
SENATE BILL 5369

State of Washington

63rd Legislature

2013 Regular Session

By Senators Kline, King, Honeyford, and Mullet

Read first time 01/28/13. Referred to Committee on Energy, Environment & Telecommunications.

1 AN ACT Relating to the use of geothermal resources; amending RCW
2 78.60.030, 78.60.040, and 78.60.060; adding a new chapter to Title 43
3 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that:

6 (1) Because related geothermal resources may be present on
7 contiguous private, state, and federal lands within the state, there is
8 a need to provide greater conformity with the state's geothermal
9 resources statutes and the federal statutes defining geothermal
10 resources and clarify that ownership of geothermal resources resides
11 with the surface owner unless the interest is otherwise reserved or
12 conveyed.

13 (2) It is in the public interest to encourage and foster the
14 development of geothermal resources in the state, and the legislature
15 intends to align the state statutes defining geothermal resources with
16 current federal law with which developers are familiar, and clarify the
17 respective regulatory roles of state agencies.

18 (3) Geothermal resources suitable for energy development are
19 located at much greater depths than the aquifers relied upon for other

1 beneficial uses, but in the event that a geothermal well draws from the
2 same source as other uses, a coordinated and streamlined permitting of
3 geothermal development can better ensure that any interference with
4 existing water uses will be addressed and eliminated. It is the intent
5 of this act that no water uses associated with a geothermal well impair
6 any water use authorized through appropriation under Title 90 RCW.

7 (4) Changes to federal law in 2005 require a distribution of a
8 portion of geothermal energy revenues from leases on federal land
9 directly to the county in which the lease activity occurs, and
10 therefore it is appropriate that the additional distribution to the
11 state be provided for statewide uses relating to geothermal energy
12 assessment, exploration, and production.

13 **Sec. 2.** RCW 78.60.030 and 1974 ex.s. c 43 s 3 are each amended to
14 read as follows:

15 (~~For the purposes of this chapter, unless the text otherwise~~
16 ~~requires, the following terms shall have the following meanings:~~) The
17 definitions in this section apply throughout this chapter unless the
18 context clearly requires otherwise.

19 (1)(a) "Geothermal resources" (~~means only that natural heat energy~~
20 ~~of the earth from which it is technologically practical to produce~~
21 ~~electricity commercially and the medium by which such heat energy is~~
22 ~~extracted from the earth, including liquids or gases, as well as any~~
23 ~~minerals contained in any natural or injected fluids, brines and~~
24 ~~associated gas, but excluding oil, hydrocarbon gas and other~~
25 ~~hydrocarbon substances)) includes the natural heat of the earth, the
26 energy, in whatever form, below the surface of the earth present in,
27 resulting from, or created by, or that may be extracted from, the
28 natural heat, and all minerals in solution or other products obtained
29 from naturally heated fluids, brines, associated gases and steam, in
30 whatever form, found below the surface of the earth, exclusive of
31 helium or oil, hydrocarbon gas or other hydrocarbon substances, but
32 including, specifically:~~

33 (i) All products of geothermal processes, including indigenous
34 steam, and hot water and hot brines;

35 (ii) Steam and other bases, hot water and hot brines resulting from
36 water, gas, or other fluids artificially introduced into geothermal
37 formations;

1 (iii) Heat or other associated energy found in geothermal
2 formations; and

3 (iv) Any by-product derived from them.

4 (b) "Geothermal resources" does not include heat energy used in
5 ground source heat exchange systems for ground source heat pumps.

6 (2) "Waste", in addition to its ordinary meaning, shall mean
7 "physical waste" as that term is generally understood and shall
8 include:

9 (a) The inefficient, excessive, or improper use of, or unnecessary
10 dissipation of, reservoir energy; or the locating, spacing, drilling,
11 equipping, operating or producing of any geothermal energy well in a
12 manner which results, or tends to result, in reducing the quantity of
13 geothermal energy to be recovered from any geothermal area in this
14 state;

15 (b) The inefficient above-ground transporting or storage of
16 geothermal energy; or the locating, spacing, drilling, equipping,
17 operating, or producing of any geothermal well in a manner causing, or
18 tending to cause, unnecessary excessive surface loss or destruction of
19 geothermal energy;

20 (c) The escape into the open air, from a well of steam or hot
21 water, in excess of what is reasonably necessary in the efficient
22 development or production of a geothermal well.

