



ANALYSIS

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1953, No. 102

Title.

AN ACT to make provision for the control of the tapping and use of geothermal energy and for vesting all such energy in the Crown. [26 November 1953]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

Short Title.

1. This Act may be cited as the Geothermal Energy Act 1953.

Interpretation.

Geothermal
Steam Act 1952,
No. 5, s. 2

2. In this Act, unless the context otherwise requires,—

“Bore” means any well, hole, pipe, or excavation of any kind which is bored, drilled, sunk, or made in the ground for the purpose of investigating, prospecting, obtaining, or producing geothermal energy, or which taps or

is likely to tap geothermal energy; and includes any hole in the ground which taps geothermal energy:

“Geothermal energy” means energy derived or derivable from and produced within the earth by natural heat phenomenon; and includes all steam, water, and water vapour, and every mixture of all or any of them that has been heated by geothermal energy, and every kind of matter derived from a bore and for the time being with or in any such steam, water, water vapour, or mixture:

“Geothermal energy area” means any area which is declared to be a geothermal energy area by or under section four of this Act:

“Government Department” means any Department or instrument of the executive Government of New Zealand:

“Licence” means a licence granted under section nine of this Act:

“Licensee” has the meaning assigned to it by subsection two of section nine of this Act:

“Minister” means the Minister of Works:

“Owner”, in relation to any land, means the person who for the time being is entitled to the rack rent thereof or would be so entitled if the land were let at a rack rent; and includes any public or local authority which for the time being has control of the land.

3. (1) Notwithstanding anything to the contrary in any Act, or in any Crown grant or certificate of title or lease or other instrument of title in respect of any land within the territorial limits of New Zealand, the sole right to tap, take, use, and apply geothermal energy on or under the land shall vest in the Crown, whether the land has been alienated from the Crown or not.

(2) All alienations of land from the Crown made after the commencement of this Act, whether by way of sale or lease or otherwise, shall be deemed to be made subject to the reservation of the sole right of the Crown to tap, take, use, and apply geothermal energy on or under the land, and subject to the provisions of this Act.

Sole right to tap and use geothermal energy to vest in the Crown.
1952, No. 5, s. 3

Proclamation
of geothermal
energy areas.
1952, No. 5, s. 8

4. (1) The Governor-General may, by Proclamation which may from time to time in like manner be amended or revoked, declare that any area of land which is a source or is believed to be a source of geothermal energy shall be a geothermal energy area for the purposes of this Act or for any of those purposes specified in the Proclamation.

1952, No. 5

(2) Every area which was a geothermal steam area within the meaning of the Geothermal Steam Act 1952 immediately before the commencement of this Act is hereby declared to be a geothermal energy area for the purposes of this Act.

Owner of land
not in a
geothermal
energy area
may make bores
in search for
geothermal
energy.

5. (1) Subject to the provisions of this Act, the owner of any land which is not in a geothermal energy area, or any person allowed to do so by the owner of any such land, may make surveys, investigations, tests, and measurements in respect of geothermal energy on or below the surface of the land, and in connection therewith may sink bores on the land. The authority conferred by this subsection to sink bores shall be subject to the condition that every bore so sunk is kept under close supervision and is at all times maintained in a safe condition while it is being sunk and is finally left in a condition of lasting safety and stability.

(2) For protecting the public interest or for ensuring that all necessary safety precautions are observed, the Minister may at any time, by notice to the owner for the time being of the land on which any bore has been or is being or is proposed to be sunk or to any other person allowed under this section to sink any bore on the land, require that owner or person to comply with such conditions in respect of the bore as may be specified in the notice.

Minister may
authorize
search for
geothermal
energy and
give power to
enter land.
Ibid., s. 5

6. (1) For the purposes and subject to the provisions of this Act, the Minister, or any person authorized specially or generally in that behalf in writing by him, may make surveys, investigations, tests, and measurements in respect of geothermal energy, and for that purpose may--

(a) Enter and re-enter from time to time upon any land to which the authority relates, with such assistants, gear, appliances, and equipment as he thinks fit:

- (b) Sink any bore on the land:
- (c) Make geological surveys and geophysical surveys on the land:
- (d) Generally do all things necessary in connection with any such survey, investigation, test, or measurement.

(2) The Minister may grant authority as aforesaid to any person whether that person is acting on his own account or on behalf of the Crown or of any other person.

(3) When practicable, reasonable notice of the intention to enter upon any land owned by another person shall be given to the owner and occupier thereof.

(4) Every person who is authorized in writing as aforesaid shall produce his authority when so required by the owner or occupier of any land on which he intends to enter or has entered.

