

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 56

S. P. 45

In Senate, January 5, 1981

Submitted by the Department of Educational and Cultural Services pursuant to Joint Rule 24.

Reference to the Committee on State Government suggested.

MAY M. ROSS, Secretary of the Senate

Presented by Senator Wood of York.

STATE OF MAINE

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

AN ACT to Preserve Maine's Archaeological Heritage.

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

Sec. 1. 27 MRSA § 361, as amended by PL 1973, c. 460, § 19, is repealed.

Sec. 2. 27 MRSA § 371, as enacted by PL 1969, c. 398, is repealed and the following enacted in its place:

§ 371. Statement of policy

The Legislature, in recognizing the importance of Maine's cultural heritage of the distant past to our understanding of Maine's people, declares that it is the policy of the State of Maine to preserve and protect archaeological sites for proper excavation and interpretation.

It is in the public interest to provide for the preservation and interpretation of archaeological artifacts and natural science specimens for the benefit of the people of the State. In order to ensure proper preservation and interpretation of artifacts, specimens and materials which are public property by virtue of having been found on, in or beneath state-controlled lands, it is in the public interest that a single state department be designated to hold title, as trustee for the State, to all such artifacts, specimens and materials, except as may be authorized by sections 374 and 376.

The State Museum Bureau is best qualified to assume that trusteeship by virtue of the fact that its facilities are intended to function primarily for the purpose of preserving and interpreting artifacts, specimens and materials as defined within this subchapter.

Sec. 3. 27 MRSA § 372, as enacted by PL 1969, c. 398, is repealed and the following enacted in its place:

§ 372. Legislative intent

1. **Transference of custody.** The several departments of the State are authorized to transfer any archaeological objects or natural science specimens in their possession to the custody and trusteeship of the State Museum Bureau.

2. **Museum responsibility.** The State designates the State Museum Bureau to hold title, as trustee for the State, to all archaeological objects and natural science specimens found on, in or beneath state-controlled lands. The State charges the State Museum Bureau with the responsibility of protecting, preserving and interpreting such objects and specimens as may be placed under its trusteeship; preventing the defacement, damage, destruction or unauthorized removal of those objects and specimens; and ensuring the continued availability of those objects and specimens for scientific study by qualified persons, agencies or institutions.

Sec. 4. 27 MRSA § 373, as enacted by PL 1969, c. 398, is repealed.

Sec. 5. 27 MRSA § 373-A is enacted to read:

§ 373-A. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Artifact.** "Artifact" means a physical entity which has been worked or modified by human action.

2. **Authorized representative.** "Authorized representative" means any official or group of officials employed by the permitors or other competent person authorized in writing by the permitors.

3. **Excavation.** "Excavation" means any turning over, removal or disturbance of the soil, artifact in the soil or ground matrix or recovery of artifacts from beneath the water, including, but not limited to: Activities such as purposeful looting, material procurement or construction activities without regard for intent.

4. **Materials.** "Materials" means 3-dimensional items, other than artifacts and specimens as defined, and excluding books, papers, manuscripts and archival or library material, which are commonly included in the display or research collection of museums.

5. **Object.** “Object” means any archaeological monument, artifact, relic or article.

6. **Permitters.** “Permitters” means the Director of the Maine Historic Preservation Commission and the Director of the State Museum Bureau as well as the director of any state department having primary land jurisdiction acting in concert in the review, approval and granting of permits.

7. **Principal investigator.** “Principal investigator” means the senior scientist in charge of an archaeological excavation.

8. **Site.** “Site” means an area containing historical or archaeological artifacts or materials as defined within this subchapter, or other evidence of habitation, occupation or other use by historic or prehistoric people, and which is:

A. Listed in the National Register of Historic Places;

B. Posted by the owner, which may include the State, as:

(1) Prohibiting unauthorized excavation; and

(2) Being listed in the National Register of Historic Places; and

C. Is on or under state-owned or state-controlled land or is referred to in a preservation easement between the landowner or landowners and the Maine Historic Preservation Commission, as outlined by Title 33, sections 1551 to 1555.

9. **Specimen.** “Specimen” means any items, set of items or parts of items collected as representative samples of geological media or biological forms found within the State.

10. **State-controlled land.** “State-controlled land” means any land or water area owned by the State, or under the primary administrative jurisdiction of any state department, with the exception of those lands contained within Baxter State Park. That state-controlled land includes, but is not restricted to, state parks, state recreation areas, wilderness and wildlife preserves, public reserved land, navigable bodies of inland, estuarine or coastal water and highway rights-of-way or other easements.

Sec. 6. 27 MRSA § 374, as enacted by PL 1969, c. 398, is repealed and the following enacted in its place:

§ 374. Legislative provisions

1. **Purpose.** The people of the State of Maine benefit only when an archaeological site is systematically excavated, analyzed and interpreted by a qualified archaeologist.

2. **Permit procedure.** The procedure for obtaining a permit to remove artifacts from or excavate a prehistoric, aboriginal site shall be as follows.

A. Any person, agency or institution desiring to remove prehistoric, aboriginal artifacts from or to excavate a prehistoric, aboriginal site or those desiring to

remove artifacts or materials from or excavate a historic site shall submit a written application for the authorization.

B. Application for a permit shall be in the form of a letter and research proposal directed to the Director of the Maine Historic Preservation Commission and shall be accompanied by the written permission of the landowner to proceed with the excavation.

C. The archaeological excavation permit shall be cosigned by the Director of the Maine Historic Preservation Commission and the Director of the State Museum Bureau, except for state-owned or state-controlled lands where the permit also shall be cosigned by the director of the agency with primary jurisdiction.

