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**SUBSTITUTE SENATE BILL 5369**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2013 Regular Session

**State of Washington                      63rd Legislature                      2013 Regular Session**

**By** Senate Energy, Environment & Telecommunications (originally sponsored by Senators Kline, King, Honeyford, and Mullet)

READ FIRST TIME 02/22/13.

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; creating a new section; and repealing RCW 43.140.010, 43.140.020,  
4 43.140.030, 43.140.040, 43.140.050, 43.140.060, and 43.140.900.

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

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

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

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

1 (3) Geothermal resources suitable for energy development are  
2 located at much greater depths than the aquifers relied upon for other  
3 beneficial uses, but in the event that a geothermal well draws from the  
4 same source as other uses, a coordinated and streamlined permitting of  
5 geothermal development can better ensure that any interference with  
6 existing water uses will be addressed and eliminated. It is the intent  
7 of this act that no water uses associated with a geothermal well impair  
8 any water use authorized through appropriation under Title 90 RCW.

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

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

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

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

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

1        (ii) Steam and other bases, hot water and hot brines resulting from  
2 water, gas, or other fluids artificially introduced into geothermal  
3 formations;

4        (iii) Heat or other associated energy found in geothermal  
5 formations; and

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

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

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

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

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

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

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

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

1 containers or through leaks in the structure of the earth caused by or  
2 to which access was made possible by any drilling, redrilling,  
3 reworking or operating of a geothermal or reinjection well.

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

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

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

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

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

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

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

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

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

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

3 (15) "By-product" means any mineral or minerals, not including oil,  
4 hydrocarbon gas, or helium, which are found in solution or in  
5 association with geothermal steam and that have a value of less than  
6 seventy-five percent of the value of the geothermal resource or are  
7 not, because of quantity, quality, or technical difficulties in  
8 extraction and production, of sufficient value to warrant extraction  
9 and production by themselves.

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

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

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

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

33 (2) Authorization for ((~~use of by product water resources for all~~  
34 beneficial uses)) a consumptive or nonconsumptive use of water  
35 associated with a geothermal well, for purposes including but not  
36 limited to power production, greenhouse heating, warm water fish

1 propagation, space heating plants, irrigation, swimming pools, and hot  
2 springs baths, shall be subject to the appropriation procedure as  
3 provided in Title 90 RCW, except for the following:

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

7 (b) The reasonable loss of water:

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

9 (ii) From the temporary failure of all or part of a system that  
10 removes water from an aquifer or geothermal reservoir, transfers the  
11 heat from that water, and reinjects that water into the same aquifer or  
12 reservoir.

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

16 (4) Nothing in this act shall affect or operate to impair any  
17 existing water rights.

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

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

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

29 (3) Maintenance of the productivity of renewable resources through  
30 the investment of proceeds from these resources.

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

34 (2) All revenues received by the state treasurer under section 35  
35 of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. Sec.  
36 191), with respect to activities of the United States bureau of land

1 management undertaken pursuant to the Geothermal Steam Act of 1970 (30  
2 U.S.C. Sec. 1001 et seq.) shall be deposited in the geothermal account  
3 in the state treasury immediately upon receipt.

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

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

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

11 (2) Thirty percent to Washington State University or its statutory  
12 successor for the purpose of encouraging the development of geothermal  
13 energy.

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

16 NEW SECTION. **Sec. 9.** The following acts or parts of acts are each  
17 repealed:

18 (1) RCW 43.140.010 (Purpose) and 1981 c 158 s 1;

19 (2) RCW 43.140.020 (Definitions) and 1981 c 158 s 2;

20 (3) RCW 43.140.030 (Geothermal account--Deposit of revenues) and  
21 1991 sp.s. c 13 s 7, 1985 c 57 s 58, & 1981 c 158 s 3;

22 (4) RCW 43.140.040 (Geothermal account--Limitations on  
23 distributions) and 1996 c 186 s 510 & 1981 c 158 s 4;

24 (5) RCW 43.140.050 (Distribution of funds to county of origin) and  
25 1996 c 186 s 511, 1996 c 186 s 107, & 1981 c 158 s 5;

26 (6) RCW 43.140.060 (Appropriation for exploration and assessment of  
27 geothermal energy--Reimbursement) and 1981 c 158 s 7; and

28 (7) RCW 43.140.900 (Termination of chapter) and 2001 c 215 s 1,  
29 1991 c 76 s 1, & 1981 c 158 s 8.

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