(5) Every authority granted under this section shall be subject to the condition that every bore made pursuant to the authority is kept under close supervision and is at all times maintained in a safe condition while it is being sunk and is finally left in a condition of lasting safety and stability, and to such other conditions as the Minister may impose either at the time of granting the authority or subsequently.

(6) Any such authority may be revoked by the Minister on any of the following grounds:

- (a) That the person to whom the authority is granted has not complied with any requirement or condition of his authority or of any enactment relating to the authority or to any bore which is being made pursuant to the authority:
- (b) That operations being carried on under the authority have become or appear likely to become a source of danger to persons or property:
- (c) That operations being carried on under the authority are, in the opinion of the Minister, affecting detrimentally other specified bores or the supplies of geothermal energy for other specified purposes or a specified tourist attraction:

(d) That it is in the public interest that operations being carried on under the authority should cease.

General power to take land. 1952, No. 5, s. 6
See Reprint of Statutes, Vol. VII, p. 622

Special power to take land required for certain industrial undertakings.

7. The Governor-General may take under the Public Works Act 1928, as for a water power work within the meaning of that Act, any land necessary for the tapping, taking, use, or application of geothermal energy for any purpose in connection with any public work.

8. (1) Where the Minister of Finance, the Minister of Industries and Commerce, and the Minister of Works certify that the establishment of an industrial undertaking which will use geothermal energy is of national importance and that it should be located within a specified area where or to which supplies of geothermal energy are available to ensure the best prospects of successful operation, the Governor-General may (by Order in Council published in the *Gazette*) declare that the provisions of this section shall apply to the establishment of that undertaking within that area.

(2) For the purpose of facilitating the establishment of any such undertaking to which a declaration under subsection one of this section relates, the Governor-General may, on the application of the persons responsible for the undertaking and at their expense, take under the Public Works Act 1928 any land within the area specified in the declaration or any particular estate or interest in any such land (whether for the time being subsisting separately or not), or any easement or *profit a prendre* over any such land (whether for the time being subsisting or not). Without limiting the foregoing powers, it is hereby declared that any such property which is taken under this subsection may be taken subject to any particular estate, interest, easement, *profit a prendre*, or encumbrance to which it is for the time being subject.

(3) Notwithstanding anything to the contrary in the Public Works Act 1928, the effect of a Proclamation issued for the purposes of this section shall be to vest the land, estate, interest, easement, or *profit a prendre*, as the case may be, which is taken in the persons for whom it is taken instead of in Her Majesty; and all proceedings subsequent to the issue of the Proclamation

in respect of compensation or otherwise for the purpose of complying with the said Act shall be taken in accordance with that Act by or against those persons, who shall be deemed to be the respondents and shall be liable in respect of the taking to the same extent as Her Majesty or the Minister of Works would have been liable if the taking had been for the purpose of a Government work.

9. (1) Notwithstanding anything to the contrary in any Act, instrument of title, or rule of law, no person shall sink any bore or tap, take, use, or apply geothermal energy for any purpose unless he has first obtained a licence granted by the Minister under this section:

Licences for
use of
geothermal
energy.
1952, No. 5, s. 7

Provided that,—

- (a) It shall not be necessary to obtain a licence to sink a bore, or to tap or take any geothermal energy, for the purposes of any survey, investigation, test, or measurement lawfully carried on by any person under section five or section six of this Act:
- (b) Unless the Minister having regard to the public interest otherwise directs, it shall not be necessary to obtain a licence to sink a bore, or to tap, take, use, or apply geothermal energy for any domestic purpose whatever (including cooking, heating, washing, and bathing), except where the bore proposed to be sunk or the bore from which the geothermal energy is derived is more than two hundred feet in depth:

Provided that notice of intention to make any bore within any geothermal energy area shall be given in the prescribed manner not sooner than four weeks and not later than two weeks before the bore is commenced:

- (c) Where geothermal energy on or under any land is being used for any purpose at the commencement of this Act, geothermal energy on or under that land may thereafter be used for that purpose to a similar or lesser extent without any such licence unless the Minister, having regard to the public interest, otherwise directs.

(2) Notwithstanding anything to the contrary in this Act, the Minister may from time to time grant to any person (in this Act with the successors and assigns of that person called the licensee) a licence to tap, take, use, or apply geothermal energy for any purpose.

(3) The licence shall be for such period, and shall be subject to such terms and conditions, and may impose such obligations on the licensee, as the Minister thinks fit, and shall be assignable only with the consent of the Minister.

(4) The licence shall be deemed to constitute a contract between the licensee and the Crown, and shall be enforceable by and against either party accordingly.

