

MAINE STATE LEGISLATURE

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(Governor's Bill)
FIRST REGULAR SESSION
ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1715

S.P. 573

In Senate, June 1, 1987

Reference to the Committee on Energy And Natural Resources suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator LUDWIG of Aroostook.
Cosponsored by Senator USHER of Cumberland, Representative
MICHAUD of East Millinocket, Representative HOLLOWAY of
Edgecomb.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

AN ACT to Protect Existing Essential Public
and Private Ground Water Supplies.

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4 Be it enacted by the People of the State of Maine as
5 follows:

6 38 MRSA §404 is enacted to read:

7 §404. Ground water rights

8 1. Findings; purpose. The Legislature finds and
9 declares that the State's ground water is a public
10 resource and that the availability of ground water
11 resources is critical to promote the health, safety
12 and general welfare of the people of the State. Aq-
13 uifers provide a significant amount of the water used
14 by the people of the State and it is the policy of

1 the State to protect, conserve and maintain ground
2 water supplies in the State.

3 2. Definitions. As used in this chapter, unless
4 the context otherwise indicates, the following terms
5 have the following meanings.

6 A. "Beneficial domestic use" means any ground
7 water use for household purposes essential to
8 health and safety, whether provided by individual
9 wells or through public supply systems.

10 B. "Ground water" means all the waters found be-
11 neath the surface of the earth.

12 C. "Preexisting use" means any use which was un-
13 dertaken by a public water supplier, a landowner
14 or lawful land occupant or a predecessor in in-
15 terest of the supplier, owner or occupant, at
16 any time during the period of 3 years prior to
17 the commencement of the use which resulted in the
18 interference.

19 3. Cause of action created. Subject to the lim-
20 itations of subsection 4, and except as provided by
21 Title 23, section 652, a person is liable for the
22 withdrawal, including use in heat pump systems, of
23 ground water which causes interference with the pre-
24 existing beneficial domestic use of ground water by a
25 landowner or lawful land occupant.

26 4. Limitations; compensatory damages. The lia-
27 bility imposed under subsection 3 shall be in compen-
28 satory damages only, to be recovered in an action
29 brought by the landowner or other lawful land occu-
30 pant whose ground water use has been interfered with,
31 against the person whose subsequent use has caused
32 the interference. Such damages shall be limited to
33 the following:

34 A. All costs necessary to restore the landowner
35 or lawful land occupant to a status which is rea-
36 sonably equivalent in terms of quantity and qual-
37 ity of ground water, made available on a similar-
38 ly accessible and economic basis;

1 B. Compensatory damages for loss or damage to
2 property, including, without limitation, the loss
3 of habitability of residence, caused to the land-
4 owner or lawful land occupant by reason of the
5 interference, prior to restoration of the status
6 provided for in paragraph A; and

7 C. Reasonable costs, including expert witness
8 fees and attorney fees incurred in initiating and
9 prosecuting an action when necessary to secure a
10 judgment granting the relief provided for under
11 this chapter.

12 The rights afforded by this chapter shall be in addi-
13 tion to, and shall not be in derogation of, any other
14 rights, whether arising under statute or common law,
15 which any person may have to seek redress against any
16 other person for ground water interference or contam-
17 ination.

18 STATEMENT OF FACT

19 Maine court decisions to date indicate that Maine
20 is one of the last states in the nation which retains
21 the English common law doctrine of absolute ownership
22 of ground water. This doctrine permits any landowner
23 to use ground water for any purpose or to any extent,
24 even when such use may interfere with preexisting
25 uses by other landowners of reasonable quantities of
26 ground water. This bill addresses the most important
27 facet of this issue by allowing residential landown-
28 ers and those providing water for residential land-
29 owners redress against new ground water users who in-
30 terfere with preexisting beneficial domestic uses.
31 In responding to this issue, the Legislature recog-
32 nizes that the use of ground water for residential
33 purposes, though it involves relatively small quanti-
34 ties, is considered an essential right and, as such,
35 has priority over other, newer uses.

36 This bill deals with the most pressing problem in
37 this area of the law. It protects those who have
38 used ground water at any time during the previous 3
39 years, for domestic purposes by providing them with a
40 right of action against new uses which dry up their

1 wells. It exempts the Department of Transportation,
2 which is already covered for such incidents under the
3 Maine Revised Statutes, Title 23. Further, it limits
4 recoverable damages to the cost of restoration of the
5 water supply, cost of loss or damage to property from
6 the interference and court costs, including attorney
7 fees and expert witness fees, of bringing suit.

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