

SENATE BILL REPORT

SB 5369

As Reported by Senate Committee On:
Energy, Environment & Telecommunications, February 21, 2013

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

Brief Description: Concerning the use of geothermal resources.

Sponsors: Senators Kline, King, Honeyford and Mullet.

Brief History:

Committee Activity: Energy, Environment & Telecommunications: 2/12/13, 2/21/13
[DPS].

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Majority Report: That Substitute Senate Bill No. 5369 be substituted therefor, and the substitute bill do pass.

Signed by Senators Ericksen, Chair; Sheldon, Vice Chair; Ranker, Ranking Member; Billig, Brown, Chase, Cleveland, Honeyford and Litzow.

Staff: Diane Smith (786-7410)

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 entity, 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

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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:

- 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 per day; or
- providing water for industrial purposes, including irrigation, in an amount not exceeding 5,000 gallons per 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 geothermal energy account was eliminated.

Summary of Bill (Recommended 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, excluding helium and oil, and including the following:

- well products of geothermal processes, including indigenous steam, 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; and
- heat or other associated energy found in geothermal formations 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. By-products are defined as any minerals, except hydrocarbon gas, helium, or oil found in association with geothermal streams that do not warrant extraction and production based on their own economic value.

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 and Non-consumptive Uses of Water Brought to the Surface is Amended. Authorization under the Water Code is needed for consumptive and non-consumptive uses including but not limited to power production. Authorization 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; or
- water that is used during a test of a geothermal well.

DOE Given Additional Duties. DNR and DOE must avoid duplication and promote efficiency when issuing permits and other approvals for these uses.

Existing Water Rights Not Impaired. The Act must neither affect nor operate to impair any existing water rights.

Geothermal Energy Account Restored, Directions Given for the Distribution of Funds. The geothermal energy 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 70 percent to DNR for geothermal exploration, and 30 percent to Washington State University for encouraging development of geothermal resources.

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

EFFECT OF CHANGES MADE BY ENERGY, ENVIRONMENT & TELECOMMUNICATIONS COMMITTEE (Recommended Substitute): The provision regarding the removal of water within the groundwater exemption is removed. Provisions regarding conflict resolution conducted by DOE and DNR between existing geothermal and existing water right holders are removed. It is clarified that nothing in the act may affect or operate to impair any existing water rights.

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 on Original Bill: PRO: This is a simple bill that only slightly changes the definition of geothermal resources to comport with the federal definition. We hope to further private sector development of geothermal resources, of which there are two known areas in Washington. The water used for these purposes is one-half to one mile below the aquifers with minor water impacts. Washington is a high heat-flow state with many features such as volcanoes, hot springs, and faults. This is considered green energy. The bill provides needed clarity.

CON: Because of the dual nature of the bill, concerning both water and geothermal mining, there needs to be clarification.

Persons Testifying: PRO: Senator Kline, prime sponsor; Dave Norman, DNR; Anthony Chavez, Weyerhaeuser; Evan Sheffels, DOE.

CON: Kathleen Collins, WA Water Policy Alliance.