis concludes that "by clearly delineating essential rules and allowing ECMD to promulgate additional rules, the transparency and clarity for operators, the public, and for the regulating agency will be significantly improved thereby allowing for better compliance and regulation of the resource."

HB289 provides for the regulation of 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 public welfare, and encouraging maximum economic recovery of the geothermal resources, by ECMD. The bill permits ECMD to require persons seeking to explore, develop or produce geothermal resources to obtain permits from ECMD. Additionally, the bill provides that ECMD:

- has jurisdiction over all matters relating to the exploration, development and production of geothermal resources and jurisdiction, authority and control of all persons, matters and things necessary or proper to enforce effectively the provisions of the bill, including making investigations and inspections of geothermal projects, facilities and wells;
- 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, and 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; and
- shall have exclusive authority to regulate injection into geothermal wells 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.

The bill permits ECMD employees, with proper identification, to 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 statutes, rules, permits, or orders, or to examine and copy records or memoranda of the business being investigated. Any inspection or investigation on private property shall be at reasonable times and upon notice to the private landowner.

HB289 provides an administrative penalty of \$2,500 for each violation of statutes, rules, permits, or orders. HB289 permits ECMD to assess a civil penalty only after the person charged with a violation has been given an opportunity for a public hearing. The bill provides that after the public hearing is held, or the person has failed to participate in the public hearing, ECMD shall issue an order requiring that any penalty imposed be paid. If the person fails to pay the civil penalty as ordered, ECMD may file a civil suit to collect the penalty in district court. A person subject to a final decision by ECMD may appeal to district court pursuant to existing statute.

OTHER SUBSTANTIVE ISSUES

The bill requires a permit from the Office of the State Engineer (OSE) for the use of ground water over 250°F for development of geothermal resources unless all ground water is reinjected “as soon as practicable into the same source from which it was diverted” and a “plan of replacement” is required if OSE determines any existing ground water rights are likely to be impaired. Such a plan is defined by the bill as a “detailed plan for the replacement of water.” However, the bill does not require approval of such a plan by either OSE or ECMD. While the bill lists what may be included in these plans it does not provide a minimum set of conditions or considerations to be included. Presumably these details would be addressed by regulations. The bill allows for actions in district court for water rights owners claiming damage from geothermal resource exploration, development, or production.

In addition to the exclusion of water below 250°F from regulation under HB289, use of geothermal energy to heat and cool buildings through on-site geo-exchange heat pumps or similar on-site systems is not regulated by the bill.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 223 duplicates HB289.