

# WEST VIRGINIA LEGISLATURE

## 2022 REGULAR SESSION

### Introduced

## House Bill 4098

FISCAL  
NOTE

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WAMSLEY, AND REYNOLDS

[Introduced January 17, 2022; Referred to the  
Committee on Energy and Manufacturing then the  
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §22-33-1, §22-33-2, §22-33-3, §22-33-4, §22-33-5, §22-33-6, §22-33-7, §22-  
 3 33-8, and §22-33-9, all relating to geothermal energy development; defining terms;  
 4 applying this article to geothermal resources at temperatures above the minimum  
 5 temperature and the minimum volumetric rate as set forth by the department pursuant to  
 6 §22-33-5 of this code; defining ownership rights; stating findings and separateness of the  
 7 resource; delegating and defining powers of the department; providing for cancellation or  
 8 rejection of permits; providing for civil penalties and injunctions; and delegating judicial  
 9 review.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 33. GEOTHERMAL ENERGY DEVELOPMENT.**

**§22-33-1. Definitions relating to the exploration and production of geothermal energy.**

1 (a) "Correlative right" means the right of each geothermal owner in a geothermal system  
 2 to produce without waste his or her just and equitable share of the geothermal resources in the  
 3 geothermal system.

4 (b) "Geothermal energy" means the usable energy that is produced or that can be  
 5 produced from a geothermal resource.

6 (c) "Geothermal resource" means the natural heat of the earth and the energy, in whatever  
 7 form, that is present in, associated with, or created by, or that may be extracted from, such natural  
 8 heat, as determined by the rules of the department.

9 (d) "Geothermal system" means any aquifer, pool, reservoir, or other geologic formation  
 10 containing geothermal resources.

**§22-33-2. Application.**

1 The provisions of this article regarding permitting, well regulations, reservoir management,  
 2 and allocation apply to geothermal resources at temperatures above the minimum temperature  
 3 and the minimum volumetric rate as set forth by the department pursuant to §22-33-5 of this code.

**§22-33-3. Ownership.**

1 Ownership rights to geothermal resources are vested in the owner of the surface property  
2 over the geothermal resource unless such rights have been otherwise explicitly reserved or  
3 conveyed. Nothing in this section shall divest the people or the state of any rights, title, or interest  
4 they might have in any geothermal resource.

**§22-33-4. Findings; clarification of nature of the resource.**

1 Geothermal resources are found and hereby declared to be a different resource, being  
2 neither mineral resources nor water resources. No mineral estate shall be construed to include  
3 geothermal resources unless such inclusion is explicit in the terms of the deed or other instrument  
4 of conveyance or reservation.

**§22-33-5. Powers and duties of the department.**

1 (a) The Department of Environmental Protection has jurisdiction and authority over all  
2 persons and property, public and private, necessary to enforce the provisions of this article and  
3 has the power and authority to promulgate and enforce rules and orders and do whatever is  
4 reasonably necessary to carry out the provisions of this article. Any rules promulgated by the  
5 department pursuant to the provisions of this article shall be adopted in compliance with §29A-1-  
6 1 et seq. of this code, State Administrative Procedures Act.

7 (b) The department shall:

8 (1) Develop a comprehensive geothermal permitting system for the state that provides for  
9 the exploration and development of geothermal resources;

10 (2) Promulgate all rules necessary to provide for geothermal drilling and the exploration  
11 for and development of geothermal resources in the state. Such rules shall be based on a system  
12 of correlative rights;

13 (3) Establish minimum temperature levels and volumetric rates to determine departmental  
14 jurisdiction over geothermal resource development. In establishing such levels, the department  
15 shall set minimum temperature levels and minimum volumetric rates for permitting, well

16 regulations, reservoir management and allocation of geothermal resources for geothermal  
17 development as necessary. The department shall review established temperature level and  
18 volumetric rate requirements biennially and may revise the figures as necessary. Revision of  
19 temperature level or volumetric rate requirements shall not occur more often than every two years,  
20 and any such revisions shall not operate retroactively; and

21 (4) Promulgate rules as necessary to protect the waters of the state and to carry out the  
22 powers and duties of the department pursuant to the provisions of this article.

**§22-33-6. Reinjection, waste disposal.**

1 The department shall develop and revise as necessary a policy and rules on reinjection  
2 or other disposal of spent geothermal fluids. Such policy and rules shall refer to the reinjection  
3 into the ground of waters extracted from the earth in the process of geothermal development,  
4 production, or utilization.

**§22-33-7. Cancellation or suspension of permit.**

1 If the department determines, after a public hearing, that a holder of a permit issued  
2 pursuant to the provisions of this article has willfully violated any provision of this article, rules  
3 promulgated hereunder, or permit issued pursuant to this article, the department may cancel or  
4 suspend such permit for cause or impose limitations on the future use thereof in order to prevent  
5 future violations.

**§22-33-8. Civil penalties; injunctions.**

1 (a) Any person who knowingly violates any provision of this article, rules promulgated  
2 hereunder, or permit issued pursuant to this article is subject to a civil penalty of not less than  
3 \$100 or more than \$500 for each violation.

4 (b) In addition, upon violation of any provision of this article, rules promulgated hereunder,  
5 or permit issued pursuant to this article, the department may, either before or after the institution  
6 of proceedings pursuant to subsection (a), institute a civil action in the Circuit Court of Kanawha  
7 County or any circuit court where the well is located for injunctive relief to restrain the violation

8 and for any other or further relief that the court deems proper.

**§22-33-9. Judicial Review.**

1 Any person aggrieved by a final decision of the department pursuant to the provisions of  
2 §22-33-7 or §22-33-8 of this code is entitled to judicial review of such final decision in accordance  
3 with the provisions of §29A-1-1 et seq. of this code, State Administrative Procedures Act.

NOTE: The purpose of this bill is to clarify and define certain matters relating to geothermal energy including applying this article to geothermal resources at temperatures above the minimum temperature and the minimum volumetric rate as set forth by the department pursuant to §22-33-5 of this code; defining ownership rights; stating findings and separateness of the resource; delegating and defining powers of the department; providing for cancellation or rejection of permits; providing for civil penalties and injunctions; and delegating judicial review.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.