

# CHAPTER 71

## Energy and Minerals

### ARTICLE 1

#### Solar Power Loans

(Repealed by Laws 1987, ch. 234, § 84.)

#### 71-1-1 to 71-1-8. Repealed.

#### ANNOTATIONS

**Repeals.** — Laws 1987, ch. 234, § 84 repeals 71-1-1 to 71-1-8 NMSA 1978, as enacted by Laws 1983, ch. 281, §§ 1 to 8, relating to solar power loans, effective July 1, 1987. For provisions of former sections, see 1986 Cumulative Supplement. For present comparable provisions, see 71-6-1 to 71-6-10 NMSA 1978.

Laws 1981, ch. 379, §§ 21 and 22 repealed former 71-1-1 NMSA 1978, as amended by Laws 1979, ch. 100, § 1, relating to the powers and duties of the energy and minerals department and former 71-1-2 NMSA 1978, as enacted by Laws 1977, ch. 255, § 98, relating to the authorization of the energy and minerals department to accept funds and donations. For provisions of the former sections, see the 1978 original pamphlet and the 1980 cumulative supplement.

**Fund transfers.** — Laws 1987, ch. 136, § 1A transfers to the general fund all existing balances and credits belonging to the solar power loan fund in the form of deposits in financial institutions, including principal and interest to be transferred upon maturity of the deposit.

Laws 1989, ch. 107, § 12 directs the department of finance and administration to transfer to the general fund the balance in the solar power fund as of June 30, 1989, in accordance with Laws 1987, ch. 136.

**Severability.** — Laws 1987, ch. 136, § 3 provides for the severability of the act if any part or application thereof is held invalid.

**Effective dates.** — Laws 1987, ch. 136, § 4 makes the act effective immediately. Approved April 7, 1987.

### ARTICLE 2

#### Energy Resources

#### 71-2-1 to 71-2-7. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 1987, ch. 234, § 84 repeals 71-2-1 to 71-2-4, 71-2-6 and 71-2-7 NMSA 1978, as enacted by Laws 1976, ch. 144, § 1, Laws 1978, ch. 61, § 1, and Laws 1978, ch. 62, § 1, and as amended by Laws 1977, ch. 255, §§ 100 to 102 and Laws 1978, ch. 112, § 1, relating to energy sources, effective July 1, 1987. For provisions of former sections, see 1981 Replacement Pamphlet. For present comparable provisions, see 70-2-1 to 70-2-36 NMSA 1978.

Section 71-2-5 NMSA 1978, as amended by Laws 1977, ch. 255, § 102, relating to severance tax bonds and pipeline systems, was previously repealed by Laws 1985 (1st S. S.), ch. 15, § 23, effective June 7, 1985.

**Fund transfers.** — Laws 1987, ch. 136, § 1B transfers to the general fund all existing balances and credits belonging to the natural gas purchase revolving fund.

**Severability.** — Laws 1987, ch. 136, § 3 provides for the severability of the act if any part or application thereof is held invalid.

**Effective dates.** — Laws 1987, ch. 136, § 4 makes the act effective immediately. Approved April 7, 1987.

### **71-2-8. Confidentiality; penalty.**

The provisions of any confidential contract or any other confidential information required or possessed by the energy, minerals and natural resources department shall be held confidential by the department upon written request of the party supplying it, and any employee of the department, whether temporary or permanent, who willfully violates the provisions of this section shall be guilty of a misdemeanor. Nothing in this section shall be construed to prevent statistical information from being derived from the information in the hands of the department or its use in public hearings before the department or in appeals from decisions of the department for which such information is essential. Notwithstanding the provisions of Sections 10-15-1 through 10-15-4 NMSA 1978 or any other act requiring meetings of public bodies to be open, the department may close that part of any meeting where confidential information covered by this section is discussed by the department.

**History:** 1953 Comp., § 65-13-13, enacted by Laws 1975, ch. 289, § 18; 1977, ch. 255, § 105; 1987, ch. 234, § 68.

## ANNOTATIONS

**The 1987 amendment,** effective July 1, 1987, in the first sentence inserted "energy, minerals and natural resources" preceding "department" near the beginning, in the third sentence substituted "Sections 10-15-1 through 10-15-4 NMSA 1978" for "Sections 5-6-

23 through 5-6-26 NMSA 1953" and made a minor language change at the end of the first sentence.

### **71-2-9. Notification of contract or production.**

Every producer shall notify the energy, minerals and natural resources department of:

A. the completion of a well capable of producing oil, natural gas or liquid hydrocarbon individually, or any combination thereof, or geothermal energy in commercial quantities within five days after completion of the well and not less than five days before the producer enters into a binding agreement for or otherwise provides for the disposition of the products or geothermal energy of the well under an agreement or disposition which covers any period longer than six months; or

B. his intent to enter into a binding agreement covering the disposition of the products or geothermal energy of a potential well or series of wells at least five days before he enters into the agreement.

**History:** 1953 Comp., § 65-13-14, enacted by Laws 1975, ch. 289, § 19; 1977, ch. 255, § 106; 1987, ch. 234, § 69.

#### **ANNOTATIONS**

**The 1987 amendment**, effective July 1, 1987, in the opening clause substituted "energy, minerals and natural resources" for "energy and minerals"; in Subsection A deleted "with sufficient detail to allow the department to suggest a manner in which the products could be used in furtherance of a statewide plan" following "or geothermal energy in commercial quantities."

### **71-2-10. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 234, § 84 repeals 71-2-10 NMSA 1978, as amended by Laws 1977, ch. 255, § 108, relating to construction of the Energy and Minerals Department Act, effective July 1, 1987. For provisions of the former section, see 1981 Replacement Pamphlet. For present comparable provisions, see 9-5A-1 to 9-5A-7 NMSA 1978.

## **ARTICLE 3**

### **Federal Lands Action Group**

(Repealed by Laws 1981, ch. 61, § 1.)

## **71-3-1 to 71-3-3. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1981, ch. 61, § 1, repeals 71-3-1 through 71-3-3 NMSA 1978, relating to the federal lands action group.

## **ARTICLE 4 Energy Research and Development**

(Repealed by Laws 1981, ch. 379, § 22; 1986, ch. 38, § 14.)

