

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 Fahrenheit, or the energy in whatever form below the surface of the earth present in, resulting from, created by or which 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 geexchange heat pump or

similar on-site system;

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

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

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

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

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

"19-13-3. ADMINISTRATION OF ACT.--Administration of the Geothermal Resources Act shall be based on the principle of multiple use of state land and resources and shall allow coexistence of other leases on the same lands for deposits of other minerals, and the existence of leases issued pursuant to the Geothermal Resources Act shall not preclude other uses of the land covered thereby. Geothermal resources may be administered as a renewable energy resource, in which case any leases for and regulations of a geothermal resource as a renewable energy resource shall require that the geothermal

resource not be diminished beneath applicable natural seasonal fluctuations in the measurable quantity, quality or temperature of any area classified as a known geothermal resources field. However, operations under other leases or for other uses shall not unreasonably interfere with or endanger operations under any lease issued pursuant to the Geothermal Resources Act, nor shall operations under leases issued pursuant to the Geothermal Resources Act unreasonably interfere with or endanger operations under any lease issued pursuant to any other law. The Geothermal Resources Act shall not be construed to supersede the authority that any state department or agency has with respect to the management, protection and utilization of the state lands and resources under its jurisdiction."

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

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

A. Each lease issued pursuant to the Geothermal Resources Act shall provide for the following base rentals, royalties and percentage rentals with respect to geothermal resources produced or sold from the lands included within the lease:

(1) a base lease rent to be charged under each lease based upon fair market value at the time of leasing as determined by the commissioner;

(2) a royalty or percentage rent to be charged as a percentage of gross revenue derived from the production, sale or use of geothermal resources, or the energy produced therefrom, under the lease as determined by the commissioner, who shall not determine a value below or above a range that could be determined by the federal bureau of land management, based on fair market value of the geothermal resource or use of the geothermal resource at the time of leasing. The commissioner may require an escalation of the royalty or percentage rent over time; and

(3) a royalty of the gross revenue received from the sale of mineral products or chemical compounds recovered from geothermal fluids, if any, based on fair market value of the mineral product as determined by the commissioner, except that as to any by-product or minerals covered by other mineral leasing statutes administered by the commissioner or rules or regulations of the commissioner, the rate of royalty for such mineral or by-product shall be the same as the then-existing rate of royalty under leases currently being issued by the commissioner.

B. The commissioner shall have the authority in leasing lands pursuant to the Geothermal Resources Act to prescribe a development program. In prescribing the program, the commissioner shall consider all applicable economic factors, including market conditions and the cost of drilling

for, producing, processing and utilizing geothermal resources."

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

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

A. Any lease entered into pursuant to the Geothermal Resources Act shall be for a primary term of five years and so long thereafter as geothermal resources are being produced or utilized or are capable of being produced or utilized in commercial quantities from such lands or from lands unitized therewith, subject to continued payment of rentals as provided in Section 19-13-7 NMSA 1978. If the lessee fails to produce or utilize geothermal resources or to discover geothermal resources capable of being produced or utilized in commercial quantities from the lands or from lands unitized therewith during the initial five-year term, the lessee may continue the lease in full force and effect as to the portion held by the lessee for a secondary term of five years and so long thereafter as geothermal resources are being produced or utilized or are capable of being produced or utilized in commercial quantities from such lands or from lands unitized therewith by continued payment each year, in advance, of rentals at the rate set by the lease. Provided that if for any reason beyond the control of the lessee production or utilization of geothermal resources in commercial quantities

ceases or if the capability to so produce is temporarily lost after the secondary term has expired, the producing lessee may, with the written permission of the commissioner, continue such lease as to the acreage held by the lessee in effect from year to year for an additional period not to exceed three years by continued payment of rentals as provided in the lease at the rate provided in the secondary term of the lease.

B. If commercial production or capability of commercial production occurs during the primary term and thereafter ceases before the primary term would have expired, the lease shall be deemed to be a "nonproducing or incapable of producing lease" from that date, and the lessee shall have the unexpired portion of the primary term and any subsequent terms within which to resume such production or capability of production. If commercial production or capability of commercial production occurs during the primary term and ceases during the secondary term, the lease shall be deemed to be a "nonproducing or incapable of producing lease" from that date and, upon payment of rentals as provided in Subsection A of this section, the lessee shall have the unexpired portion of the secondary term within which to resume such production or capability of production. When such production or capability of production is resumed, the term of the lease shall continue so long thereafter as geothermal resources are being produced or utilized or are capable of being produced or

utilized in commercial quantities from the leased land or from land unitized therewith. In such cases, the rental rate for the lease or the portion thereof shall be the rental rate provided in the term or portion of the term in which such production or capability of production is resumed."=====