(5) The Minister may at any time, on the application of or by agreement with the licensee, revoke or amend or extend or vary the terms, conditions, and obligations of the licence.

(6) The granting of the licence shall not be so construed or so operate as to relieve any person from any liability at law or in equity in respect of anything done pursuant to the licence.

(7) Nothing in the licence shall be so construed or shall so operate as to render compliance with section eighty-nine of the Statutes Amendment Act 1945 unnecessary.

1945, No. 40

(8) The Minister, in his discretion, may refuse any application for a licence under this section or may grant the application wholly or partly.

(9) Any licence granted under this section may at any time be revoked by the Minister, and any such conditions as aforesaid may from time to time be varied, added to, or revoked by the Minister:

Provided that no such licence shall be revoked, and no material change shall be made in the conditions of any such licence, without the licensee's consent, except on one or more of the following grounds:

(a) That the licensee has not complied with any requirement or condition of his licence or of any enactment relating to his licence or to any bore to which his licence relates:

- (b) That operations under the licence have become or appear likely to become a source of danger to persons or property in the vicinity:
- (c) That operations under the licence are in the opinion of the Minister affecting detrimentally other specified bores or the supply of geothermal energy for other specified purposes or a specified tourist attraction:
- (d) That it is in the public interest that operations under the licence should cease.

(10) Any person to whom a direction is given by the Minister under paragraph (b) or paragraph (c) of subsection one of this section shall comply with that direction, but may appeal against the direction to the Supreme Court. Written notice of any such appeal shall be given to the Minister, and the decision of the Court shall be binding on the Minister.

10. (1) Subject to the provisions of this section, the licensee under any licence to use or apply geothermal energy for industrial or commercial purposes shall pay to the Crown a rental computed at the rate and in the manner specified in the licence.

Rental payable for use of geothermal energy for industrial or commercial purposes.

(2) The rental to be specified in any such licence shall be fixed by the Minister when granting the licence and shall not exceed the proportion for the time being fixed by regulations of the value of the benefit to be derived from the use of the geothermal energy, due account being taken of the costs of investigation and of developing and adapting the energy to the licensee's requirements and the possibility of rapid depreciation of the licensee's plant and undertaking.

(3) If any dispute arises as to whether the rental specified in any such licence exceeds the rental which can lawfully be charged under subsection two of this section, the dispute shall be referred to arbitration, and for that purpose this subsection shall be deemed to be a submission within the meaning of the Arbitration Act 1908, and the reference shall be deemed to be to two arbitrators.

See Reprint of Statutes, Vol. I, p. 346

(4) The rental specified in any such licence shall be payable by the person who is the licensee for the time being and shall be recoverable from that person as a debt due to the Crown.

(5) All rentals payable in respect of any such licence shall be paid into the Public Account to the credit of the Consolidated Fund.

Powers of
Crown in
respect of
generation of
electricity, etc.
1952, No. 5, s. 4
1945, No. 36

11. (1) Subject to the provisions of this Act, the Minister for the time being charged with the administration of the Electricity Act 1945 may, within any area which is declared by subsection two of section four of this Act to be a geothermal energy area, or within any geothermal energy area constituted after the commencement of this Act for the purpose of generating electricity, without obtaining a licence,—

(a) Tap, take, use, and apply geothermal energy on or under any land:

(b) Erect, construct, provide, and use such works and appliances as may be necessary in connection with the tapping, taking, use, and application of geothermal energy for the purpose of generating electricity, and in connection with the transmission, use, supply, and sale of electricity when so generated.

(2) In connection with the tapping, taking, use, and application of geothermal energy for the purpose of generating electricity and with the transmission, use, supply, and sale of electricity when so generated, the Minister for the time being charged with the administration of the Electricity Act 1945 shall have and may exercise without any authority other than this Act all or any of the powers which are or may be conferred on him by or under Part XIII of the Public Works Act 1928 and which relate to the utilization of water power for the generation of electrical energy and the transmission, use, supply, and sale of electrical energy when so generated.

See Reprint
of Statutes,
Vol. VII, p. 767

(3) All works and appliances erected, constructed, or provided under this Act by the Minister for the time being charged with the administration of the Electricity Act 1945 shall be public works within the meaning of the Public Works Act 1928, and the provisions of that Act shall, with all necessary modifications, apply in like manner as if the works and appliances had been erected, constructed, or provided under that Act.