## **71-4-1 to 71-4-8. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1981, ch. 379, § 22, repeals 71-4-1 through 71-4-8 NMSA 1978, relating to energy research and development.

Laws 1981, ch. 379, § 23, provides that the effective date of Laws 1981, ch. 379, § 22, is the first day after the date that the secretary of energy and minerals has certified to the governor in writing that a transition plan has been fully implemented pursuant to Subsection B of Section 13 of the Energy Research and Development Institute Act.

## **71-4-9 to 71-4-20. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1986, ch. 38, § 14 repeals 71-4-9 through 71-4-20 NMSA 1978, as enacted by Laws 1981, ch. 379, the Energy Research and Development Institute Act, effective February 28, 1986. For provisions of former sections, see 1981 Replacement Pamphlet. For present comparable provisions, see 9-15-16 NMSA 1978 et seq.

**Transfers.** — Laws 1986, ch. 38, § 13 provides that on the effective date of that section, February 28, 1986, any unexpended or unencumbered balance remaining in or appropriations to the energy research and development institute fund shall be transferred to the research and development fund and also that on February 28, 1986, all contracts, projects, powers and duties, money and appropriations and all records or other information undertaken or held by the New Mexico energy research and development institute pursuant to the Energy Research and Development Institute Act shall be transferred to the New Mexico research and development institute.

## **ARTICLE 5 Geothermal Resources Conservation**

## **71-5-1. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-1 NMSA 1978, as enacted by Laws 1975, ch. 272, § 1, relating to the short title of the Geothermal Resources Conservation Act, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-2. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-2 NMSA 1978, as enacted by Laws 1975, ch. 272, § 2, relating to the purpose of the act, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-2.1. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-2.1 NMSA 1978, as enacted by Laws 2003, ch. 16, § 2, relating to exclusion, incidental loss or extraction of heat, limited exception, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-3. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-3 NMSA 1978, as enacted by Laws 1975, ch. 272, § 3, relating to definitions, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-4. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-4 NMSA 1978, as enacted by Laws 1975, ch. 272, § 4, relating to waste prohibited, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-5. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-5 NMSA 1978, as enacted by Laws 1975, ch. 272, § 5, relating to waste definitions, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-6. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-6 NMSA 1978, as enacted by Laws 1975, ch. 272, § 6, relating to commission's and division's powers and duties, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-7. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-7 NMSA 1978, as enacted by Laws 1975, ch. 272, § 7, relating to power of commission and division to prevent waste and protect correlative rights, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-8. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 144 repealed 71-5-8 NMSA 1978, as enacted by Laws 1975, ch. 272, § 8, relating to enumeration of powers, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-9. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-9 NMSA 1978, as enacted by Laws 1975, ch. 272, § 9, relating to regulation of geothermal resources production, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-10. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-10 NMSA 1978, as enacted by Laws 1975, ch. 272, § 10, relating to allocation of production, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-11. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-11 NMSA 1978, as enacted by Laws 1975, ch. 272, § 11, relating to equitable allocation of production spacing; pooling, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-12. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-12 NMSA 1978, as enacted by Laws 1975, ch. 272, § 12, relating to court may authorize pooling or unitization by fiduciaries, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-13. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-13 NMSA 1978, as enacted by Laws 1975, ch. 272, § 13, relating to spacing unit with divided mineral ownership, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-14. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-14 NMSA 1978, as enacted by Laws 1975, ch. 272, § 14, relating to common purchasers and discrimination in purchasing prohibited, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-15. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-15 NMSA 1978, as enacted by Laws 1975, ch. 272, § 15, relating to purchase, sale or handling of excess geothermal resources or products prohibited, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-16. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-16 NMSA 1978, as enacted by Laws 1975, ch. 272, § 16, relating to rules and regulations to effectuate prohibitions against purchase or handling of illegal geothermal resources or illegal geothermal resources product, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-17. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-17 NMSA 1978, as enacted by Laws 1975, ch. 272, § 17, relating to hearings on rules, regulations and orders, notice and emergency rules, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-17.1. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-17.1 NMSA 1978, as enacted by Laws 1979, ch. 326, § 1, relating to rules of procedure in hearings, manner of giving notice, record of rules, regulations and orders, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-17.2. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-17.2 NMSA 1978, as enacted by Laws 1979, ch. 326, § 2, relating to subpoena power,



immunity of natural persons required to testify, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

### **71-5-17.3. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-17.3 NMSA 1978, as enacted by Laws 1979, ch. 326, § 3, relating to failure or refusal to comply with subpoena, refusal to testify, contempt, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

### **71-5-17.4. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-17.4 NMSA 1978, as enacted by Laws 1979, ch. 326, § 4, relating to perjury and punishment, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

### **71-5-17.5. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-17.5 NMSA 1978, as enacted by Laws 1979, ch. 326, § 5, relating to additional powers of commission or division, hearings before examiner, hearings de novo, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

### **71-5-18. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-18 NMSA 1978, as enacted by Laws 1975, ch. 272, § 18, relating to rehearings and appeals, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

### **71-5-19. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-19 NMSA 1978, as enacted by Laws 1975, ch. 272, § 19, relating to temporary restraining order or injunction, grounds, hearing and bond, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-20. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-20 NMSA 1978, as enacted by Laws 1975, ch. 272, § 20, relating to actions for violations, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-21. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-21 NMSA 1978, as enacted by Laws 1975, ch. 272, § 21, relating to actions for damages, institution of actions for injunctions by private parties, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-21.1. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-21.1 NMSA 1978, as enacted by Laws 2012, ch. 50, § 2, relating to water rights owner; action for impairment, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-22. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-22 NMSA 1978, as enacted by Laws 1975, ch. 272, § 22, relating to violation of court order grounds for appointment of receiver, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-23. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-23 NMSA 1978, as enacted by Laws 1981, ch. 362, § 2, relating to violations of the Geothermal Resources Conservation Act and penalties, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **71-5-24. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14 repealed 71-5-24 NMSA 1978, as enacted by Laws 1975, ch. 272, § 24, relating to seizure and sale of illegal geothermal resources or illegal geothermal resources product and procedure, effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMONESOURCE.COM*.