23 (3) "Geothermal area" means any land that is, or reasonably appears
24 to be, underlain by geothermal resources.

25 (4) "Energy transfer system" means the structures and enclosed
26 fluids which facilitate the utilization of geothermal energy. The
27 system includes the geothermal wells, cooling towers, reinjection
28 wells, equipment directly involved in converting the heat energy
29 associated with geothermal resources to mechanical or electrical energy
30 or in transferring it to another fluid, the closed piping between such
31 equipment, wells and towers and that portion of the earth which
32 facilitates the transfer of a fluid from reinjection wells to
33 geothermal wells: PROVIDED, That the system shall not include any
34 geothermal resources which have escaped into or have been released into
35 the nongeothermal ground or surface waters from either man-made
36 containers or through leaks in the structure of the earth caused by or
37 to which access was made possible by any drilling, re-drilling,
38 reworking or operating of a geothermal or reinjection well.

1 (5) "Operator" means the person supervising or in control of the
2 operation of a geothermal resource well, whether or not such person is
3 the owner of the well.

4 (6) "Owner" means the person who possesses the legal right to
5 drill, convert or operate any well or other facility subject to the
6 provisions of this chapter.

7 (7) "Person" means any individual, corporation, company,
8 association of individuals, joint venture, partnership, receiver,
9 trustee, guardian, executor, administrator, personal representative, or
10 public agency that is the subject of legal rights and duties.

11 (8) "Pollution" means any damage or injury to ground or surface
12 waters, soil or air resulting from the unauthorized loss, escape, or
13 disposal of any substances at any well subject to the provisions of
14 this chapter.

15 (9) "Department" means the department of natural resources.

16 (10) "Well" means any excavation made for the discovery or
17 production of geothermal resources, or any special facility, converted
18 producing facility, or reactivated or converted abandoned facility used
19 for the reinjection of geothermal resources, or the residue thereof
20 underground.

21 (11) "Core holes" are holes drilled or excavations made expressly
22 for the acquisition of geological or geophysical data for the purpose
23 of finding and delineating a favorable geothermal area prior to the
24 drilling of a well.

25 (12) A "completed well" is a well that has been drilled to its
26 total depth, has been adequately cased, and is ready to be either
27 plugged and abandoned, shut-in, or put into production.

28 (13) "Plug and abandon" means to place permanent plugs in the well
29 in such a way and at such intervals as are necessary to prevent future
30 leakage of fluid from the well to the surface or from one zone in the
31 well to the other, and to remove all drilling and production equipment
32 from the site, and to restore the surface of the site to its natural
33 condition or contour or to such condition as may be prescribed by the
34 department.

35 (14) "Shut-in" means to adequately cap or seal a well to control
36 the contained geothermal resources for an interim period.

37 (15) "By-product" means any mineral or minerals, not including oil,
38 hydrocarbon gas, or helium, which are found in solution or in

1 association with geothermal steam and that have a value of less than
2 seventy-five percent of the value of the geothermal resource or are
3 not, because of quantity, quality, or technical difficulties in
4 extraction and production, of sufficient value to warrant extraction
5 and production by themselves.

6 **Sec. 3.** RCW 78.60.040 and 1979 ex.s. c 2 s 1 are each amended to
7 read as follows:

8 Notwithstanding any other provision of law, geothermal resources
9 are found and hereby determined to be sui generis, being neither a
10 mineral resource nor a water resource and as such are (~~hereby~~)
11 declared to be the private property of the holder of the title to the
12 surface land above the resource, unless the geothermal resources have
13 been otherwise reserved by or conveyed to another person or entity.
14 Nothing in this section divests the people of the state of any rights,
15 title, or interest in geothermal resources owned by the state.