D. The application shall state the nature and specific location of the artifacts and materials to be removed, the legal name and address of the person, agency or institution seeking authorization and the date or dates on which the artifacts or materials are to be removed.

E. Upon receipt of an application, the permitors may issue a written permit authorizing the excavation of the site and the proposed removal of artifacts or materials for such term and upon such conditions as they deem reasonable and which are consistent with subsection 3.

3. Permit conditions. The conditions which may be imposed upon a permit are as follows.

A. In order to minimize damage to state-controlled lands and to artifacts or materials to be removed, and, in order to ensure the recording and preservation of significant data regarding those artifacts, materials or sites, the permit may set forth requirements or limitations regarding the methods and equipment to be employed in the removal, the procedures to be followed in documenting the removal and the report or reports, if any, to be submitted to officials or agencies of the State upon completion of the removal activities.

B. The permitors may require that an authorized representative of the State be present to witness and document the removal of artifacts or materials from state-controlled land.

C. The permit shall clearly indicate the type of artifacts or materials to be removed, the location of the site, the time of the proposed removal activity or excavation, the legal name and address of the permittee and any other limitations and requirements that may be imposed by the permitors.

D. On excavations authorized by the permit process, the principal investigator should normally possess the minimum qualifications of a graduate degree in anthropology, archaeology or a related field, accompanied by institutional facilities to ensure proper conservation and curation of the artifacts or extensive experience and demonstrated ability.

4. **Permit revocation.** The permitors, or their authorized representatives, may revoke or suspend a permit if there is evidence to indicate that the permittee has violated or exceeded the limitations of his permit, or if there is evidence to indicate that artifacts, materials or the site are being unnecessarily defaced, damaged or destroyed in the course of their removal. Any willful violation of the provisions or limitations of a permit is grounds for immediate revocation of the permit and shall be construed as unauthorized removal.

5. **Permit possession.** The permit shall be retained in the personal possession of the permittee during the course of removal activities, and shall be made available for inspection upon demand of any authorized representative of the State. Any person or persons engaged in the removal of artifacts or materials from or engaged in excavation on a site as defined in section 373-A, who do not produce a valid permit upon demand of an authorized representative of the State, are presumptively engaged in unauthorized removal activity.

Sec. 7. 27 MRSA §§ 375-377 are enacted to read:

§ 375. **Unlawful excavation**

1. **Definition of unlawful excavation.** "Unlawful excavation" means the unauthorized removal from a site or excavation activity at a site, as described in section 374, subsections 4 and 5, unless:

A. A demonstrable emergency situation existed relating to the survival of the site; and

B. An excavation permit is immediately applied for in accordance with section 374.

2. **Penalty.** Unlawful excavation is a Class D crime.

3. **Prosecution.** The Attorney General, upon receiving notification of a violation of this section from the Director of the Maine Historic Preservation Commission, is authorized to file a complaint against the person named in the District Court of the district in which the person resides, or in the district in which the violation occurred.

§ 376. **Antiquities recovered from archaeological sites**

1. **Artifacts to remain in Maine.** No artifacts, objects, specimens or other materials originating in an archaeological site which is protected from unlawful excavation, whether excavated lawfully or unlawfully, may be authorized to leave the State permanently. They may be loaned for a term specified by the permitors for proper study or exhibit.

2. **Sale of artifacts.** Attempts to sell, offers of sale and sale of artifacts, objects or specimens excavated with or without an excavation permit from a site, as defined in section 373-A, subsection 8, without the written permission of the permit grantors or the Maine Historic Preservation Commission and the Director of the State Museum Bureau, shall be punishable by a civil penalty not greater

than twice the price for which artifacts, objects or specimens are sold or offered for sale.

3. **Prosecution.** The Attorney General, upon receiving notification and evidence of violation of this section from the Director of the Maine Historic Preservation Commission, is authorized to file a complaint against the person named in the District Court of the district in which the person resides, or in the district in which the violation occurred.

4. **Artifact ownership.** Artifacts, objects, materials and specimens lawfully recovered by excavations accomplished under this permit process on state-controlled lands will become property of the State Museum Bureau. Lawfully recovered artifacts, objects, materials and specimens from excavations on other lands will become property of an established Maine institution designated by the permit signatories.

§ 377. Protection of site location information

All site location data held by the Maine Historic Preservation Commission, the State Museum Bureau, the Bureau of Parks and Recreation, other state agencies and the University of Maine will be confidential and exempt from Title, 1, chapter 13, in order to protect all of Maine's sites from unauthorized excavation.

STATEMENT OF FACT

Passage of this bill will allow the State of Maine to take the necessary steps to preserve Maine's archaeological heritage, while at the same time protecting the right of consent of the private property owner.

Much physical evidence of Maine's distant past is contained in archaeological sites left both by Maine's native residents and by explorers, colonists and developers of Maine's economy. Only the proper excavation and interpretation of these sites can produce a complete sense of heritage and understanding of past lifeways and cultures for the people of Maine.

Archaeological sites are a nonrenewable resource; the cultures that created them are extinct. Moreover, archaeological sites are extremely fragile entities wherein the relative positions and associations of objects and artifacts with each other and with features and qualities of their surrounding soil all contain clues to the past.

Because these sites are finite and fragile, only the most current and careful techniques of excavation and analysis should be used in their investigation. Any damage done to them otherwise is vandalism, be it intentional or unintentional. Such vandalism causes the people of Maine to lose forever a chapter from their past.

This bill will protect the sites that are significant to understanding Maine's past, those on the National Register of Historic Places, from vandalism, and will ensure that they will be available for future interpretation for the benefit of all.