## **ARTICLE 6**

### **Solar Energy Development**

#### **71-6-1. Short title.**

This act [71-6-1 to 71-6-3 NMSA 1978] may be cited as the "Solar Energy Development Act."

**History:** 1953 Comp., § 4-37-1, enacted by Laws 1975, ch. 83, § 1.

#### **71-6-2. Purpose.**

The purpose of the Solar Energy Development Act [71-6-1 NMSA 1978] is to promote development and use of solar energy in New Mexico, by both industry and government for the benefit of New Mexico citizens and for the citizens of the United States. It is proposed to accomplish this purpose through active measures to encourage the location within this state of the proposed national solar institute, research to discover practical and feasible methods to harness solar energy to supplement existing but limited present sources of energy and development of a vigorous and productive solar energy industrial complex.

**History:** 1953 Comp., § 4-37-2, enacted by Laws 1975, ch. 83, § 2.

#### **71-6-3. Duties.**

The commerce and industry department shall:

A. establish and operate a program of promotion to encourage investment in the research and application of solar energy within New Mexico;

B. promote and develop in New Mexico a vigorous and productive solar energy industrial complex;

C. actively seek and promote the state of New Mexico as the proper and ideal site, because of geographical location, climate, research facilities and plentiful supply of scientific and technical expertise, for the location of the proposed national solar institute;

D. develop necessary promotional material to be used in the process of attracting new investment capital within the solar energy field;

E. employ sufficient staff to carry out the purpose of the Solar Energy Development Act [71-6-1 NMSA 1978]; and

F. cooperate with private firms and all agencies of the state and federal government in furthering research and investment in solar energy use in New Mexico.

**History:** 1953 Comp., § 4-37-3, enacted by Laws 1975, ch. 83, § 3; 1977, ch. 245, § 17.

#### **ANNOTATIONS**

**Law reviews.** — For article, " 'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 Nat. Resources J. 283 (1977).

#### **71-6-4. Short title.**

Sections 71-6-4 through 71-6-10 NMSA 1978 may be cited as the "Solar Collector Standards Act".

History: Laws 1981, ch. 379, § 14; 2007, ch. 38, § 1.

#### **ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, changes the reference to the act from Sections "14 through 20 of this act" to Sections "71-6-4 through 71-6-10 NMSA 1978".

#### **71-6-5. Purpose.**

The purpose of the Solar Collector Standards Act [71-6-4 to 71-6-10 NMSA 1978] is to develop and implement a program to promote solar industry and stimulate a demand for high quality solar components and systems.

**History:** Laws 1981, ch. 379, § 15.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 1981, ch. 379, § 24, makes the act effective immediately. Approved April 10, 1981.

## **71-6-6. Definitions.**

As used in the Solar Collector Standards Act [71-6-4 NMSA 1978]:

A. "department" means the energy, minerals and natural resources department; and

B. "solar collector" means a component that provides for the collection and transfer of incident solar energy, such transfer to be effected through a liquid or air medium primarily by mechanical means for use in water heating, space heating or cooling or other applications that normally require or would require a conventional source of energy such as petroleum products, natural gas or electricity; but does not include a passive system that uses structural elements of a building to provide for the collection, storage and distribution of solar energy for heating or cooling without the use of a motor-driven fan or pump.

History: Laws 1981, ch. 379, § 16; 2007, ch. 38, § 2.

### **ANNOTATIONS**

**The 2007 amendment**, effective July 1, 2007, in Subsection A, defines "department" and in Subsection B, deletes the exclusion of custom installations to be assembled at the site at which installation is to be made, deletes the exclusion of what are commonly known as "passive systems", and adds the exclusion of a passive system that uses structural elements of a building to provide for the collection, storage and distribution of solar energy for heating or cooling without the use of a motor-driven fan or pump.

## **71-6-7. Department; duties relating to solar collector standards.**

A. The department shall promulgate rules to:

(1) define minimum standards for the durability and reliability of solar collectors; and

(2) establish criteria for testing the durability, reliability and thermal efficiency of solar collectors.

B. In promulgating the rules required by Subsection A of this section, the department shall:

(1) consult with scientists, engineers and individuals in research centers and professional societies such as the American society of testing and materials who are engaged in the construction of, experimentation with and research of solar energy

systems in order to make changes, modifications and improvements to the standards and certification program;

(2) consider compliance costs to industry and, insofar as practicable, make efforts to reduce such costs; and

(3) consider similar standards and testing criteria adopted by other states or included in nationally recognized and accepted testing methodologies.

C. The department shall approve testing facilities that meet the criteria established by Paragraph (2) of Subsection A of this section and that have no financial interest in the manufacture, distribution or sale of solar collectors. An approved testing facility that is partially or wholly supported by state funds may collect a reasonable testing fee sufficient to cover the costs of testing.

History: Laws 1981, ch. 379, § 17; 1987, ch. 234, § 71; 2007, ch. 38, § 3.

#### **ANNOTATIONS**

**The 2007 amendment**, effective July 1, 2007, in Subsection A, changes "secretary of energy, minerals and natural resources or his designee" to the "department"; in Subsection B, changes "secretary or his designee" to "department"; and in Subsection C, changes "secretary of energy, minerals and natural resources or his designee" to "department".

**The 1987 amendment**, effective July 1, 1987, substituted "energy, minerals and natural resources" for "energy and minerals" at the beginning of Subsections A and C.

#### **71-6-7.1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 86, § 3 repealed 71-6-7.1 NMSA 1978, as enacted by Laws 2007, ch. 38, § 5, relating to construction standards to accommodate solar collectors and rulemaking, effective June 14, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*.

#### **71-6-8. Certification.**

A. A person who manufactures, distributes or sells solar collectors may apply to the department for certification of the collectors. The department shall certify the solar collectors if:

(1) the applicant submits test results performed by an approved testing facility that show that the collectors meet the minimum standards of durability and reliability and that indicate the thermal efficiency of the collectors; or

(2) the applicant submits test results that show that the collectors meet the minimum standards of durability and reliability and that indicate the thermal efficiency of the collectors and the applicant submits proof that the collectors have been certified or approved by another state or the federal government and, in the opinion of the secretary of energy, minerals and natural resources, the minimum standards and testing criteria of the other state or the federal government are at least as stringent as those established pursuant to the Solar Collector Standards Act [71-6-4 NMSA 1978].

