

SENATE BILL REPORT

SB 6285

As of February 1, 2012

Title: An act relating to the use of geothermal resources.

Brief Description: Concerning the use of geothermal resources.

Sponsors: Senators Kline, Nelson, Ranker, Stevens and Fraser.

Brief History:

Committee Activity: Energy, Natural Resources & Marine Waters: 1/26/12.

SENATE COMMITTEE ON ENERGY, NATURAL RESOURCES & MARINE WATERS

Staff: Angeline Thomas (786-7470)

Background: Definition. Washington defines geothermal resources, under the Geothermal Resources Act, as a resource capable of generating electricity commercially derived from the natural heat of the earth. Geothermal resources are also considered *sui generis*, meaning that it is its own distinct thing, neither a mineral nor water right.

Regulatory Scheme. The Department of Natural Resources (DNR) is the agency responsible for administering and enforcing the provisions of the Geothermal Resources Act and governing state land leases. Developers must submit a written proposal to DNR before drilling, and DNR must hold a public hearing on the application in the county in which the drilling or re-drilling is proposed. Additionally, if the project is on state lands, a developer must secure a geothermal lease from DNR.

The Department of Ecology (DOE) is the lead agency in charge of administering the various rules and regulations governing water use and water quality in Washington State. All direct-use geothermal resources are considered to be ground water and are regulated as such. DOE is responsible for issuing water rights, well construction permits, and geothermal fluid disposal plans, among other things. Developers must also secure a water right permit from DOE unless exempt under the water code.

Water Right Permits. Unless a ground water withdrawal is exempt from the permit requirements under the Water Code, a geothermal project cannot be drilled without the well owner first obtaining a water right permit. There are four types of groundwater uses exempt from the state water-right permitting requirements:

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- providing water for livestock;
- watering a non-commercial lawn or garden one-half acre in size or less;
- providing water for a single home or groups of homes in an amount not exceeding 5,000 gallons a day;
- providing water for industrial purposes, including irrigation, in an amount not exceeding 5,000 gallons a day.

If a project does not meet one of these categorical exemptions, DOE will issue water right permits only if the proposed use meets the following requirements: water will be put to beneficial use; there will be no impairment to existing or senior rights; water is available for appropriation; and the issuance of the water right will not harm the public's welfare.

Geothermal Energy Account. The state received revenue under the Mineral Lands Leasing Act of 1920 and the Geothermal Steam Act of 1970 until June 2011 when the account was eliminated.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): *Definitions.* The definition of geothermal resources no longer requires commercial viability. It is amended to include the natural heat of the earth, the energy below the surface of the earth, and all minerals obtained from fluids, brines, gases, and steam found below the surface of the earth, including:

- well products of geothermal processes, including indigenous steam, and hot water and hot brines;
- steam and other bases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;
- heat or other associated energy found in geothermal formations; and
- any by-product derived from them.

Geothermal resources do not include heat energy used in ground source heat exchange systems for ground source heat pumps. Additional definitions are added, including by-product, county of origin, and geothermal energy.

Geothermal Resources may be Conveyed. Geothermal resources remain sui generis. Geothermal resources may be reserved or conveyed to another person or entity.

Authorization Under the Water Code for Consumptive Uses of Water Brought to the Surface is Amended. Authorization under the Water Code is not needed in the following circumstances:

- water that is returned to or re-injected into the same aquifer or reservoir;
- water that is used during a temporary failure of a geothermal system;
- water that is used during a test of a geothermal well; or
- water that is removed from a geothermal well in conjunction with the groundwater exemption in the Water Code.

Department of Ecology Given Additional Duties. DNR and DOE are directed to avoid duplication and to promote efficiency when issuing permits and other approvals for these uses. Both agencies are also directed to work cooperatively to resolve conflict and develop a

cooperative management program if interference between an existing geothermal well and an existing water right is found. In this circumstance, both agencies must consider the following goals:

- achieve the most beneficial use of the heat and water resource;
- allow all existing users of the resources to continue their use to the greatest extent possible; and
- protect public interest in efficient use of water.

Geothermal Energy Account Restored, Directions Given for the Distribution of Funds, and Who Must Distribute the Funds Elected. The account is created to provide for the allocation of revenues distributed to the state under the Mineral Lands Leasing Act of 1920 and the Geothermal Steam Act of 1970. Funds from this account must be distributed 30 percent to DNR for geothermal exploration, 30 percent to the Washington State University for encouraging development of geothermal resources; and 40 percent to the county of origin for mitigating the impacts caused by geothermal energy exploration, assessment, and development.

The State Treasurer is responsible for the distribution of funds to the county of origin.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Geothermal resources are renewable, reliable load-based resources. Pursuing renewable geothermal resources is important to working toward a carbon free future.

This bill aligns state and federal law together to make it easier for geothermal resource development to occur, particularly on DNR-managed land, in a number of ways. It clarifies the definition of geothermal resources, which was a substantial barrier to development due to the commercial viability requirement. This requirement was outdated and did not reflect technological advances made since the 1970s, when Washington's definition was first written. The definition in this bill is in line with the federal definition of geothermal resources and is similar to what other states have done. The bill addresses water rights issues, specifically clarifying what activities are and are not subject to the water permitting process. Additionally, the bill reinstates the disbursement of funds from the account that recently expired.

The encouragement of cooperation between DNR and DOE is also helpful.

Persons Testifying: PRO: Senator Kline, prime sponsor; Dave Norman, DNR; Brenda White, Snohomish PUD; Steve Robinson, Tulalip and Umatilla Tribes; Travis Burns, DOE; Kathleen Callison, Law Offices of Kathleen Callison.