

HOUSE BILL REPORT

SSB 5369

As Passed House - Amended:

April 15, 2013

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

Brief Description: Concerning the use of geothermal resources.

Sponsors: Senate Committee on Energy, Environment & Telecommunications (originally sponsored by Senators Kline, King, Honeyford and Mullet).

Brief History:

Committee Activity:

Environment: 3/19/13, 3/20/13 [DPA];

Appropriations Subcommittee on General Government: 4/4/13 [DPA(ENVI)].

Floor Activity:

Passed House - Amended: 4/15/13, 95-0.

Brief Summary of Substitute Bill (As Amended by House)

- Recreates the Geothermal Account to receive and direct the distribution of all revenues related to geothermal resource extraction on federal lands located in Washington.
- Updates the existing definition of "geothermal resources" to add specific inclusions and exemptions.
- Clarifies the relationship among geothermal resource wells and water wells.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: Do pass as amended. Signed by 7 members: Representatives Upthegrove, Chair; McCoy, Vice Chair; Short, Ranking Minority Member; Pike, Assistant Ranking Minority Member; Morris, Nealey and Tharinger.

Minority Report: Without recommendation. Signed by 1 member: Representative Overstreet.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Jason Callahan (786-7117).

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT

Majority Report: Do pass as amended by Committee on Environment. Signed by 8 members: Representatives Hudgins, Chair; Parker, Ranking Minority Member; Buys, Chandler, Dunshee, Hunt, Pedersen and Springer.

Minority Report: Do not pass. Signed by 1 member: Representative Taylor.

Staff: Michael Bennion (786-7118).

Background:

State Management of Geothermal Resources.

The Department of Natural Resources (DNR) is responsible for administering and enforcing state laws related to the drilling, operation, maintenance, abandonment, and restoration of geothermal resources. The term "geothermal resources" means the natural heat energy of the Earth from which electricity can be produced and the mediums used to extract the heat energy. The term does not include oil, gas, or other hydrocarbon substances. Geothermal resources are the private property of the person who owns the associated land's surface rights.

A permit must be issued by the DNR before any person may drill a new well, or recommission an abandoned well, that is to be used for geothermal resource extraction. The fee for a geothermal resources well permit is \$200. This fee revenue is deposited into the General Fund. Permits are only approved by the DNR if the well is found to be in the best interest of the state and if the well will not unreasonably decrease groundwater available to senior water right holders.

Federal Management of Geothermal Resources.

The federal Geothermal Steam Act of 1970 is managed and administered by the Bureau of Land Management (BLM). The BLM is responsible for authorizing the exploration, development, production, and closeout of geothermal resources on federal lands. Fifty percent of the royalties from geothermal resource exploration managed by the BLM are distributed to the state where the resource was found. The remaining 50 percent is evenly split between the federal government and the county government where the resource was found.

Historic State Geothermal Statutes.

In 1981 the Legislature created a statutory framework for distributing revenue received from the BLM for geothermal resource development in Washington. That initial framework was set to terminate after 20 years. In 2001 the initial termination date was extended for an additional decade. This framework, although still codified, officially terminated in 2011.

The centerpiece of the now-terminated statutes was an account to receive any funds owed to the state by the BLM. Funds in this account were split three ways: 30 percent to the DNR,

30 percent to Washington State University (WSU), and 40 percent to the county where the geothermal resource was extracted.

Groundwater Regulations.

All groundwater withdrawals require an application and permit from the Department of Ecology (DOE). Exemptions from this permit include any withdrawal of public groundwater for stock-watering purposes, or for watering a lawn or a noncommercial garden less than one-half acre. Single or group domestic uses or industrial purposes in an amount not exceeding 5,000 gallons a day are also exempt, as is providing water for industrial purposes, including irrigation, in an amount not exceeding 5,000 gallons per day.

Summary of Amended Bill:

A new chapter is created in state law with the intent to provide for the allocation of revenues related to geothermal exploration. A new appropriated account, the Geothermal Account, is created to receive all revenues related to geothermal activities of the BLM under the Geothermal Steam Act of 1970. Seventy percent of all revenues in the Geothermal Account must be distributed to the DNR with the remaining balance distributed to WSU. The DNR's portion of the funding must be used for geothermal exploration and assessments. The portion dedicated to WSU must be used for the purpose of encouraging the development of geothermal energy.

The definition of "geothermal resources" is changed to expressly include within its scope all products of geothermal processes, fluids and steam artificially introduced into geothermal formations, heat found in geothermal formations, and any by-product derived from geothermal formations. The definition clarification also expressly excludes heat energy used in ground source heat exchange systems and helium.

Exemptions are provided to the general statement that all water use related to geothermal resources is subject to the general water law appropriation procedure. These exemptions are for water reasonably lost during well testing or a temporary failure of geothermal extraction infrastructure and for water that is removed from an aquifer in the geothermal extraction process but later returned or reinjected into the same aquifer. The DNR and the DOE must cooperate to avoid permitting duplication related to geothermal activities that affect water.

An express acknowledgment is made that the holder of title to a land's surface rights may convey the rights to the underlying geothermal resources to another party. However, that acknowledgment does not divest the state of Washington with its interest in state-owned geothermal resources.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Environment):

(In support) The goal is to make Washington an inviting place for the leasing of land and the development of geothermal resources. There is no active geothermal extraction underway now in Washington; however, there are a number of sites with potential and an existing interest in leasing, exploration, and job creation. Washington's geography is complex and exploration is difficult. But Washington also has significant high-heat features, such as volcanoes and hot springs, that are indicative of potential.

Geothermal energy is a baseline, renewable power that can help the state lower its carbon footprint. Expanded geothermal extraction also will create good, high-paying jobs in the state. To encourage this, ownership of the resources and the definition of the resource itself has to be clarified to be consistent with federal regulations, case law, and tax policy. The current inconsistent definitions and policies are a barrier to the development of geothermal resources. They are also not representative of modern exploration and extraction technologies.

Thought has been given as to how geothermal extraction interacts with water rights. It is clear in the bill that existing water rights would not be impaired by geothermal development. It is also clear when a geothermal operation would, and would not, require a water right or permit.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations Subcommittee on General Government):

(In support) The Department of Natural Resources is supportive of the intent of the bill and the distribution of federal funds if they were to become available. It is appropriate that these funds be used to encourage geothermal development. Washington is a high heat flow state with many geologic features that offer excellent opportunities and potential for developing geothermal energy. There is no current geothermal production in the state, but geothermal energy is a baseload renewable power that can help the state meet its goals of reducing its carbon footprint.

The bill provides for changes to law that promote development of geothermal resources and will be consistent with other state and federal laws. The coordination between state agencies identified in the bill will support greater clarity and efficiency on the use of state resources and on permit processes, and will provide for severing interests in geothermal resources from the overlying service of the state which will allow for the developer to have more certainty about the source of the resource. The state will also retain the resource as it sells state lands.

(Opposed) None.

Persons Testifying (Environment): Senator Kline, prime sponsor; Dave Norman, Department of Natural Resources; Kathleen Callison, Law Office of Kathleen Callison; Anthony Chavez, Weyerhaeuser; and Trenton Cladouhos, AltaRock Energy.

Persons Testifying (Appropriations Subcommittee on General Government): Dave Norman, Department of Natural Resources; and Kathy Callison, Law Office of Kathleen Callison PS.

Persons Signed In To Testify But Not Testifying (Environment): None.

Persons Signed In To Testify But Not Testifying (Appropriations Subcommittee on General Government): None.