B. The department shall maintain accurate records of all solar collectors that have been certified pursuant to Subsection A of this section, including the test results submitted to the department. The records shall be available for public inspection.

C. Not more than once every two years, the department may require any applicant for which solar collectors have been previously certified pursuant to this section to submit additional or more recent test results. If the applicant continues to meet the requirements of Subsection A of this section, the certification of the solar collectors shall be continued. If the applicant fails to submit the additional or more recent test results or if the applicant fails to continue to meet the requirements of Subsection A of this section, the department shall withdraw the certification previously issued and shall so notify the applicant.

D. The department shall promulgate rules necessary to implement the provisions of this section.

History: Laws 1981, ch. 379, § 18; 1987, ch. 234, § 72; 2007, ch. 38, § 4.

#### **ANNOTATIONS**

**The 2007 amendment**, effective July 1, 2007, in Subsection A, changes "energy, minerals and natural resources department" to "department"; in Paragraph (2) of Subsection A, changes "secretary of energy and minerals" to "secretary of energy, minerals and natural resources"; in Subsection B, changes "energy, minerals and natural resources department" to "department"; in Subsection C, changes "secretary of energy, minerals and natural resources" to "department" and in the last sentence, changes "secretary" to "department"; and in Subsection D, changes "energy, minerals and natural resources department" to "department".

**The 1987 amendment**, effective July 1, 1987, substituted "energy, minerals and natural resources" for "energy and minerals" near the beginning of each of the four subsections.

#### **71-6-9. Repeal.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 38, § 7, repeals 71-6-9 NMSA 1978, being Laws 1981, ch. 379, § 19, as amended, relating to credit against personal income tax for solar

collectors, effective July 1, 2007. For provisions of former section, see the 2006 NMSA 1978 on NMONESOURCE.COM.

### **71-6-10. Liability.**

Nothing in the Solar Collector Standards Act [71-6-4 NMSA 1978] shall be construed to create any liability of malfeasance, misfeasance or nonfeasance in the performance of any duty required of the state, any of its agencies or political subdivisions or any institution controlled by the state.

**History:** Laws 1981, ch. 379, § 20.

### **ANNOTATIONS**

**Effective dates.** — Laws 1981, ch. 379, § 23, provides that the effective date of Laws 1981, ch. 379, § 22, is the first day after the date that the secretary of energy and minerals has certified to the governor in writing that a transition plan has been fully implemented pursuant to Subsection B of Section 13 of the Energy Research and Development Institute Act.

**Emergency clauses.** — Laws 1981, ch. 379, § 24, makes the act effective immediately. Approved April 10, 1981.

## **ARTICLE 7**

# **Advanced Energy Technologies Economic Development Act**

### **71-7-1. Short title.**

This act [71-7-1 to 71-7-7 NMSA 1978] may be cited as the "Advanced Energy Technologies Economic Development Act".

**History:** Laws 2004, ch. 55, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 55 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

### **71-7-2. Findings.**

The legislature finds that advancing the development of hydrogen, fuel cell, renewable energy and energy efficiency technologies is important for the state's



economic future and energy stability, and to protect the public health of its citizens and the state's environment. The legislature further finds that there is a need to assist in the development of early market demand that will advance the commercialization and widespread application of these emerging energy technologies. The legislature further finds that New Mexico is ideally positioned to stimulate advanced energy technology economic development due to its abundance of natural and renewable energy sources, a successful research and development track record, an ability to attract significant research and development federal dollars and the establishment of a variety of entrepreneurial support programs.

History: Laws 2004, ch. 55, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 55 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

### **71-7-3. Purpose.**

The Advanced Energy Technologies Economic Development Act [71-7-1 NMSA 1978] provides funds to stimulate the market for and promote the statewide utilization of advanced energy technologies. That act further provides for a targeted program that advances the creation of a hydrogen and fuel cell industry cluster.

History: Laws 2004, ch. 55, § 3.

### **ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 55 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

### **71-7-4. Definitions.**

As used in the Advanced Energy Technologies Economic Development Act [71-7-1 NMSA 1978]:

A. "alternative fuel" means natural gas, liquefied petroleum gas, electricity, hydrogen, a fuel mixture containing not less than eighty-five percent ethanol or methanol, a fuel mixture containing not less than twenty percent vegetable oil or a water-phased hydrocarbon fuel emulsion consisting of a hydrocarbon base and water in an amount not less than twenty percent by volume of the total water-phased fuel emulsion;

B. "clean energy" means alternative fuels, energy efficiency, renewable energy and fuel cells;

C. "department" means the energy, minerals and natural resources department;

D. "energy efficiency" means the application of technology resulting in the reduced or improved use of energy;

E. "fuel cell" means equipment using an electrochemical process to generate electricity and heat;

F. "fund" means the clean energy grants fund;

G. "renewable energy" means thermal or electrical energy generated by means of a low- or zero-emissions generation technology that has substantial long-term production potential, including solar, wind, geothermal, landfill gas or biomass, but does not include fossil fuel or nuclear power; and

H. "secretary" means the secretary of energy, minerals and natural resources.

History: Laws 2004, ch. 55, § 4.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 55 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

#### **71-7-5. Clean energy grants fund.**

The "clean energy grants fund" is created in the state treasury. The fund shall consist of money appropriated and transferred to the fund and tax revenues distributed to the fund by law. Earnings from investment of the fund shall be credited to the fund. Money in the fund is subject to appropriation by the legislature to the department for the purpose of administering the clean energy grants program pursuant to the Advanced Energy Technologies Economic Development Act [71-7-1 NMSA 1978]. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources.

History: Laws 2004, ch. 55, § 5.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 55 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

## **71-7-6. Clean energy grants program.**

A. The secretary shall establish the clean energy grants program to provide clean energy grants to:

- (1) municipalities and county governments;
- (2) state agencies;
- (3) state universities;
- (4) public schools;
- (5) post-secondary educational institutions; and
- (6) Indian nations, tribes and pueblos.

B. The secretary may make grants from the fund for physical projects utilizing clean energy technologies and clean energy education, technical assistance and training programs. The department may use no more than one hundred thousand dollars (\$100,000) from the fund for the administration of the grants program and to conduct research or studies directly related to the Advanced Energy Technologies Economic Development Act [71-7-1 NMSA 1978].

C. The department may adopt rules establishing the application procedure and required qualifications of projects. No single entity shall receive greater than one hundred thousand dollars (\$100,000) from the fund. Factors that may be considered in approving or denying disbursements from the fund are:

- (1) the geographic area of the state in which the project is to be conducted in relation to other projects;
- (2) percentage of cash or in-kind contributions applied to the total project;
- (3) the extent to which the project incorporates an innovative new technology or an innovative application of an existing technology;
- (4) the degree to which the project will reduce the entity's energy-related expenditures;

(5) the degree to which the project fosters the general public's, students' or a specific government or industry sector's overall understanding and appreciation of clean energy technologies; and

(6) the extent to which the project stimulates in-state economic development, including jobs creation, and further development of a commercial market for clean energy technologies.

D. Except as provided otherwise in this section, the department shall disburse:

(1) no less than three hundred thousand dollars (\$300,000) to municipalities and county governments;

(2) no less than three hundred thousand dollars (\$300,000) to state universities and post-secondary educational institutions;

(3) no less than three hundred thousand dollars (\$300,000) to Indian nations, tribes and pueblos; and

(4) no more than two hundred thousand dollars (\$200,000) to state agencies and public schools.

E. The minimum disbursements designated in this section may be amended by the department if an insufficient number of qualified projects are applied for by entities seeking grant funding within a particular category or categories.

F. The department shall report on disbursements made from the fund to the legislative finance committee prior to each regular legislative session. The report shall include:

(1) a list of recipients receiving disbursements;

(2) the amount of each disbursement;

(3) the date of each disbursement;

(4) a description of each project or expansion funded with a disbursement;

(5) a description of each project's contribution to the state's knowledge and use of clean energy technologies; and

(6) a description of the extent to which the grants program is benefitting the state's environment, public health and economic development.

History: Laws 2004, ch. 55, § 6.

## ANNOTATIONS

**Effective dates.** — Laws 2004, ch. 55 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

### **71-7-7. Hydrogen and fuel cell technologies development program.**

A. The secretary of economic development, in collaboration with the department, shall establish a hydrogen and fuel cell technologies development program for the purpose of fostering the development of hydrogen and fuel cell-related commercialization and economic development in the state. The program shall include:

(1) establishing a public-private partnership between the state, national laboratories, nonprofit organizations and the hydrogen and fuel cell technologies industry sector to provide guidance and support for hydrogen and fuel cell initiatives;

(2) supporting activities to adopt uniform hydrogen safety codes and standards and provide education and training to communicate these codes and standards to the appropriate fire and regulatory entities;

(3) developing demonstration projects by pursuing federal funds and other available funds to augment state resources, advancing public education about hydrogen and fuel cell technology and building the necessary infrastructure to support commercial use and adoption of hydrogen and fuel cell technologies; and

(4) coordinating and supporting research and education activities in hydrogen and fuel cells between state universities and federally funded research and development organizations in the state to promote closer cooperation and advance the state's overall capabilities and programs in hydrogen and fuel cell technologies.

B. The economic development department shall report on the status and progress of the hydrogen and fuel cell technologies development program to the legislative finance committee prior to each regular legislative session. The report shall include the type and amount of expenditures made pursuant to the appropriation in this section.

History: Laws 2004, ch. 55, § 7.

## ANNOTATIONS

**Effective dates.** — Laws 2004, ch. 55 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

# ARTICLE 8

## Sustainable Development Testing Site Act

### 71-8-1. Short title.

This act [71-8-1 to 71-8-8 NMSA 1978] may be cited as the "Sustainable Development Testing Site Act".

History: Laws 2007, ch. 34, § 1.

### ANNOTATIONS

**Effective dates.** — Laws 2007, ch. 34, § 9 makes the act effective July 1, 2007.

### 71-8-2. Definitions.

As used in the Sustainable Development Testing Site Act [71-8-1 NMSA 1978]:

A. "permittee" means a person who holds a testing site permit;

B. "planning commission" means a county planning commission appointed pursuant to Section 4-57-1 NMSA 1978; provided that, if no county planning commission has been appointed pursuant to that section, "planning commission" means the board of county commissioners;

C. "sustainable development" means a live-in environment composed of structures and systems that inherently produce utilities and life-support systems free of existing conventional grids and disposal systems. "Sustainable development" includes:

- (1) the inherent provision of on-site energy needs via renewable resources;
- (2) the inherent provision of water needs while minimizing the withdrawals from ground water and surface water systems in accordance with state water law and the rules and policies of the state engineer;
- (3) the inherent provision of sewage treatment needs with zero discharge;
- (4) the reuse of materials discarded by modern society; and
- (5) the development of organic foods and fuel;

D. "sustainable development research" means activities conducted at a sustainable development testing site that test ideas, concepts or inventions designed to lead ultimately to sustainable development;

E. "sustainable development testing site" means an area that is:

- (1) two acres or less in size;
- (2) situated wholly outside the planning and platting jurisdiction of a municipality; and
- (3) subject to a testing site permit and existing federal laws and regulations; and

F. "testing site permit" means a permit, issued by a planning commission, that designates an area as a sustainable development testing site and specifies:

- (1) the sustainable development research that can be conducted within the site by the permittee; and
- (2) the county codes, ordinances, rules or permits that are not applicable to the permittee and the research.

History: Laws 2007, ch. 34, § 2.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 34, § 9 makes the act effective July 1, 2007.

#### **71-8-3. Application for testing site permit; evaluation; notice of public hearing.**

A. A person desiring a testing site permit shall submit an application to the planning commission for the county in which the proposed sustainable development testing site is located. The application shall include:

- (1) a detailed description of the sustainable development research that will be conducted on the sustainable development testing site, including an explanation of the ideas, concepts and inventions that will be tested;
- (2) a schematic layout of the sustainable development testing site;
- (3) the number of inhabitants and employees that are expected to occupy the sustainable development testing site;
- (4) a water budget detailing the anticipated indoor and outdoor water use for the sustainable development testing site;
- (5) an assessment of the county codes, ordinances, rules or permits relating to construction or building requirements, occupancy, zoning or subdivisions that are not

practicable for the specific sustainable development testing site and that may inhibit the proposed sustainable development research and an explanation of how the sustainable development testing site will not be damaged if the proposed sustainable development research at the site is allowed;

(6) an application fee, set by the planning commission, equal to the estimated costs of evaluating the application, holding the public hearing and administering the permit;

(7) other information as may be required by rules adopted pursuant to Section 8 of the Sustainable Development Testing Site Act [71-8-8 NMSA 1978] or by rule of the planning commission or ordinance of the county; and

(8) copies of all required state permits, including the approval of the wastewater treatment and disposal technology on an experimental basis.

