



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:

**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 development of ground water wells that are exempt from permitting may have an adverse effect on other water rights;
- (5) 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
- (6) the Water Use Act does not provide the department of natural resources and conservation with clear direction on the administration of ground water wells exempt from permitting.

**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 that may be exempted from permitting over the next decade under current laws and regulations;

- (ii) summarizing the types of beneficial uses to which water from exempt wells is applied;
  - (iii) analyzing the amount of water reasonably necessary for the various beneficial uses served by exempt wells compared to the current statutory limits for flow rate and volume;
  - (iv) exploring options to provide accurate measurement of water appropriated via exempt wells;
  - (v) examining enforcement options for exempt wells to ensure that they do not exceed statutory limits or disrupt the priority system for water right administration governed by the Water Use Act and the Montana constitution;
  - (vi) examining applicable research and analysis conducted by the ground water investigation program at the Montana bureau of mines and geology provided for in 85-2-525;
  - (vii) examining the historical treatment of exempt wells and the evolution of laws and rules governing exempt wells;
  - (viii) analyzing how the water appropriated by exempt wells may affect surface water appropriations, including existing claims, permits, certificates, and reservations; and
  - (ix) examining the legal options for integrating exempt wells into the principle that first in time is first in right when senior water rights are not fulfilled;
- (b) the statutes, rules, programs, and policies employed by other prior appropriation states for exempt wells, including legal challenges;
  - (c) the adequacy of existing programs and tools for managing and mitigating the development of wells that would otherwise be exempt from permitting, including but not limited to controlled ground water areas created pursuant to Title 85, chapter 2, part 5, water mitigation banks, community water system incentives, and in-lieu-of-fee programs;
  - (d) the relationship between exempt wells and land use decisions, including the relationship between exempt wells and individual septic systems, the cost comparison of installing public water systems or extending existing water infrastructure, and the role of local governments in requiring alternatives to exempt wells; and
  - (e) the rulemaking authority of the department of natural resources and conservation in relation to the statutory policy and purpose provided for in 85-2-101.
- (2) The committee shall prepare a report to submit to the 63rd legislature that provides clear policy direction and necessary legislation to guide Montana's policy regarding wells that may be exempt from the permitting process.

**Section 3. Limit on rulemaking authority.** (1) Except as provided in subsection (2), the department of natural resources and conservation may not adopt rules to implement the provisions of 85-2-306(3) for ground water wells that are exempt from permitting until October 1, 2012.

(2) The department may adopt rules to implement amendments to 85-2-306(3) that were passed and approved by the 62nd legislature for:

(a) appropriations by a local governmental fire agency organized under Title 7, chapter 33, provided that the appropriation is used only for emergency fire protection; or

(b) nonconsumptive appropriations for geothermal heating or cooling exchange applications.

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

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

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

**Section 6. Termination.** [This act] terminates June 30, 2013.

- END -

I hereby certify that the within bill,  
HB 0602, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

HOUSE BILL NO. 602  
INTRODUCED BY W. MCNUTT

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