

**UIC - \_\_\_\_\_ 999 \_\_\_\_\_**

**LEGISLATIVE  
SESSION**

**YEAR(S):**

**2012**

## Chavez, Carl J, EMNRD

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**From:** Brancard, Bill, EMNRD  
**Sent:** Tuesday, March 06, 2012 5:21 PM  
**To:** Bailey, Jami, EMNRD; Brooks, David K., EMNRD; Chavez, Carl J, EMNRD  
**Subject:** FW: Action Alert: HB201

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**From:** NMLR Bill Action Alert [<mailto:ActionAlerts@nmlr.com>]  
**Sent:** Tuesday, March 06, 2012 4:28 PM  
**To:** Brancard, Bill, EMNRD  
**Subject:** Action Alert: HB201

HB201 - Jurisdiction for Water Used in Geothermal Electricity Production  
Action: 03/06/2012 - G - Signed by the Governor

## Chavez, Carl J, EMNRD

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**From:** Lucero, Stephen A., EMNRD  
**Sent:** Wednesday, February 22, 2012 9:13 AM  
**To:** Chavez, Carl J, EMNRD  
**Subject:** FW: HB 201 - Geothermal Resources for Power Generation  
**Attachments:** HB0201.pdf

FYI

Stephen Lucero

Clean Energy Specialist  
Energy Conservation and Management Division  
Energy, Minerals & Natural Resources Department  
1220 South St. Francis Drive  
Santa Fe, NM 87505  
Tel 505.476.3324 ~ Fax 505.476.3322  
[stephen.lucero@state.nm.us](mailto:stephen.lucero@state.nm.us)

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**From:** Morin, Barbara, EMNRD  
**Sent:** Tuesday, February 21, 2012 4:56 PM  
**To:** Barrera, Vincent, EMNRD; Helton, Ryan, EMNRD; Hughes, Ken, EMNRD; Johnson, Brian K., EMNRD; Lucero, Stephen A., EMNRD; Marbury, Susie, EMNRD; McDiarmid, Michael, EMNRD; Sweat, Randel, EMNRD  
**Subject:** HB 201 - Geothermal Resources for Power Generation

Here are more details on HB201 that was briefly discussed at today's staff meeting. (Please see attachment)  
You can also read the legislation by accessing the NM State Legislatures website.

According to Bill Brancard's analysis:

HB201 amends a section of the Geothermal Resources conservation Act, Section 71-5-2.1 NMSA 1978, to provide that certain uses of geothermal resources are governed solely by the Act and not also by the water laws under chapter 72.

Under the Act, EMNRD has the authority to prevent the waste, and regulate the production, of geothermal resources, which is defined as the natural heat of the earth or the energy below the surface of the earth. The Act does not specify whether the state Engineer also regulates the diversion of water which may occur as a side effect of the production of geothermal resources unless the water is 250 degrees or less and then the water laws apply.

HB201 does not generally clarify the State Engineer's jurisdiction under the Act except to provide that one narrow circumstance, the "nonconsumptive use of the geothermal reservoir to generate electricity on a utility scale", the State Engineer does not have jurisdiction.

When HB201 refers to the "nonconsumptive use of the geothermal reservoir" it is mixing a water law concept ("nonconsumptive use") with a defined term under the Act ("geothermal reservoir") that contains geothermal resources or the nature heat of the earth.

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

SPONSOR HENRC ORIGINAL DATE 01/31/12 CS/201/aHENRC/aHFI#1/  
LAST UPDATED 02/13/12 HB aSCONC  
SHORT TITLE Geothermal Resources for Power Generation SB \_\_\_\_\_  
ANALYST van Moorsel/Daly

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY12	FY13		
	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

Similar to SB 190

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the State Engineer (OSE)

Department of Environment

#### No Response

Energy, Minerals and Natural Resources Department (EMNRD)

### SUMMARY

#### Synopsis of SCONC Amendment

The Senate Conservation Committee amendment to the House Energy and Natural Resources Committee substitute for House Bill 201 corrects the reference to the Geothermal Resources Conservation Act. The amendment also requires, as to all diverted ground water incident to the development of geothermal resource, that the oil conservation division of the ENMRD provide the OSE all information available to the division regarding the proposed diversion and reinjection and request the opinion of the OSE as to whether existing ground water rights sharing the same ground water source may be impaired. If the OSE determines the information is sufficient and opines that there may be impairment, the division shall require the owner or operator to submit a plan of replacement as to rights likely to be impaired. Any such determination by the OSE as to whether the information is sufficient to render an opinion or the issuance of an opinion shall not constitute a decision, act or refusal to act under section 72-2-16. "Plan of replacement" is defined to mean a detailed plan for the replacement of water, which may include the furnishing of a substitute water supply; the modification of an existing water

supply; the drilling of replacement wells, the assumption of additional operating costs; the procurement of documentation establishing a waiver of protection by owners of the affected water rights; artificial recharge; or any other means to avoid impairment of those rights.

