

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."

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

NEW SECTION. **Section 1. Legislative findings.** The legislature finds that:

- (1) the state of Montana has managed the allocation of water under the prior appropriation doctrine for more than 100 years;
- (2) Article IX, section 3, of the Montana constitution recognizes and confirms all existing water rights;
- (3) the right to the use of water through a water right is a recognized property right;
- (4) the fair and equitable allocation of water is important to the culture and economy of Montana;
- (5) the development of ground water wells that are exempt from permitting for uses that consume more than a de minimis amount of water may have an adverse effect on other water rights;
- (6) the Water Use Act requires the department of natural resources and conservation to coordinate the development and use of the water resources of the state so as to effect full utilization, conservation, and protection of its water resources; and
- (7) the water laws of Montana do not provide the department of natural resources and conservation with clear direction on the administration of ground water wells exempt from permitting and the de minimis use of water.

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

- (a) wells that are exempt from permitting pursuant to 85-2-306, including:
  - (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 the historical treatment of exempt wells and the evolution of laws and rules governing  
8 exempt wells;  
9 (vi) analyzing how the water appropriated by exempt wells may affect surface water appropriations,  
10 including existing claims, permits, certificates, and reservations; and  
11 (vii) examining the legal options for integrating exempt wells into the principle that first in time is first in  
12 right when senior water rights are not fulfilled;  
13 (b) the statutes and policies employed by other prior appropriation states for exempt wells or de minimis  
14 ground water appropriations, including legal challenges;  
15 (c) the adequacy of controlled ground water areas, created pursuant to Title 85, chapter 2, part 5, for  
16 managing the development of wells that would otherwise be exempt from permitting;  
17 (d) the relationship between exempt wells and the role of local governments in land use decisions; and  
18 (e) the rulemaking authority of the department of natural resources and conservation in relation to the  
19 statutory policy and purpose provided for in 85-2-101.  
20 (2) The committee shall prepare a report to submit to the 63rd legislature that provides clear policy  
21 direction and necessary legislation to guide Montana's policy regarding wells that may be exempt from the  
22 permitting process.

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24 **NEW SECTION. Section 3. Limit on rulemaking authority.** The department of natural resources and  
25 conservation may not commence rulemaking to implement the provisions of 85-2-306(3) for ground water wells  
26 that are exempt from permitting until October 1, 2012.

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