(4) All works and appliances erected, constructed, or provided under this Act by the Minister for the time being charged with the administration of the Electricity Act 1945 shall be maintained and worked by that Minister in accordance with the provisions of the State Supply of Electrical Energy Act 1917, and in each case shall, as that Minister may determine, be deemed to be a scheme approved by him in accordance with that Act, or be deemed to form part of an existing scheme approved or deemed to be approved by that Minister under that Act.

1945, No. 36

See Reprint
of Statutes,
Vol. III, p. 89

(5) Subject to the provisions of this Act, any Minister of the Crown or any Government Department requiring geothermal energy for the purposes of any public work may be authorized by the Governor-General in a Proclamation constituting a geothermal energy area or in an Order in Council, without obtaining a licence,—

- (a) To tap, take, use, and apply geothermal energy on or under any land for the purposes of that work:
- (b) To erect, construct, provide, and use such works and appliances as may be necessary in connection with the tapping, taking, use, and application of geothermal energy for those purposes:
- (c) For those purposes to exercise all or any of the powers which are conferred on licensees by any enactment or any specified powers which may be conferred on licensees under any enactment, but subject to the obligations imposed on licensees by any enactment and any specified obligations which may be imposed on licensees under any enactment.

12. (1) The Minister may at any time, by notice to any person to whom the notice may be given in accordance with subsection two of this section, require that person to close any bore specified in the notice on the grounds specified in the notice, being all or any of the following grounds—

Minister may
require bore
to be closed.

- (a) That the bore is a source of danger to persons or property in the vicinity:

(b) That the bore is, in the opinion of the Minister, affecting detrimentally other specified bores, or the supplies of geothermal energy for other specified purposes, or a specified tourist attraction:

(c) That the bore causes a nuisance in law or that it is otherwise in the public interest that the bore should be closed:

(d) That the bore has been abandoned or discontinued.

(2) Notice to close a bore may be given under this section by the Minister to the last licensee entitled to use or apply geothermal energy from the bore for any purpose; and if there has been no such licensee the notice may be given to any of the following persons:

(a) The person authorized by the Minister to make the bore:

(b) Any person who made or assisted to make the bore:

(c) The owner of the land if he permitted the bore to be made without authority from the Minister.

(3) Compensation in respect of the closing of a bore shall be payable to a licensee in respect of any loss which he may suffer in consequence of the bore being closed during any period specified in the licence during which he was entitled to use or apply geothermal energy for any purpose if the grounds for closing the bore include all or any of those specified in paragraphs (b) and (c) of subsection one of this section. Compensation shall not be payable to any other person or in any other case.

13. (1) Except as otherwise provided in this Act, every person who—

(a) Has any estate or interest in any land injuriously affected by the exercise of any powers conferred by this Act or conferred by any authority or licence granted under this Act; or

(b) Suffers any damage from the exercise of any powers so conferred; or

(c) Is deprived of any right which he could otherwise have exercised under paragraph (c) of subsection one of section nine of this Act in consequence of—

(i) A direction or notice given by the Minister under that paragraph or under section twelve of this Act; and

(ii) The failure or refusal of the Minister to grant a licence under section nine of this Act—

shall be entitled to full compensation for all such loss, injury, and damage suffered by him.

(2) Where any claim for compensation under this Act arises in respect of the exercise of any power by or on behalf of the Crown or any Minister of the Crown or Government Department or in the public interest, the Minister of Works shall, subject to section one hundred of the Public Works Act 1928, be liable for the compensation (if any) that becomes payable, and shall be the respondent for the purposes of that Act.

See Reprint
of Statutes,
Vol. VII, p. 664

(3) Where any other claim for compensation under this Act arises in respect of the exercise of any power by or on behalf of any person in any case to which subsection two of this section does not apply, that person shall be liable for the compensation (if any) that becomes payable and he shall be the respondent for the purposes of the Public Works Act 1928.

(4) Claims for compensation under this section shall be made and determined as claims for compensation under the Public Works Act 1928, and the provisions of that Act shall, so far as they are applicable and with the necessary modifications, apply with respect to claims under this section.

14. Notwithstanding anything in this Act or any other Act, compensation shall not be payable in respect of any geothermal energy on or below the surface of any land except so far as, at the commencement of this Act, the existence of the geothermal energy on or below the surface of the land is of actual benefit to the owners or occupiers of the land.

No
compensation
in respect of
geothermal
energy.

15. (1) Every person who sinks any bore, or who taps, takes, uses, or applies any geothermal energy, in contravention of subsection one of section nine of this Act commits an offence against this Act.

Offences.
1952, No. 5,
ss. 8 (6), 10, 11

(2) Every person who fails to perform, observe, or comply with any term, condition, or obligation to which any authority or licence granted to him under this Act is subject, or any requirement of the Minister under this Act, commits an offence against this Act.