Synopsis of HFI#1 Amendment

The House Floor #1 amendment to House Bill 201 provides that all diverted groundwater incident to the development of geothermal resources be reinjected “as soon as possible.”

Synopsis of HENRC Amendment

The House Energy and Natural Resources Committee amendment to House Bill 201 specifies that a water rights owner is authorized to bring a “de novo,” rather than a “new,” action for damages or for injunctive relief with respect to any claimed impairment of existing water rights due to the development of geothermal resources.

Synopsis of Original Bill

The House Energy and Natural Resources Committee substitute for House Bill 201 amends the Geothermal Resources Conservation Act to provide conditions under which a permit from the Office of the State Engineer (OSE) is not required for the use of groundwater over 250 degrees Fahrenheit as an incident to the development of geothermal resources. Specifically, these conditions require that:

- the use does not require any diversion of groundwater;
- all diverted groundwater is reinjected into the same groundwater source from which it was diverted resulting in no new net depletions to the source; and
- no groundwater right is established through the use of the groundwater.

HB201/HENRC also creates a new section of the Geothermal Resource Conservation Act to permit any water rights owner to bring an action in the district court of the county in which the water rights are located for damages or for injunctive relief with respect to any claimed impairment of existing water rights due to the development of geothermal resources.

**FISCAL IMPLICATIONS**

HB201/HENRCS makes no appropriation. The OSE notes that the bill would not have a fiscal impact on the agency.

**SIGNIFICANT ISSUES**

The bill would create criteria under which certain uses use of geothermal reservoirs would be exempted from the requirement to acquire a water right from the OSE. The OSE reports that HB201/HENRCS would make explicit that, where the geothermal resource to be developed is groundwater, permits from both the Oil Conservation Division of the Energy, Minerals and Natural Resources Department and the OSE are required, except:

- where there is no diversion of groundwater;

- where all diverted groundwater will be reinjected into the same groundwater source from which it was diverted resulting in no new net depletions to the source; and
- where no groundwater right is established through the use of groundwater.

The bill also provides for recourse for water rights owners who claim their water rights are impaired as a result of the development of geothermal resources.

#### **ADMINISTRATIVE IMPLICATIONS**

HB201/HENRC could reduce the administrative burden on the Water Resource Administration Program of the OSE, as it would not be required to process water right applications for the uses specified in the bill.

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 190 is similar to HB201/HENRCS.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Geothermal resource development that requires drilling of a well would continue to require a permit from the OSE.

PvM:MD/amm:svb



**2012 Regular Session**

SB 190

**GEOTHERMAL RESOURCES FOR POWER GENERATION**



**Sponsor:** John Arthur Smith

Rodolpho "Rudy" S. Martinez


**Current Location:** Senate Conservation Committee

**Actions:** (Key to Abbreviations)

[2] SCC/SCONC/SFC-SCC [4]germane-SCONC

  Introduced (1/24/12)

  SCC Committee Report (1/30/12)

 Fiscal Impact Report

1 SENATE BILL 190

2 50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

3 INTRODUCED BY

4 John Arthur Smith and Rodolpho "Rudy" S. Martinez

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10 AN ACT

11 RELATING TO ENERGY; AMENDING A SECTION OF THE GEOTHERMAL  
12 RESOURCES CONSERVATION ACT TO PROVIDE FOR JURISDICTION UNDER  
13 THE ACT FOR UTILITY SCALE ELECTRIC POWER GENERATION.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 71-5-2.1 NMSA 1978 (being Laws 2003,  
17 Chapter 16, Section 2) is amended to read:

18 "71-5-2.1. EXCLUSION--INCIDENTAL LOSS OR EXTRACTION OF  
19 HEAT.--

20 A. When the application of potable water to a  
21 beneficial use involves the incidental loss or extraction of  
22 heat, and the water is [250] two hundred fifty degrees  
23 Fahrenheit or less, then that heat is not a geothermal resource  
24 for which a royalty is due. In such a case, the use is not  
25 governed by laws related to geothermal resources but is simply

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underscored material = new  
~~[bracketed material]~~ = delete



1 governed by Chapter 72 NMSA 1978.