B. Upon receipt of a complete application, the planning commission shall:

(1) forward a copy of the application to the office of the state engineer and to the department of environment;

(2) set a date for a public hearing on the application; and

(3) publish in a newspaper of general circulation in the county an announcement of its receipt of the application, a notice of the public hearing and information concerning where an interested person can obtain a copy of the application.

C. The department of environment and the office of the state engineer shall, prior to the hearing, evaluate the application and the proposed sustainable development research to be performed at the proposed sustainable development testing site and submit comments to the planning commission.

History: Laws 2007, ch. 34, § 3.

## ANNOTATIONS

**Effective dates.** — Laws 2007, ch. 34, § 9 makes the act effective July 1, 2007.

### **71-8-4. Application for testing site permit; public hearing; decision.**

A. At the public hearing for a testing site permit application pursuant to Section 3 of the Sustainable Development Testing Site Act [71-8-3 NMSA 1978], the planning commission shall hear comments from all interested persons, federal, state or local agencies and, if appropriate, responses from the applicant.



B. Following the hearing, the planning commission shall, in writing, make its decision. The planning commission may issue a testing site permit if:

(1) the state engineer and the department of environment have determined that the sustainable development testing site or sustainable development research proposed to be conducted at the site will not damage land, water or air adjacent to the site or will not permanently damage the area of the site;

(2) no existing county codes, ordinances, rules or permits, other than those identified in the permit, will be violated by the proposed sustainable development research at the sustainable development testing site;

(3) the applicant has complied with rules adopted pursuant to Section 8 of the Sustainable Development Testing Site Act [71-8-8 NMSA 1978];

(4) the proposed sustainable development research at the sustainable development testing site is beneficial to sustainable development;

(5) the sustainable development testing site and proposed sustainable development research are otherwise beneficial to the county and to the state; and

(6) the applicant has provided a cash bond, an irrevocable letter of credit or any other surety, including insurance, satisfactory to the planning commission, in the amount of one hundred thousand dollars (\$100,000), to secure payment for damage caused by the sustainable development testing site.

C. A testing site permit shall include:

(1) the specific sustainable development research that may be conducted at the sustainable development testing site;

(2) the maximum number of structures that may be constructed;

(3) the maximum number of individuals that may inhabit the sustainable development testing site;

(4) the specific county codes, ordinances, rules and permits relating to construction or building requirements, occupancy, zoning or subdivisions otherwise applicable to the permittee and the permittee's sustainable development research on the sustainable development testing site but that do not apply to the permittee and research conducted pursuant to the permit; and

(5) other restrictions on the sustainable development testing site and the permittee's activities as required by rules adopted pursuant to Section 8 of the Sustainable Development Testing Site Act or as determined by the planning commission.

D. For each testing site permit issued, the board of county commissioners shall designate a nonelected member of the planning commission or a member of the planning commission's staff to monitor the activities conducted pursuant to the permit, share information with appropriate state agencies and represent the county in interpreting the terms and conditions of the permit. The designee or a successor shall serve during the life of the permit and any renewal thereof.

E. The permit shall be filed and recorded in the records of the county clerk for the county in which the sustainable development testing site is located in the same manner as deeds of real estate are filed and recorded.

F. A testing site permit shall be issued for a term specified by the planning commission, not to exceed five years, subject to renewal for a second five-year period with no renewal after the second five-year period.

History: Laws 2007, ch. 34, § 4.

## ANNOTATIONS

**Effective dates.** — Laws 2007, ch. 34, § 9 makes the act effective July 1, 2007.

### **71-8-5. Testing site permit; effect.**

As long as a testing site permit is in effect:

A. the permittee, when conducting sustainable development research that is specified in the testing site permit, shall comply with all applicable laws and rules except those county codes, ordinances, rules or permits specified in the permit as inapplicable to the permittee and the research;

B. nothing in the Sustainable Development Testing Site Act [71-8-1 NMSA 1978] or the testing site permit shall be deemed to allow the permittee to appropriate or otherwise use underground or surface water without first obtaining a water rights permit or approval from the state engineer. New appropriations of water and water rights transfers shall in no event be exempted from state water law and the rules of the state engineer;

C. employees and agents of the state or the county may, at all reasonable times, enter the sustainable development testing site for the purpose of inspecting the site and activities conducted on the site to ensure that conditions specified in the testing site permit are being met;

D. the permittee shall annually, no later than the anniversary date of the testing site permit, submit a report to the planning commission, the department of environment, the state engineer, the energy, minerals and natural resources department and the construction industries division of the regulation and licensing department describing the

sustainable development research conducted during the preceding twelve months and summarizing the results. The report shall also include all required monitoring data for soil, water, including water quality and quantity, and air. All information contained in the report and all other information learned from activities pursuant to the testing site permit shall be made available to the public;

E. the planning commission may revoke the testing site permit if it finds, after a public hearing, that:

(1) the permittee has violated a testing site permit provision, a provision of the Sustainable Development Testing Site Act or a rule adopted pursuant to Section 8 [71-8-8 NMSA 1978] of that act; or

(2) the sustainable development testing site has not complied with a permit provision, ordinance, rule, regulatory policy or other associated administrative action of the state engineer, the department of environment or another state or federal agency; and

F. a permittee may apply to have a testing site permit amended by submitting a new application pursuant to Section 3 of the Sustainable Development Testing Site Act [71-8-3 NMSA 1978]; provided that, if the planning commission determines that the proposed amendment will not substantially alter the sustainable development research or other activities conducted at the sustainable development testing site, it may waive the requirements of that section for notice and public hearing.

History: Laws 2007, ch. 34, § 5.

