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HOUSE BILL 289

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

INTRODUCED BY

James G. Townsend

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

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1 the division to require that geothermal resources be explored,  
2 developed and produced in such a manner as to safeguard life,  
3 health, property, natural resources and the public welfare and  
4 to encourage maximum economic recovery.

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

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

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

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

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1           D. "geothermal resources" means the natural heat of  
2 the earth in excess of two hundred fifty degrees Fahrenheit, or  
3 the energy, in whatever form, below the surface of the earth  
4 present in, resulting from, created by or that may be extracted  
5 from this natural heat in excess of two hundred fifty degrees  
6 Fahrenheit, and all minerals in solution or other products  
7 obtained from naturally heated fluids, brines, associated gases  
8 and steam, in whatever form, found below the surface of the  
9 earth, but excluding oil, hydrocarbon gas and other hydrocarbon  
10 substances and excluding the heating and cooling capacity of  
11 the earth not resulting from the natural heat of the earth in  
12 excess of two hundred fifty degrees Fahrenheit, as may be used  
13 for the heating and cooling of buildings through an on-site  
14 geo-exchange heat pump or similar on-site system; and

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

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

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

- 25           (1) the use does not require any diversion of

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1 ground water; or

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

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

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

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

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1 C. No ground water right is established through the  
2 use of ground water as allowed in Subsection A of this section.

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

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

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

21 A. The division shall regulate the exploration,  
22 development and production of geothermal resources on public  
23 and private land for the purposes of conservation; protection  
24 of correlative rights; protection of life, health, property,  
25 natural resources, the environment and the public welfare; and

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1 encouraging maximum economic recovery of the geothermal  
2 resources. The division may require persons seeking to  
3 explore, develop or produce geothermal resources to obtain  
4 permits from the division.

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

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

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

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1           SECTION 6.   ~~[NEW MATERIAL]~~ RULES.--

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

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

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

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

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

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

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

25                   (6) protect correlative rights against

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1 infringement resulting from the exploration, development or  
2 production of geothermal resources;

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

13 (8) regulate the permitting of geothermal  
14 projects, facilities and wells;

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

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

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

25 (12) require persons applying for permits to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20           **SECTION 14. REPEAL.--**Sections 71-5-1 through 71-5-24 NMSA  
21 1978 (being Laws 1975, Chapter 272, Sections 1 and 2, Laws  
22 2003, Chapter 16, Section 2, Laws 1975, Chapter 272, Sections 3  
23 through 17, Laws 1979, Chapter 326, Sections 1 through 5, Laws  
24 1975, Chapter 272, Sections 18 through 21, Laws 2012, Chapter  
25 50, Section 2, Laws 1975, Chapter 272, Section 22, Laws 1981,

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

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

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