2 B. When the temperature of a geothermal reservoir  
3 exceeds two hundred fifty degrees Fahrenheit, nonconsumptive  
4 use of the geothermal reservoir to generate electricity on a  
5 utility scale is governed solely by the Geothermal Resources  
6 Conservation Act, not by Chapter 72 NMSA 1978."

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FIFTIETH LEGISLATURE  
SECOND SESSION, 2012

January 27, 2012

Mr. President:

Your **COMMITTEES' COMMITTEE**, to whom has been referred

**SENATE BILL 190**

has had it under consideration and finds same to be **GERMANE**,  
pursuant to Senate Executive Message No. 67, and thence referred to  
the **CONSERVATION COMMITTEE**.

Respectfully submitted,

\_\_\_\_\_  
Timothy Z. Jennings, Chairman

Adopted \_\_\_\_\_  
(Chief Clerk)

Not Adopted \_\_\_\_\_  
(Chief Clerk)

Date \_\_\_\_\_

SB0190CC1

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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/12

SPONSOR Smith & Martinez, R. LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Geothermal Resources for Power Generation SB 190

ANALYST van Moorsel

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY12	FY13		
	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB201/HENRCS

#### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Environment (NMED)

#### SUMMARY

##### Synopsis of Bill

Senate Bill 190 amends the Geothermal Resources Conservation Act to provide that nonconsumptive use of a geothermal reservoir with a temperature exceeding 250 degrees Fahrenheit to generate electricity on a utility scale is governed solely by the Geothermal Resources Conservation Act.

#### FISCAL IMPLICATIONS

SB190 makes no appropriation.

#### SIGNIFICANT ISSUES

SB190 would place nonconsumptive use of geothermal reservoirs to generate electricity on a utility scale under the jurisdiction of the Oil Conservation Division (OCD) of the Energy, Minerals and Natural Resources Department, as current statute grants the OCD "jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of the Geothermal Resources Conservation Act."

The Department of Environment notes that if use of the water from the geothermal reservoir is consumptive, it would also require obtaining a water right from the Office of the State Engineer. SB190 appears to differentiate nonconsumptive use of the geothermal reservoir to avoid the acquisition of a water right from the Office of the State Engineer.

The Department of Environment adds that if the application of potable water to a beneficial use involves the incidental loss or extraction of heat and the water is two hundred fifty degrees Fahrenheit or less and the heat is not a geothermal resource, the New Mexico Environment Department would have regulatory authority under the New Mexico Water Quality Control Commission regulations. In this case, the Department of Environment would require the user to file a notice of intent to determine if a discharge permit is required for the proposed project.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Similar to HB201/HENRCS

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

A user of a geothermal reservoir to generate electricity on a utility scale would be required to obtain water right from the OSE if the temperature of the geothermal reservoir exceeds 250 degrees Fahrenheit; and water use from the geothermal reservoir is nonconsumptive.

PvM/svb



## 2012 Regular Session

HB 201

### GEOHERMAL RESOURCES FOR POWER GENERATION



Sponsor: Rodolpho "Rudy" S. Martinez

John Arthur Smith

Current Location: Passed

#### Actions: (Key to Abbreviations)

[6] not prntd-HRC [8] w/dm - prntd- ref HENRC-HENRC [12] DNP-CS/DP/a [13] fl/a- PASSED/H (65-0) [9] SCONC/SJC-SCONC [16] DP/a-SJC [20] DP [21] PASSED/S (36-6) [26] h/cncrd

-   Introduced (1/25/12)
-   HENRC Committee Report (2/01/12)
-   HENRC Committee Substitute (2/01/12)
-   House Floor Amendment 1 (2/03/12)
-   Final House Vote (2/03/12)
-   SCONC Committee Report (2/11/12)
-   SJC Committee Report (2/15/12)
-   Final Senate Vote (2/15/12)
-  Fiscal Impact Report

OFFICIAL ROLL CALL  
NEW MEXICO STATE SENATE  
FIFTIETH LEGISLATURE, SECOND SESSION, 2012

LEGISLATIVE DAY 21

DATE: 02-16-12  
RCS# 353

SENATOR M. SANCHEZ CHALLENGED THE RULING OF THE CHAIR THAT SENATE FLOOR  
AMENDMENT #1 (.189820.4) TO HENRC/HOUSE BILL 201 FAILED BY VOICE VOTE

	YES	NO	ABS	EXC		YES	NO	ABS	EXC
ADAIR	X				LOVEJOY		X		
ASBILL	X				MARTINEZ	X			
WILSON BEFFORT	X				MCSORLEY		X		
BOITANO	X				MORALES	X			
BURT	X				MUNOZ	X			
CAMPOS	X				NAVA	X			
CISNEROS	X				NEVILLE	X			
CURTIS	X				ORTIZ Y PINO	X			
EICHENBERG		X			PAPEN		X		
FELDMAN		X			PAYNE	X			
FISCHMANN		X			PINTO	X			
GARCIA	X				RODRIGUEZ		X		
GRIEGO, E.	X				RUE	X			
GRIEGO, P.	X				RYAN	X			
HARDEN		X			SANCHEZ, B.		X		
INGLE	X				SANCHEZ, M.		X		
JENNINGS	X				SAPIEN		X		
KELLER		X			SHARER	X			
KERNAN	X				SMITH	X			
LEAVELL	X				ULIBARRI	X			
LOPEZ		X			WIRTH		X		
					TOTALS =>	28	14	0	0

PASSED: 28 - 14

OTHER ACTION: CHAIR UPHELD



## 2012 Regular Session

HB 201

### GEOHERMAL RESOURCES FOR POWER GENERATION


Sponsor: Rodolpho "Rudy" S. Martinez

John Arthur Smith

Current Location: Senate Calendar

#### Actions: (Key to Abbreviations)

[6] not prntd-HRC [8] w/dm - prntd- ref HENRC-HENRC [12] DNP-CS/DP/a [13] fl/a- PASSED/H (65-0) [9] SCONC/SJC-SCONC [16] DP/a-SJC [20] DP

-   Introduced (1/25/12)
-   HENRC Committee Report (2/01/12)
-   HENRC Committee Substitute (2/01/12)
-   House Floor Amendment 1 (2/03/12)
-   Final House Vote (2/03/12)
-   SCONC Committee Report (2/11/12)
-   SJC Committee Report (2/15/12)
-  Fiscal Impact Report

1 HOUSE BILL 201

2 50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

3 INTRODUCED BY

4 Rodolpho "Rudy" S. Martinez

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10 AN ACT

11 RELATING TO ENERGY; AMENDING A SECTION OF THE GEOTHERMAL  
12 RESOURCES CONSERVATION ACT TO PROVIDE FOR JURISDICTION UNDER  
13 THE ACT FOR UTILITY SCALE ELECTRIC POWER GENERATION.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 71-5-2.1 NMSA 1978 (being Laws 2003,  
17 Chapter 16, Section 2) is amended to read:

18 "71-5-2.1. EXCLUSION--INCIDENTAL LOSS OR EXTRACTION OF  
19 HEAT.--

20 A. When the application of potable water to a  
21 beneficial use involves the incidental loss or extraction of  
22 heat, and the water is [250] two hundred fifty degrees  
23 Fahrenheit or less, then that heat is not a geothermal resource  
24 for which a royalty is due. In such a case, the use is not  
25 governed by laws related to geothermal resources but is simply

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underscored material = new  
~~[bracketed material]~~ = delete



1 governed by Chapter 72 NMSA 1978.

2 B. When the temperature of a geothermal reservoir  
3 exceeds two hundred fifty degrees Fahrenheit, nonconsumptive  
4 use of the geothermal reservoir to generate electricity on a  
5 utility scale is governed solely by the Geothermal Resources  
6 Conservation Act, not by Chapter 72 NMSA 1978."

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FIFTIETH LEGISLATURE  
SECOND SESSION, 2012

February 1, 2012

Mr. Speaker:

Your **ENERGY AND NATURAL RESOURCES COMMITTEE**, to whom has been referred

**HOUSE BILL 201**

has had it under consideration and reports same with recommendation that it **DO NOT PASS**, but that

**HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE  
SUBSTITUTE FOR HOUSE BILL 201**

**DO PASS**, amended as follows:

1. On page 2, line 17, strike "an" and insert in lieu thereof "a de novo".

The roll call vote on Amendment #1 was 10 For 1 Against  
Yes: 10  
No: Kintigh  
Excused: Park  
Absent: None

Respectfully submitted,

\_\_\_\_\_  
Brian Egolf, Chairman

Adopted \_\_\_\_\_  
(Chief Clerk)

Not Adopted \_\_\_\_\_  
(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 11 For 0 Against  
Yes: 11  
No: 0  
Excused: Park  
Absent: None

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 201

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

AN ACT

RELATING TO GEOTHERMAL RESOURCES; PROVIDING FOR GROUND WATER TO  
QUALIFY AS A GEOTHERMAL RESOURCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 71-5-2.1 NMSA 1978 (being Laws 2003,  
Chapter 16, Section 2) is amended to read:

"71-5-2.1. EXCLUSION--INCIDENTAL LOSS OR EXTRACTION OF  
HEAT--LIMITED EXCEPTION---

A. When the application of potable water to a  
beneficial use involves the incidental loss or extraction of  
heat, and the water is [250] two hundred fifty degrees  
Fahrenheit or less, then that heat is not a geothermal resource  
for which a royalty is due. In such a case, the use is not  
governed by laws related to geothermal resources but is simply  
governed by Chapter 72 NMSA 1978.

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underscored material = new  
[bracketed material] = delete

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

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

8                   (2) all diverted ground water is reinjected  
9 into the same ground water source from which it was diverted,  
10 resulting in no new net depletions to the source.

11           C. No ground water right is established through the  
12 use of ground water as allowed in Subsection B of this  
13 section."

14           SECTION 2. A new section of the Geothermal Resources  
15 Conservation Act is enacted to read:

16           "NEW MATERIAL] WATER RIGHTS OWNER--ACTION FOR  
17 IMPAIRMENT.--Any water rights owner may bring an action in the  
18 district court of the county in which the water rights are  
19 located for damages or injunctive relief with respect to any  
20 claimed impairment of existing water rights due to the  
21 development of geothermal resources pursuant to Subsection B of  
22 Section 71-5-2.1 NMSA 1978."

23           SECTION 3. EFFECTIVE DATE.--The effective date of the  
24 provisions of this act is July 1, 2012.

underscored material = new  
[bracketed material] = delete

**FIFTIETH LEGISLATURE  
SECOND SESSION, 2012**

February 3, 2012

**HOUSE FLOOR AMENDMENT** number 1 to HOUSE ENERGY AND  
NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR HOUSE BILL  
201, as amended:

Amendment sponsored by Representative Rodolpho "Rudy" S. Martinez:

1. On page 2, line 8, after "reinjecteD", insert "as soon as practicable".

\_\_\_\_\_  
Representative Rodolpho "Rudy" S. Martinez

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

NEW MEXICO HOUSE OF REPRESENTATIVES  
Fiftieth Legislature  
SECOND SESSION, 2012

HENRCS/HB 201/A  
REPs Martinez, R., Egolf  
FINAL PASSAGE

Absent: 3      Yeas: 65      Nays: 0      Excused: 2

Alcon, E.	Y Ezzell, C. S.	Y Lewis, T.	Y Rodella, D.
Y Anderson, T. A	Y Garcia, M.H.	Y Little, R.	Y Saavedra, H.
Y Baldonado, A.	Y Garcia, M.P.	Y Lujan, A.	Y Salazar, N.
Y Bandy, P. C.	Y Garcia, T.A.	Y Lujan, Ben	Y Sandoval, E.
E Begaye, R.	Y Gentry, N.	Y Lundstrom, P.	Y Smith, J. S.
Y Bratton, D.	Y Gonzales, R.	Y Madalena, J. R	Y Stapleton, S.
Y Brown, C. N.	Gray, W. J.	Y Maestas, A.	Y Stewart, M.
Y Cervantes, J.	Y Gutierrez, J.	Y Martinez, R.	Y Strickler, J.
Y Chasey, G.	Y Hall, J.W.	Y Martinez, W. K	Y Taylor T. C.
Y Chavez, D.	Y Hall, J.C.	Y McMillan, T.	Y Tripp, D.
Y Chavez, E.	Y Hamilton, D.	Y Miera, R.	Y Trujillo, J.R.
Y Chavez, E.H.	Y Herrell, Y.	Y Nunez, A.	Y Tyler, S. A.
Y Cook, Z.J.	Y Irwin, D. G.	Y O'Neill, B.	Y Varela, L.
Y Crook, A. M.	Y James, C. D.	Y Park, A.	Y Vigil, R. D.
Y Dodge, G.	E Jeff, S.	Y Picraux, D.	Y White, J. P.
Y Doyle, D.	Y King, R.	Y Powdrell-C, J.	Wooley, B.
Y Egolf, B.	Y Kintigh, D.	Y Rehm, W.	
Y Espinoza, N.	Y Larranaga, L.	Y Roch, D.	