### **ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 34, § 9 makes the act effective July 1, 2007.

### **71-8-6. Expiration of testing site permits.**

Upon the expiration of the term of a testing site permit or any renewal thereof:

A. all activities within the area of the sustainable development testing site shall comply with all applicable laws, ordinances or rules, including permitting requirements; and

B. the permittee may provide the wastewater treatment and disposal technologies to the wastewater technical advisory committee for review and, if appropriate, for listing by the department of environment as approved for use.

History: Laws 2007, ch. 34, § 6.

### **ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 34, § 9 makes the act effective July 1, 2007.

### **71-8-7. Sale of land within a sustainable development testing site.**

Land within a sustainable development testing site shall not be sold in whole or in part unless:

A. the subsequent owner obtains a testing site permit pursuant to the provisions of the Sustainable Development Testing Site Act [71-8-1 NMSA 1978]; or

B. the owner or subsequent owner enters into an agreement with the planning commission to bring the land and improvements within the sustainable development testing site into compliance with all county codes, ordinances, rules or permits that would be applicable to the site in the absence of a testing site permit.

History: Laws 2007, ch. 34, § 7.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 34, § 9 makes the act effective July 1, 2007.

### **71-8-8. Promulgation of rules.**

A county or planning commission may define a new category of rules applicable to sustainable development testing sites and promulgate rules for the category. A county or a planning commission may also promulgate rules or permit conditions applicable to a specific sustainable development testing site.

History: Laws 2007, ch. 34, § 8.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 34, § 9 makes the act effective July 1, 2007.

## **ARTICLE 9 Geothermal Resources Development**

### **71-9-1. Short title.**

Sections 1 through 11 [71-9-1 through 71-9-11 NMSA 1978] of this act may be cited as the "Geothermal Resources Development Act".

History: Laws 2016, ch. 71, § 1 and Laws 2016, ch. 78, § 1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 71, § 15 and Laws 2016, ch. 78, § 15 made the Geothermal Resources Development Act, §§ 71-9-1 to 71-9-11 NMSA 1978, effective July 1, 2016.

**Compiler's notes.** — Laws 2016, ch. 71, § 1 and Laws 2016, ch. 78, § 1, both effective July 1, 2016, enacted identical new sections. The section was set out as enacted by Laws 2016, ch. 78, § 1. See 12-1-8 NMSA 1978.

**Temporary provisions.** — Laws 2016, ch. 78, § 13 provided that on July 1, 2016, any appropriations, money and records of the oil conservation commission or the oil conservation division of the energy, minerals and natural resources department dedicated to its powers and duties under the Geothermal Resources Conservation Act are transferred to the energy conservation and management division of that department.

## **71-9-2. 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 the division to require that geothermal resources be explored, developed and produced in such a manner as to safeguard life, health, property, natural resources and the public welfare and to encourage maximum economic recovery.

History: Laws 2016, ch. 71, § 2 and Laws 2016, ch. 78, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 71, § 15 and Laws 2016, ch. 78, § 15 made the Geothermal Resources Development Act, §§ 71-9-1 to 71-9-11 NMSA 1978, effective July 1, 2016.

**Compiler's notes.** — Laws 2016, ch. 71, § 2 and Laws 2016, ch. 78, § 2, both effective July 1, 2016, enacted identical new sections. The section was set out as enacted by Laws 2016, ch. 78, § 2. See 12-1-8 NMSA 1978.

## **71-9-3. Definitions.**

As used in the Geothermal Resources Development Act:

A. "correlative rights" means the opportunity afforded, insofar as is practicable, to each owner or leaseholder in a geothermal reservoir to produce the owner's or leaseholder's just and equitable share of the geothermal resources within such reservoir, being an amount, so far as can be practicably determined and so far as can be practicably obtained without waste, substantially in the proportion that the recoverable geothermal resources of such ownership or lease interest bear to the total recoverable geothermal resources in the reservoir and, for such purpose, to use the

owner's or leaseholder's just and equitable share of the natural heat or energy in the reservoir;

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

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

D. "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 that 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 geo-exchange heat pump or similar on-site system; and

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

History: Laws 2016, ch. 71, § 3 and Laws 2016, ch. 78, § 3.

## ANNOTATIONS

**Effective dates.** — Laws 2016, ch. 71, § 15 and Laws 2016, ch. 78, § 15 made the Geothermal Resources Development Act, §§ 71-9-1 to 71-9-11 NMSA 1978, effective July 1, 2016.

**Compiler's notes.** — Laws 2016, ch. 71, § 3 and Laws 2016, ch. 78, § 3, both effective July 1, 2016, enacted identical new sections. The section was set out as enacted by Laws 2016, ch. 78, § 3. See 12-1-8 NMSA 1978.

### **71-9-4. Exclusion; incidental loss or extraction of heat; limited exception.**

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

- (1) the use does not require any diversion of ground water; or

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

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

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

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

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

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

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

History: Laws 2016, ch. 71, § 4 and Laws 2016, ch. 78, § 4.

## **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 71, § 15 and Laws 2016, ch. 78, § 15 made the Geothermal Resources Development Act, §§ 71-9-1 to 71-9-11 NMSA 1978, effective July 1, 2016.

**Compiler's notes.** — Laws 2016, ch. 71, § 4 and Laws 2016, ch. 78, § 4, both effective July 1, 2016, enacted identical new sections. The section was set out as enacted by Laws 2016, ch. 78, § 4. See 12-1-8 NMSA 1978.

### **71-9-5. General duties, jurisdiction and authority of the division.**

A. The division shall regulate 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 the public welfare; and encouraging maximum economic recovery of the geothermal resources. The division may require persons seeking to explore, develop or produce geothermal resources to obtain permits from the division.

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

C. The division 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. The division 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.

D. The division shall have exclusive authority to regulate injection into geothermal wells pursuant to the Geothermal Resources Development Act 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.

History: Laws 2016, ch. 71, § 5 and Laws 2016, ch. 78, § 5.

### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 71, § 15 and Laws 2016, ch. 78, § 15 made the Geothermal Resources Development Act, §§ 71-9-1 to 71-9-11 NMSA 1978, effective July 1, 2016.