16 **Sec. 4.** RCW 78.60.060 and 2003 c 39 s 40 are each amended to read
17 as follows:

18 (1) This chapter is intended to preempt local regulation of the
19 drilling and operation of wells for geothermal resources but shall not
20 be construed to permit the locating of any well or drilling when such
21 well or drilling is prohibited under state or local land use law or
22 regulations promulgated thereunder. Geothermal resources, by-products
23 (~~and/or~~), or waste products which have escaped or been released from
24 the energy transfer system (~~and/or~~) or a mineral recovery process
25 shall be subject to provisions of state law relating to the pollution
26 of ground or surface waters (Title 90 RCW), provisions of the state
27 fisheries law and the state game laws (Title 77 RCW), and any other
28 state environmental pollution control laws.

29 (2) Authorization for (~~use of by-product water resources for all~~
30 ~~beneficial uses~~) a consumptive or nonconsumptive use of water
31 associated with a geothermal well, for purposes including but not
32 limited to power production, greenhouse heating, warm water fish
33 propagation, space heating plants, irrigation, swimming pools, and hot
34 springs baths, shall be subject to the appropriation procedure as
35 provided in Title 90 RCW, except for the following:

1 (a) Water that is removed from an aquifer or geothermal reservoir
2 to develop and obtain geothermal resources if the water is returned to
3 or reinjected into the same aquifer or reservoir; or

4 (b) The reasonable loss of water:

5 (i) During a test of a geothermal well; or

6 (ii) From the temporary failure of all or part of a system that
7 removes water from an aquifer or geothermal reservoir, transfers the
8 heat from that water, and reinjects that water into the same aquifer or
9 reservoir; or

10 (c) Water that is removed from a geothermal well in conjunction
11 with single or group domestic uses or for an industrial purpose in an
12 amount not exceeding five thousand gallons a day as provided in RCW
13 90.44.050.

14 (3) The department and the department of ecology shall cooperate to
15 avoid duplication and to promote efficiency in issuing permits and
16 other approvals for these uses.

17 (4) If interference between an existing geothermal well and an
18 existing water right permitted under Title 90 RCW is found by either
19 the department or the department of ecology, the department and the
20 department of ecology shall work cooperatively to resolve the conflict
21 and develop a cooperative management program for the area. In
22 determining what action should be taken, they shall consider the
23 following goals:

24 (a) Achieving the most beneficial use of the water and heat
25 resources;

26 (b) Allowing all existing users of the resources to continue to use
27 those resources to the greatest extent possible; and

28 (c) Ensuring that the public interest in efficient use of water and
29 heat resources is protected.

30 NEW SECTION. Sec. 5. The purpose of this chapter is to provide
31 for the allocation of revenues distributed to the state under section
32 35 of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. Sec.
33 191), with respect to activities of the United States bureau of land
34 management undertaken pursuant to the Geothermal Steam Act of 1970 (30
35 U.S.C. Sec. 1001 et seq.) in order to accomplish the following general
36 objectives:

- 1 (1) Reduction of dependence on nonrenewable energy and stimulation
- 2 of the state's economy through development of geothermal energy.
- 3 (2) Mitigation of the social, economic, and environmental impacts
- 4 of geothermal development.
- 5 (3) Maintenance of the productivity of renewable resources through
- 6 the investment of proceeds from these resources.

7 NEW SECTION. **Sec. 6.** (1) There is created the geothermal account
8 in the state treasury. All expenditures from this account are subject
9 to appropriation and chapter 43.88 RCW.

10 (2) All revenues received by the state treasurer under section 35
11 of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. Sec.
12 191), with respect to activities of the United States bureau of land
13 management undertaken pursuant to the Geothermal Steam Act of 1970 (30
14 U.S.C. Sec. 1001 et seq.) shall be deposited in the geothermal account
15 in the state treasury immediately upon receipt.

16 (3) Expenditures from the account may only be used as provided in
17 section 7 of this act.

18 NEW SECTION. **Sec. 7.** Distribution of funds from the geothermal
19 account created in section 6 of this act shall be subject to the
20 following limitations:

21 (1) Seventy percent to the department of natural resources for
22 geothermal exploration and assessment; and

23 (2) Thirty percent to Washington State University or its statutory
24 successor for the purpose of encouraging the development of geothermal
25 energy.

26 NEW SECTION. **Sec. 8.** Sections 5 through 7 of this act constitute
27 a new chapter in Title 43 RCW.

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