CERTIFIED CORRECT TO THE BEST OF OUR KNOWLEDGE

\_\_\_\_\_  
(Speaker)

\_\_\_\_\_  
(Chief Clerk)

FIFTIETH LEGISLATURE  
SECOND SESSION, 2012

HB 201/a

February 11, 2012

Mr. President:

Your **CONSERVATION COMMITTEE**, to whom has been referred

**HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE**  
**SUBSTITUTE FOR HOUSE BILL 201, as amended**

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. On page 2, line 5, strike "Construction" and insert in lieu thereof "Conservation".

2. On page 2, line 10, after "source", insert "; provided that 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. 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, then 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. In response to a request for an opinion under this subsection, 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."

3. On page 2, line 13, strike the ending quotation mark and between lines 13 and 14, insert the following new subsection to read:

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

FIFTIETH LEGISLATURE  
SECOND SESSION, 2012

SCONC/HB 201/a

Page 2

- (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."",

and thence referred to the **JUDICIARY COMMITTEE**.

Respectfully submitted,

\_\_\_\_\_  
Bernadette M. Sanchez, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 1 Against  
Yes: 7  
No: Harden  
Excused: None  
Absent: None



**FIFTIETH LEGISLATURE  
SECOND SESSION, 2012**

SCONC/HB 201/a

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FIFTIETH LEGISLATURE  
SECOND SESSION, 2012

February 15, 2012

Mr. President:

Your **JUDICIARY COMMITTEE**, to whom has been referred

**HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE**  
**SUBSTITUTE FOR HOUSE BILL 201, as amended**

has had it under consideration and reports same with recommendation  
that it **DO PASS**.

Respectfully submitted,

\_\_\_\_\_  
Richard C. Martinez, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 8 For 1 Against  
Yes: 8  
No: Harden  
Excused: McSorley, Sanchez, M.  
Absent: None

HB0201JU1.wpd



supply; the drilling of replacement wells, the assumption of additional operating costs; the procurement of documentation establishing a waiver of protection by owners of the affected water rights; artificial recharge; or any other means to avoid impairment of those rights.

Synopsis of HFI#1 Amendment

The House Floor #1 amendment to House Bill 201 provides that all diverted groundwater incident to the development of geothermal resources be reinjected “as soon as possible.”

Synopsis of HENRC Amendment

The House Energy and Natural Resources Committee amendment to House Bill 201 specifies that a water rights owner is authorized to bring a “de novo,” rather than a “new,” action for damages or for injunctive relief with respect to any claimed impairment of existing water rights due to the development of geothermal resources.

Synopsis of Original Bill

The House Energy and Natural Resources Committee substitute for House Bill 201 amends the Geothermal Resources Conservation Act to provide conditions under which a permit from the Office of the State Engineer (OSE) is not required for the use of groundwater over 250 degrees Fahrenheit as an incident to the development of geothermal resources. Specifically, these conditions require that:

- the use does not require any diversion of groundwater;
- all diverted groundwater is reinjected into the same groundwater source from which it was diverted resulting in no new net depletions to the source; and
- no groundwater right is established through the use of the groundwater.

HB201/HENRC also creates a new section of the Geothermal Resource Conservation Act to permit any water rights owner to bring an action in the district court of the county in which the water rights are located for damages or for injunctive relief with respect to any claimed impairment of existing water rights due to the development of geothermal resources.

**FISCAL IMPLICATIONS**

HB201/HENRCS makes no appropriation. The OSE notes that the bill would not have a fiscal impact on the agency.

**SIGNIFICANT ISSUES**

The bill would create criteria under which certain uses use of geothermal reservoirs would be exempted from the requirement to acquire a water right from the OSE. The OSE reports that HB201/HENRCS would make explicit that, where the geothermal resource to be developed is groundwater, permits from both the Oil Conservation Division of the Energy, Minerals and Natural Resources Department and the OSE are required, except:

- where there is no diversion of groundwater;

- where all diverted groundwater will be reinjected into the same groundwater source from which it was diverted resulting in no new net depletions to the source; and
- where no groundwater right is established through the use of groundwater.

The bill also provides for recourse for water rights owners who claim their water rights are impaired as a result of the development of geothermal resources.

**ADMINISTRATIVE IMPLICATIONS**

HB201/HENRC could reduce the administrative burden on the Water Resource Administration Program of the OSE, as it would not be required to process water right applications for the uses specified in the bill.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 190 is similar to HB201/HENRCS.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Geothermal resource development that requires drilling of a well would continue to require a permit from the OSE.

PvM:MD/amm:svb