**Compiler's notes.** — Laws 2016, ch. 71, § 5 and Laws 2016, ch. 78, § 5, both effective July 1, 2016, enacted identical new sections. The section was set out as enacted by Laws 2016, ch. 78, § 5. See 12-1-8 NMSA 1978.



## **71-9-6. Rules.**

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

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

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

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

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

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

(8) regulate the permitting of geothermal projects, facilities and wells and provide for public notice and comment and an opportunity for hearing;

(9) where sufficient information is available, define and, from time to time as is necessary, 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 a 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 through ownership, leases, permits or other documentation;

(13) require geothermal projects, facilities and wells to be 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;

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

(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; and

(17) govern the manner and procedures by which all hearings conducted pursuant to the Geothermal Resources Development Act shall be held.

History: Laws 2016, ch. 71, § 6 and Laws 2016, ch. 78, § 6.

## ANNOTATIONS

**Effective dates.** — Laws 2016, ch. 71, § 15 and Laws 2016, ch. 78, § 15 made the Geothermal Resources Development Act, §§ 71-9-1 to 71-9-11 NMSA 1978, effective July 1, 2016.

**Compiler's notes.** — Laws 2016, ch. 71, § 6 and Laws 2016, ch. 78, § 6, both effective July 1, 2016, enacted identical new sections. The section was set out as enacted by Laws 2016, ch. 78, § 6. See 12-1-8 NMSA 1978.

### **71-9-7. Access to property.**

Employees or agents of the division, on proper identification, may 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 the Geothermal Resources Development Act or a rule, permit or order of the division, or to examine and copy, during reasonable business hours, those records or memoranda of the business being investigated; provided, however, that any inspection or investigation on private property shall be at reasonable times and upon notice to the private landowner. Employees or agents acting under the authority of this section shall observe the business's safety, internal security and fire protection rules.

History: Laws 2016, ch. 71, § 7 and Laws 2016, ch. 78, § 7.

### ANNOTATIONS

**Effective dates.** — Laws 2016, ch. 71, § 15 and Laws 2016, ch. 78, § 15 made the Geothermal Resources Development Act, §§ 71-9-1 to 71-9-11 NMSA 1978, effective July 1, 2016.

**Compiler's notes.** — Laws 2016, ch. 71, § 7 and Laws 2016, ch. 78, § 7, both effective July 1, 2016, enacted identical new sections. The section was set out as enacted by Laws 2016, ch. 78, § 7. See 12-1-8 NMSA 1978.

### **71-9-8. Administrative penalty.**

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

B. In determining the amount of the penalty, the division shall consider the person's history of previous violations of the Geothermal Resources Development Act or the Geothermal Resources Act [19-13-1 through 19-13-28 NMSA 1978] or the rules or permits issued pursuant to those acts, the seriousness of the violation, any hazard to the health or safety of the public or the environment and the demonstrated good faith of the person.

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

D. After the public hearing is held, or the person has failed to participate in the public hearing, the division shall issue an order requiring that any penalty imposed be paid.

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

History: Laws 2016, ch. 71, § 8 and Laws 2016, ch. 78, § 8.

### ANNOTATIONS

**Effective dates.** — Laws 2016, ch. 71, § 15 and Laws 2016, ch. 78, § 15 made the Geothermal Resources Development Act, §§ 71-9-1 to 71-9-11 NMSA 1978, effective July 1, 2016.

**Compiler's notes.** — Laws 2016, ch. 71, § 8 and Laws 2016, ch. 78, § 8, both effective July 1, 2016, enacted identical new sections. The section was set out as enacted by Laws 2016, ch. 78, § 8. See 12-1-8 NMSA 1978.

### **71-9-9. Appeals.**

A person subject to a final decision of the division may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: Laws 2016, ch. 71, § 9 and Laws 2016, ch. 78, § 9.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 71, § 15 and Laws 2016, ch. 78, § 15 made the Geothermal Resources Development Act, §§ 71-9-1 to 71-9-11 NMSA 1978, effective July 1, 2016.

**Compiler's notes.** — Laws 2016, ch. 71, § 9 and Laws 2016, ch. 78, § 9, both effective July 1, 2016, enacted identical new sections. The section was set out as enacted by Laws 2016, ch. 78, § 9. See 12-1-8 NMSA 1978.

### **71-9-10. Water rights owner; action for impairment.**

In addition to the appeal rights pursuant to Section 9 [71-9-9 NMSA 1978] of the Geothermal Resources Development Act, a water rights owner may bring a de novo action in the district court in which the water rights are located for damages or injunctive relief with respect to any claimed impairment of existing water rights due to the exploration, development or production of geothermal resources pursuant to Section 4 [71-9-4 NMSA 1978] of that act.

History: Laws 2016, ch. 71, § 10 and Laws 2016, ch. 78, § 10.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 71, § 15 and Laws 2016, ch. 78, § 15 made the Geothermal Resources Development Act, §§ 71-9-1 to 71-9-11 NMSA 1978, effective July 1, 2016.

**Compiler's notes.** — Laws 2016, ch. 71, § 10 and Laws 2016, ch. 78, § 10, both effective July 1, 2016, enacted identical new sections. The section was set out as enacted by Laws 2016, ch. 78, § 10. See 12-1-8 NMSA 1978.

### **71-9-11. Transfer of administration of rules, orders and permits.**

All rules, orders, permits and administrative determinations of the oil conservation division of the energy, minerals and natural resources department or oil conservation

commission issued pursuant to the Geothermal Resources Conservation Act [Chapter 71, Article 5 NMSA 1978] that existed prior to the effective date of the Geothermal Resources Development Act shall be administered by the energy conservation and management division of the department and shall remain in full force and effect after that date until repealed or amended, unless in conflict with, prohibited by or inconsistent with the provisions of the Geothermal Resources Development Act.

History: Laws 2016, ch. 71, § 11 and Laws 2016, ch. 78, § 11.

### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 71, § 15 and Laws 2016, ch. 78, § 15 made the Geothermal Resources Development Act, §§ 71-9-1 to 71-9-11 NMSA 1978, effective July 1, 2016.

**Compiler's notes.** — Laws 2016, ch. 71, § 11 and Laws 2016, ch. 78, § 11, both effective July 1, 2016, enacted identical new sections. The section was set out as enacted by Laws 2016, ch. 78, § 11. See 12-1-8 NMSA 1978.