

LFC Requester:**Jonas Armstrong****AGENCY BILL ANALYSIS
2016 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:****LFC@NMLEGIS.GOV***and***DFA@STATE.NM.US***{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:*Original Amendment
Correction Substitute Date 2/2/2016Bill No: HB 289Sponsor: Rep. James G. TownsendAgency Code: 305Short Geothermal ResourcesPerson Writing Joseph Yar, AAGTitle: Development ActPhone: 505-827-6939 Email jyar@nmag.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: SB 223
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

Synopsis:

HB 289 looks to establish jurisdiction and the rules governing development of and conservation of geothermal resources. HB 289 also provides for the penalties and remedies (civil only) for violations of the act.

HB 289’s primary intent to is facilitate and encourage the development of geothermal resources in New Mexico in a manner to safeguard life, health, property, natural resources and the public welfare and to encourage maximum economic recovery.

The primary agency to be charged with HB 289’s purposes is the energy conservation and management division of the energy, minerals and natural resources department (the “Division”). The Division will have jurisdiction over all matters relating to the exploration, development and production of geothermal resources, including making investigations and inspections of geothermal projects, facilities and wells. The Division will also have the authority to promulgate and enforce rules to accomplish the purposes of the Act.

HB 289 provides the following minimum guidelines for the Division’s rules: (1) protection of the environment in connection with development of geothermal resources; (2) prevention of waste of natural resources in connection with development of geothermal resources; (3) ensure proper casing to prevent geothermal resources, water or other fluids from escaping from strata in which they are found into other strata; (4) prevention of 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 production of geothermal resources; (7) regulate disposal of geothermal resources or the residue of geothermal resources regulate the waste of exploration, development or production of geothermal resources in a manner that would afford reasonable protection against contamination of all fresh water and water of present or probable future value for domestic, commercial, agricultural or stock purpose and will afford reasonable protection to human life and health and to the environment; (8) regulate the permitting of geothermal projects, facilities and wells; (9) define and 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 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 explore, develop or produce geothermal resources to demonstrate that they have the right to produce the 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 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; 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.

Procedurally, HB 289 provides the penalties and the forum to prosecute any violations of the provisions. HB 289 provides that violations of the Act in a penalty of \$2,500 for each violation. The Division will be responsible for providing a public hearing for any violations, and appeals will be to the district court. Any pending cases that were before the oil conservation division of the energy, minerals and natural resources department or oil conservation commission prior to the effective date of HB 289 would be transferred to the Division.

The oil conservation division will no longer have any jurisdiction or duties involving geothermal resources and all funds that were allocated to the oil conservation divisions involving geothermal resources would be transferred to the Division upon the effective date of HB 289.

HB 289 has several exceptions. These included the following: a permit from the state engineer is not required for the use of ground water over 250 degrees Fahrenheit as incident to the development of geothermal resources when (1) the use does not require any diversion of ground water; (2) all diverted ground water is reinjected as soon as practicable into the same ground water source from which is was diverted; resulting in no new depletions to the source (provided that the Division furnishes the state engineer with all the information it has on the diversion and reinjection with the understanding that the state engineer provide the division with an opinion on whether the ground water is impaired; and if so, then the Division shall require the owner to submit to the Division a plan of replacement regarding the impaired ground water).

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

HB 289 provides that venue for any collection of penalties would be where the defendant resides.

The Venue Statue NMSA 38-3-1(A), venue for cases can be brought in the county where either the Plaintiff or Defendant or the cause of action originated. HB 289 seems to be shifting the enforcement of a judgment to exclusively where the Defendant resides

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 289 is a duplicate of SB 223

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

HB 289 is proposing taking the jurisdiction of exploring and regulating geothermal resources (as discussed above) from the Oil Conservation Division and moving it to the Energy Conservation and Management Division. See NMSA 9-5A-4.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS