

MAINE STATE LEGISLATURE

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R. of S.

L.D. 816

DATE: 3-31-06

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JUDICIARY

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STATE OF MAINE
SENATE
122ND LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 271, L.D. 816, Bill, "An Act To Prohibit Changing the Flow of Water on Another's Land"

Amend the bill by striking out the title and substituting the following:

'An Act To Replace the Common Enemy Rule with Regard to Changing the Flow of Surface Water'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 17 MRSA §2808 is enacted to read:

§2808. Alteration of surface water flow

Unreasonable use of land that results in altered flow of surface water that unreasonably injures another's land or that unreasonably interferes with the reasonable use of another's land is a nuisance.

An action under this section must be commenced within 3 years after the cause of action accrues.

Sec. 2. Application. This Act applies to causes of action accruing on or after the effective date of this Act.

Sec. 3. Effective date. This Act takes effect January 1, 2007.'

COMMITTEE AMENDMENT

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SUMMARY

This amendment replaces the bill and changes the title.

This amendment changes the applicable rule governing alteration of surface water flow that affects another person's land. Existing Maine case law applies the "common enemy rule" to define a landowner's responsibility for altering the flow of surface water, also known as "diffuse surface water," that affects another's land. This amendment adopts the "reasonable use rule."

This amendment establishes as a nuisance the unreasonable use of a person's land that results in the altering of the flow of surface water that unreasonably injures another's land or that unreasonably interferes with the reasonable use of another's land.

This amendment is intended to change the principle of legal liability in this State concerning altering the flow of surface water that results in injury to another person's land or injury to the use of another person's land. This amendment rejects the common enemy rule reaffirmed in Johnson v. Whitten, 384 A.2d 698 (Me. 1978) and adopts the reasonable use rule as stated in Micucci v. White Mountain Trust Company, 114 N.H. 436, 321 A.2d 573 (1974).

This amendment requires actions to be commenced within 3 years after the cause of action accrues.

This amendment takes effect January 1, 2007 and applies to actions for which the cause of action accrues on or after that date.