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SENATE BILL 6285

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State of Washington

62nd Legislature

2012 Regular Session

By Senators Kline, Nelson, Ranker, Stevens, and Fraser

Read first time 01/16/12. Referred to Committee on Energy, Natural Resources & Marine Waters.

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

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

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

1       (~~For the purposes of this chapter, unless the text otherwise~~  
2 ~~requires, the following terms shall have the following meanings:~~) The  
3 definitions in this section apply throughout this chapter unless the  
4 context clearly requires otherwise.

5       (1)(a) "Geothermal resources" (~~means only that natural heat energy~~  
6 ~~of the earth from which it is technologically practical to produce~~  
7 ~~electricity commercially and the medium by which such heat energy is~~  
8 ~~extracted from the earth, including liquids or gases, as well as any~~  
9 ~~minerals contained in any natural or injected fluids, brines and~~  
10 ~~associated gas, but excluding oil, hydrocarbon gas and other~~  
11 ~~hydrocarbon substances)) includes the natural heat of the earth, the  
12 energy, in whatever form, below the surface of the earth present in,  
13 resulting from, or created by, or that may be extracted from, the  
14 natural heat, and all minerals in solution or other products obtained  
15 from naturally heated fluids, brines, associated gases and steam, in  
16 whatever form, found below the surface of the earth, exclusive of  
17 helium or oil, hydrocarbon gas or other hydrocarbon substances, but  
18 including, specifically:~~

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

21       (ii) Steam and other bases, hot water and hot brines resulting from  
22 water, gas, or other fluids artificially introduced into geothermal  
23 formations;

24       (iii) Heat or other associated energy found in geothermal  
25 formations; and

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

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

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

32       (a) The inefficient, excessive, or improper use of, or unnecessary  
33 dissipation of, reservoir energy; or the locating, spacing, drilling,  
34 equipping, operating or producing of any geothermal energy well in a  
35 manner which results, or tends to result, in reducing the quantity of  
36 geothermal energy to be recovered from any geothermal area in this  
37 state;

1 (b) The inefficient above-ground transporting or storage of  
2 geothermal energy; or the locating, spacing, drilling, equipping,  
3 operating, or producing of any geothermal well in a manner causing, or  
4 tending to cause, unnecessary excessive surface loss or destruction of  
5 geothermal energy;

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

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

11 (4) "Energy transfer system" means the structures and enclosed  
12 fluids which facilitate the utilization of geothermal energy. The  
13 system includes the geothermal wells, cooling towers, reinjection  
14 wells, equipment directly involved in converting the heat energy  
15 associated with geothermal resources to mechanical or electrical energy  
16 or in transferring it to another fluid, the closed piping between such  
17 equipment, wells and towers and that portion of the earth which  
18 facilitates the transfer of a fluid from reinjection wells to  
19 geothermal wells: PROVIDED, That the system shall not include any  
20 geothermal resources which have escaped into or have been released into  
21 the nongeothermal ground or surface waters from either man-made  
22 containers or through leaks in the structure of the earth caused by or  
23 to which access was made possible by any drilling, redrilling,  
24 reworking or operating of a geothermal or reinjection well.

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

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

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

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

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

2 (10) "Well" means any excavation made for the discovery or  
3 production of geothermal resources, or any special facility, converted  
4 producing facility, or reactivated or converted abandoned facility used  
5 for the reinjection of geothermal resources, or the residue thereof  
6 underground.

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

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

14 (13) "Plug and abandon" means to place permanent plugs in the well  
15 in such a way and at such intervals as are necessary to prevent future  
16 leakage of fluid from the well to the surface or from one zone in the  
17 well to the other, and to remove all drilling and production equipment  
18 from the site, and to restore the surface of the site to its natural  
19 condition or contour or to such condition as may be prescribed by the  
20 department.

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

23 (15) "By-product" means any mineral or minerals, not including oil,  
24 hydrocarbon gas, or helium, which are found in solution or in  
25 association with geothermal steam and that have a value of less than  
26 seventy-five percent of the value of the geothermal resource or are  
27 not, because of quantity, quality, or technical difficulties in  
28 extraction and production, of sufficient value to warrant extraction  
29 and production by themselves.

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

32 Notwithstanding any other provision of law, geothermal resources  
33 are found and hereby determined to be sui generis, being neither a  
34 mineral resource nor a water resource and as such are ((hereby))  
35 declared to be the private property of the holder of the title to the  
36 surface land above the resource, unless the geothermal resources have

1 been otherwise reserved by or conveyed to another person or entity.  
2 Nothing in this section divests the people of the state of any rights,  
3 title, or interest in geothermal resources owned by the state.

