

LEGISLATIVE BILL 708

Approved by the Governor April 16, 1982

Introduced by DeCamp, 40; Nichol, 48

AN ACT relating to minerals; to provide that geothermal deposits shall be treated as mineral interests; to define terms; and to provide for permits.

Be it enacted by the people of the State of Nebraska,

Section 1. The Legislature finds it to be in the public interest of the state and its citizens to promote the efficient development and prevent the waste of geothermal resources. Geothermal energy is an indigenous, renewable resource the development of which will benefit local economies. The Legislature further finds and declares that a permit system is necessary to protect Nebraska's ground and surface water resources and existing water users, particularly where the development of geothermal energy requires the utilization of geothermal resources at a location other than the well site.

Sec. 2. As used in this act, unless the context otherwise requires:

(1) Geothermal resources shall mean (a) the natural heat of the earth and the energy produced by that heat, including pressure, and (b) the material medium containing that energy;

(2) Geothermal fluids shall mean the naturally present ground water in geothermal occurrences;

(3) Geothermal occurrence shall mean an underground geologic formation at temperatures higher than the normal gradient; and

(4) Material medium shall mean geothermal fluids or other substances injected into a geothermal occurrence by which geothermal energy is transported to the surface.

Sec. 3. When the subsurface or mineral estate has been severed from the overlying surface estate, ownership of the right to develop and produce geothermal resources shall derive from the subsurface or mineral estate, except that no such right shall attach to subsurface or mineral estates granted prior to the effective date of this act unless the document conveying the subsurface or mineral estate specifically granted the right to develop and produce geothermal resources.

Sec. 4. (1) When the subsurface or mineral estate in land has been severed from the overlying surface estate, the owner of the subsurface or mineral estate shall have the right to enter upon the overlying surface estate at reasonable times and in a reasonable manner to prospect for, produce, and transport geothermal resources. Fair and equitable compensation shall be paid to the owner of the overlying surface estate for the exercise of such right of entry. The right of entry granted in this section shall not include the right to construct surface facilities for on-site utilization of geothermal energy.

(2) The Board of Educational Lands and Funds shall have the authority to lease state-owned geothermal resources under the procedures contained in Chapter 72, article 3.

Sec. 5. Any person who desires to withdraw ground water within the State of Nebraska for geothermal resource development shall, prior to commencing construction of any wells, obtain from the Director of Water Resources a permit to authorize the withdrawal, transfer, and further use or reinjection of such ground water. The Department of Water Resources shall adopt and promulgate rules and regulations governing the issuance of such permits, consistent with this act and with Chapter 46, article 6. Such rules and regulations shall provide for consultation with the Department of Environmental Control pursuant to the issuance of such permits and shall be compatible with rules and regulations adopted and promulgated by the Department of Environmental Control under the Environmental Protection Act. Any geothermal fluids produced incident to the development and production of geothermal resources shall be reinjected into the same geologic formation from which they were extracted, in substantially the same volume and substantially the same or higher quality as when extracted, unless the permit issued in accordance with this section authorizes further uses or processing other than those incident to reinjection.

Sec. 6. The development and production of geothermal resources shall be subject to Chapter 46, article 6, and the Environmental Protection Act and any rules and regulations adopted thereunder.