

HOUSE BILL NO. 602

INTRODUCED BY W. MCNUTT

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A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A PROCESS FOR THE LEGISLATURE TO PROVIDE DIRECTION FOR THE IMPLEMENTATION OF EXEMPT WELL LAWS; REQUIRING AN INTERIM STUDY OF ISSUES RELATED TO GROUND WATER WELLS EXEMPT FROM PERMITTING; TEMPORARILY PROHIBITING RULEMAKING FOR WELLS EXEMPT FROM PERMITTING; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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12 NEW SECTION. **Section 1. Legislative findings.** The legislature finds that:13 (1) the state of Montana has managed the allocation of water under the prior appropriation doctrine for
14 more than 100 years;

15 (2) Article IX, section 3, of the Montana constitution recognizes and confirms all existing water rights;

16 (3) the right to the use of water through a water right is a recognized property right;

17 ~~———— (4) the fair and equitable allocation of water is important to the culture and economy of Montana;~~18 ~~(5)(4) the development of ground water wells that are exempt from permitting for uses that consume~~
19 ~~more than a de minimis amount of water may have an adverse effect on other water rights;~~20 ~~(6)(5) the Water Use Act requires the department of natural resources and conservation to coordinate~~
21 ~~the development and use of the water resources of the state so as to effect full utilization, conservation, and~~
22 ~~protection of its water resources; and~~23 ~~(7)(6) the water laws of Montana do~~ WATER USE ACT DOES not provide the department of natural
24 resources and conservation with clear direction on the administration of ground water wells exempt from
25 permitting ~~and the de minimis use of water.~~

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27 NEW SECTION. **Section 2. Interim study.** (1) The water policy interim committee, provided for in
28 5-5-231, shall conduct a study of:

29 (a) wells that are exempt from permitting pursuant to 85-2-306, including:

30 (i) determining the number of existing exempt wells and estimating the number of ground water wells

- 1 that may be exempted from permitting over the next decade under current laws and regulations;
- 2 (ii) summarizing the types of beneficial uses to which water from exempt wells is applied;
- 3 (iii) analyzing the amount of water reasonably necessary for the various beneficial uses served by exempt
- 4 wells compared to the current statutory limits for flow rate and volume;
- 5 (iv) exploring options to provide accurate and necessary measurement of water appropriated via exempt
- 6 wells and enforcement of statutory limits for exempt wells;
- 7 (V) EXAMINING ENFORCEMENT OPTIONS FOR EXEMPT WELLS TO ENSURE THAT THEY DO NOT EXCEED STATUTORY
- 8 LIMITS OR DISRUPT THE PRIORITY SYSTEM FOR WATER RIGHT ADMINISTRATION GOVERNED BY THE WATER USE ACT AND
- 9 THE MONTANA CONSTITUTION;
- 10 (VI) EXAMINING APPLICABLE RESEARCH AND ANALYSIS CONDUCTED BY THE GROUND WATER INVESTIGATION
- 11 PROGRAM AT THE MONTANA BUREAU OF MINES AND GEOLOGY PROVIDED FOR IN 85-2-525;
- 12 ~~(v)~~(VII) examining the historical treatment of exempt wells and the evolution of laws and rules governing
- 13 exempt wells;
- 14 ~~(vi)~~(VIII) analyzing how the water appropriated by exempt wells may affect surface water appropriations,
- 15 including existing claims, permits, certificates, and reservations; and
- 16 ~~(vii)~~(IX) examining the legal options for integrating exempt wells into the principle that first in time is first
- 17 in right when senior water rights are not fulfilled;
- 18 (b) the statutes, RULES, PROGRAMS, and policies employed by other prior appropriation states for exempt
- 19 wells ~~or de minimis ground water appropriations~~, including legal challenges;
- 20 (c) the adequacy of ~~controlled ground water areas, created pursuant to Title 85, chapter 2, part 5, for~~
- 21 ~~managing the development of wells that would otherwise be exempt from permitting~~ EXISTING PROGRAMS AND
- 22 TOOLS FOR MANAGING AND MITIGATING THE DEVELOPMENT OF WELLS THAT WOULD OTHERWISE BE EXEMPT FROM
- 23 PERMITTING, INCLUDING BUT NOT LIMITED TO CONTROLLED GROUND WATER AREAS CREATED PURSUANT TO TITLE 85,
- 24 CHAPTER 2, PART 5, WATER MITIGATION BANKS, COMMUNITY WATER SYSTEM INCENTIVES, AND IN-LIEU-OF-FEE PROGRAMS;
- 25 (d) the relationship between exempt wells and ~~the role of local governments~~ in land use decisions,
- 26 INCLUDING THE RELATIONSHIP BETWEEN EXEMPT WELLS AND INDIVIDUAL SEPTIC SYSTEMS, THE COST COMPARISON OF
- 27 INSTALLING PUBLIC WATER SYSTEMS OR EXTENDING EXISTING WATER INFRASTRUCTURE, AND THE ROLE OF LOCAL
- 28 GOVERNMENTS IN REQUIRING ALTERNATIVES TO EXEMPT WELLS; and
- 29 (e) the rulemaking authority of the department of natural resources and conservation in relation to the
- 30 statutory policy and purpose provided for in 85-2-101.

1 (2) The committee shall prepare a report to submit to the 63rd legislature that provides clear policy
2 direction and necessary legislation to guide Montana's policy regarding wells that may be exempt from the
3 permitting process.

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5 NEW SECTION. Section 3. Limit on rulemaking authority. ~~The (1) EXCEPT AS PROVIDED IN SUBSECTION~~
6 ~~(2), THE~~ department of natural resources and conservation may not ~~commence rulemaking~~ ADOPT RULES to
7 implement the provisions of 85-2-306(3) for ground water wells that are exempt from permitting until October 1,
8 2012.

9 (2) THE DEPARTMENT MAY ADOPT RULES TO IMPLEMENT AMENDMENTS TO 85-2-306(3) THAT WERE PASSED AND
10 APPROVED BY THE 62ND LEGISLATURE FOR:

11 (A) APPROPRIATIONS BY A LOCAL GOVERNMENTAL FIRE AGENCY ORGANIZED UNDER TITLE 7, CHAPTER 33,
12 PROVIDED THAT THE APPROPRIATION IS USED ONLY FOR EMERGENCY FIRE PROTECTION; OR

13 (B) NONCONSUMPTIVE APPROPRIATIONS FOR GEOTHERMAL HEATING OR COOLING EXCHANGE APPLICATIONS.

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15 NEW SECTION. Section 4. Appropriation. (1) There is appropriated ~~\$30,000~~ \$15,000 from the general
16 fund for the biennium beginning July 1, 2011, to the water policy interim committee for the purpose of completing
17 the study required pursuant to [section 2].

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19 NEW SECTION. Section 5. Effective dates. (1) Except as provided in subsection (2), [this act] is
20 effective on passage and approval.

21 (2) [Section 4] is effective July 1, 2011.

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23 NEW SECTION. Section 6. Termination. [This act] terminates June 30, 2013.

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