

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4098**

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[Originating in the Committee on the Judiciary, February 2, 2022]



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 the article to geothermal resources at temperatures above a minimum  
5 temperature and a minimum volumetric flow rate as set forth by the Department of  
6 Environmental Protection; excepting heat pump systems for private residential dwellings  
7 and farm buildings; clarifying and designating ownership rights to geothermal resources;  
8 providing findings and declaring geothermal resources as neither mineral nor water;  
9 defining the powers, duties, and limitations of the department; providing for rule making  
10 authority by the department; establishing permitting authority; setting parameters and  
11 parameter review and revisions; providing for waste disposal and reinjection of spent  
12 fluids; providing for plugging and reclamation; providing for cancellation or rejection of  
13 permits by the department under certain circumstances; providing for civil penalties and  
14 injunctions for violations of law, rules, or permits; assigning judicial jurisdiction for review;  
15 and establishing judicial relief.

*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 flow rate as set forth by the department pursuant to §22-33-5 of this  
4 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 the separation of such rights is clear and manifest upon the  
3 face of the instruments in express reservations or conveyances. Nothing in this section shall  
4 divest the people or the state of any rights, title, or interest they might have in any geothermal  
5 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 or water estate shall be construed to  
3 include geothermal resources unless such inclusion is clear and manifest upon the face of the  
4 instruments in express reservations or conveyances.

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

1           (a) Except for geothermal heating and cooling heat pumps systems for private residential  
2 dwelling and farm buildings, the Department of Environmental Protection has jurisdiction and  
3 authority over all persons and property, public and private, necessary to enforce the provisions of  
4 this article and has the power and authority to promulgate and enforce rules and orders and do  
5 whatever is reasonably necessary to carry out the provisions of this article. Any rules promulgated  
6 by the department pursuant to the provisions of this article shall be adopted in compliance with  
7 §29A-1-1 et seq. of this code, State Administrative Procedures Act.

8           (b) The department shall:

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

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

14           (3) Establish minimum temperature levels and volumetric flow rates to determine  
15 departmental jurisdiction over geothermal resource development. In establishing such levels, the  
16 department shall set minimum temperature levels and minimum volumetric flow rates for  
17 permitting, well regulations, reservoir management and allocation of geothermal resources for  
18 geothermal development as necessary. The department shall review established temperature  
19 level and volumetric flow rate requirements biennially and may revise the figures as necessary.  
20 Revision of temperature level or volumetric flow rate requirements shall not occur more often than  
21 every two years, and any such revisions shall not operate retroactively;

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

24           (5) Promulgate rules necessary to ensure proper site reclamation after the drilling of a well  
25 is complete and proper plugging and site reclamation after a well ceases to be used.

**§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 flow rate as set forth by the DEP; 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.