(3) Every person who removes, damages, destroys, or otherwise interferes with any survey pegs placed in the ground in connection with any survey lawfully carried on under this Act, or any valve or instrument being used in connection with any such survey or with any bore, commits an offence against this Act.

(4) Every person who commits an offence against this Act for which no penalty is provided elsewhere than in this section shall be liable on summary conviction to a fine not exceeding fifty pounds and, if the offence is a continuing one, to a further fine not exceeding five pounds for every day or part of a day during which the offence continues.

Regulations.
1952, No. 5,
s. 12

16. (1) The Governor-General may from time to time, by Order in Council, make all such regulations as in his opinion may be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the general power hereinbefore conferred, regulations may be made under this section for all or any of the following purposes:

(a) Prescribing any forms that may be required for the purposes of this Act:

(b) Prescribing conditions upon or subject to which licences and authorities may be applied for, granted, or renewed:

(c) Providing for the keeping of records and the furnishing of information and returns by persons authorized by or under this Act to sink bores, and by licensees for any purpose under this Act, and prescribing the nature of the records, information, and returns, and the form, manner, and times in or at which they shall be kept or furnished:

(d) Prescribing matters in respect of which fees and rentals are to be payable under this Act or under regulations made under this section, the amount of the fees and rentals, and the persons liable to pay them:

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- (e) Authorizing the refund or remission, in such circumstances as in accordance with the regulations the Minister thinks fit, of any fees or rentals payable under this Act or under regulations made under this section:
 - (f) Prescribing the duties of licensees and persons to whom authorities are granted by or under this Act, and the operations to be carried out under licences and authorities:
 - (g) Prescribing the qualifications of persons in charge of the making and closing of bores or any class thereof, and, in particular, of persons employed as bore managers, and providing for the examination of and grant of certificates to qualified persons:
 - (h) Preventing or abating nuisances in or about bores and industries using geothermal energy:
 - (i) Prescribing safety precautions in the making and after the completion of bores, and the treatment of the ground about any bore and of water above and below the ground, and preventing waste or loss of geothermal energy:
 - (j) Prescribing drilling machinery, materials, and casing to be used in the making of bores and to be available to cope with any emergency in connection with any bore: and prohibiting the use of other classes thereof:
 - (k) Prohibiting or regulating the making of bores near other bores:
 - (l) Regulating the cessation of boring operations and the abandonment and closing of bores; and prescribing precautions against loosening the earth in the vicinity of any bore:
 - (m) Providing for bores to be made with due diligence and by safe and satisfactory methods:
 - (n) Generally regulating the making of bores:
 - (o) Providing for the exemption of licensees and persons to whom authorities have been granted under this Act, either wholly or partially, and either absolutely or conditionally, from any of the requirements of their licences or authorities or of regulations made under this section:

- (p) Prescribing the powers and duties of Inspectors, and requiring compliance by all persons with any directions lawfully given by them:
- (q) Prescribing fines, not exceeding those which may be imposed under section fifteen of this Act, for the breach of any regulation made under this section.

(3) Any regulations made under this section may be so made that different regulations shall apply with respect to different classes of licences or licensees or persons to whom authorities have been granted or boring operations or industries, or with respect to the same class of licences, licensees, persons, operations, or industries in different circumstances.

(4) Any regulations made under this section may apply generally throughout New Zealand, or within any specified part or parts thereof, or within the whole of New Zealand, except specified parts thereof, and may from time to time be applied by the Minister, by notice in the *Gazette*, to any part of New Zealand.

(5) The operation of any regulations made under this section may, if it is so provided therein, be wholly suspended until they are applied by the Minister by notice in the *Gazette*. Any such notice may be at any time in like manner revoked.

(6) All regulations made under this Act shall be laid before Parliament within twenty-eight days after the date of the making thereof if Parliament is then in session, and, if not, shall be laid before Parliament within twenty-eight days after the date of the commencement of the next ensuing session.

17. (1) The Geothermal Steam Act 1952 is hereby repealed.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been

Repeals and
savings.
1952, No. 5

See Reprint
of Statutes,
Vol. VIII,
p. 568

made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.

(3) Every licence and consent granted under the Geothermal Steam Act 1952 by the Governor-General in Council, and every authority and consent granted under that Act by the Minister for the time being charged with the administration of the Electricity Act 1945, so far as the licence or consent or authority is in force at the time of the repeal of that Act, shall be deemed to have been granted by the Minister of Works under this Act, and every such consent as is first mentioned in this subsection shall be deemed to be an authority.

1952, No. 5

1945, No. 36