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

6 (1) This chapter is intended to preempt local regulation of the  
7 drilling and operation of wells for geothermal resources but shall not  
8 be construed to permit the locating of any well or drilling when such  
9 well or drilling is prohibited under state or local land use law or  
10 regulations promulgated thereunder. Geothermal resources, by-products  
11 ((and/or)), or waste products which have escaped or been released from  
12 the energy transfer system ((and/or)) or a mineral recovery process  
13 shall be subject to provisions of state law relating to the pollution  
14 of ground or surface waters (Title 90 RCW), provisions of the state  
15 fisheries law and the state game laws (Title 77 RCW), and any other  
16 state environmental pollution control laws.

17 (2) Authorization for ((use of by-product water resources for all  
18 beneficial uses)) a consumptive use of water brought to the surface  
19 outside of a geothermal well, including but not limited to power  
20 production, greenhouse heating, warm water fish propagation, space  
21 heating plants, irrigation, swimming pools, and hot springs baths,  
22 shall be subject to the appropriation procedure as provided in Title 90  
23 RCW.

24 (3) Authorization for the use of water brought to the surface  
25 outside of a geothermal well is not subject to the appropriation  
26 procedure as provided in Title 90 RCW in the following circumstances:

27 (a) Water that is removed from an aquifer or geothermal reservoir to  
28 develop and obtain geothermal resources if the water is returned to or  
29 reinjects into the same aquifer or reservoir; (b) water that is used  
30 during a temporary failure of all or part of a system that removes  
31 water from an aquifer or geothermal reservoir, transfers the heat from  
32 that water, and reinjects that water into the same aquifer or  
33 reservoir; or (c) water that is used during a test of a geothermal  
34 well; or (d) water that is removed from a geothermal well in  
35 conjunction with single or group domestic uses or for an industrial  
36 purpose in an amount not exceeding five thousand gallons a day as  
37 provided in RCW 90.44.050.

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

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

11       (a) Achieving the most beneficial use of the water and heat  
12 resources;

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

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

17       NEW SECTION. Sec. 5. The purpose of this chapter is to provide  
18 for the allocation of revenues distributed to the state under section  
19 35 of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. Sec.  
20 191), with respect to activities of the United States bureau of land  
21 management undertaken pursuant to the Geothermal Steam Act of 1970 (30  
22 U.S.C. Sec. 1001 et seq.) in order to accomplish the following general  
23 objectives:

24       (1) Reduction of dependence on nonrenewable energy and stimulation  
25 of the state's economy through development of geothermal energy.

26       (2) Mitigation of the social, economic, and environmental impacts  
27 of geothermal development.

28       (3) Financial assistance to counties to offset the costs of  
29 providing public services and facilities necessitated by the  
30 development of geothermal resources within their jurisdictions.

31       (4) Maintenance of the productivity of renewable resources through  
32 the investment of proceeds from these resources.

33       NEW SECTION. Sec. 6. The definitions in this section apply  
34 throughout this chapter unless the context clearly requires otherwise.

35       (1) "County of origin" means any county in which the United States  
36 bureau of land management has leased lands for geothermal development.

1 (2) "Geothermal energy" means the natural heat of the earth and the  
2 medium by which this heat is extracted from the earth, including  
3 liquids or gases, as well as any minerals contained in any natural or  
4 injected fluids, brines, and associated gas but excluding oil,  
5 hydrocarbon gas, and other hydrocarbon substances.

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

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

15 (3) Expenditures from the account may only be used as provided in  
16 section 8 of this act.

17 NEW SECTION. **Sec. 8.** Distribution of funds from the geothermal  
18 account created in section 7 of this act shall be subject to the  
19 following limitations:

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

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

25 (3) Forty percent to the county of origin for mitigating impacts  
26 caused by geothermal energy exploration, assessment, and development.

27 NEW SECTION. **Sec. 9.** The state treasurer is responsible for  
28 distribution of funds to the county of origin. Each county's share of  
29 rentals and royalties from a lease including lands in more than one  
30 county shall be computed on the basis of the ratio that the acreage  
31 within each county has to the total acreage in the lease. Washington  
32 State University shall obtain the necessary information to make the  
33 distribution of funds on such a basis.

1           NEW SECTION.   **Sec. 10.**   Sections 5 through 9 of this act constitute  
2   a new chapter in Title 43 RCW.

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