

MAINE STATE LEGISLATURE

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(New Draft of: S. P. 45, L. D. 56)
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 827

S. P. 316

In Senate, February 13, 1981

Reported by Senator Gill of Cumberland from the Committee on State Government. Printed under Joint Rules No. 2.

MAY M. ROSS, Secretary of the Senate

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Sec. 1. 27 MRSA § 361, as amended by PL 1973, c. 460, § 19, is repealed.

Sec. 2. 27 MRSA § 371, as enacted by PL 1969, c. 398, is repealed and the following enacted in its place: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 this State to preserve and protect archaeological sites for proper excavation and interpretation.

It is the public interest to provide for the preservation and interpretation of archaeological artifacts and 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 found on, in or beneath state-controlled land, 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 section 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Sec. 3. 27 MRSA § 372, as enacted by PL 1969, c. 398, is repealed and the following enacted in its place: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, materials or 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, materials and 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, materials and specimens as may be placed under its trusteeship; preventing their defacement, damage, destruction or unauthorized removal; and ensuring their continued availability 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 permittors or other competent person authorized in writing by the permittors.

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. "Excavation" shall include, but is not limited to, activities such as purposeful looting, material procurement or construction activities. In the case of private property the term "excavation" on a site shall not include activities associated with agriculture or forestry unless specifically provided for in the permit or the preservation agreement as defined in Title 33, section 1551, sub-§ 2.

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

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

6. **Permittors.** "Permittors" 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 administering state-controlled lands, 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 any area containing archaeological artifacts or materials or other evidence of habitation, occupation or other use by historic or prehistoric people, and which is either:

A. On or under state-controlled land and is:

- (1) Listed in the National Register of Historic Places; and
- (2) Posted; or

B. Is the subject of a preservation agreement between the landowner or landowners and the Maine Historic Preservation Commission, pursuant to Title 33, section 1551 and is:

- (1) Listed in the National Register of Historic Places; and
- (2) Posted.

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 in fee simple by the State, with the exception of those lands contained within Baxter State Park. State-controlled land includes, but is not limited to, state parks, state recreation areas, wilderness and wildlife preserves, located public lots and land beneath great ponds or navigable bodies of water and other submerged lands owned by the State.

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 this State benefit only when a site is systematically excavated, analyzed and interpreted by a qualified principal investigator.

2. **Permit procedure.** The procedure for obtaining a permit to excavate a site shall be as follows:

A. Any person, agency or institution desiring to excavate a site shall submit a written application.

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 a copy of the preservation agreement attested by the Register of Deeds and the written permission of the landowner to proceed with the excavation. The landowner may give permission to excavate in the preservation agreement.

C. The permit to excavate shall be cosigned by the Director of the Maine Historic Preservation Commission and the Director of the State Museum Bureau, except for 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, specimens 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, specimens 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 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, specimens or materials to be removed, and, in order to ensure the recording and preservation of significant data regarding those artifacts, specimens, 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, specimens or materials from state-controlled land.

C. The permit shall clearly indicate the type of artifacts, specimens 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, materials and specimens or extensive experience and demonstrated ability.

4. Permit revocation. All 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 excavation.

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 excavation on a site who do not produce a valid permit upon demand of an authorized representative of the State, are presumptively engaged in unauthorized excavation.

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

§ 375. **Unlawful excavation**

1. **Definition of unlawful excavation.** “Unlawful excavation” means unauthorized excavation at a site, 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.** Violation of this chapter is a civil violation for which a forfeiture of not less than \$50 nor more than \$1,000 shall be adjudged. The unlawful excavation for any one day shall constitute a separate violation. The Director of the Maine Historic Preservation Commission, in the name of the people of this State through the Attorney General, may in addition to other remedies provided bring an action or an injunction to restrain a violation of this chapter or to enjoin future unlawful excavation.

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. **State-owned artifacts to remain in Maine.** No artifacts, objects, specimens or materials originating from a site on state-controlled land may be authorized to leave the State permanently without written permission of the permitors. 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 after the effective date of this Act, whether excavated lawfully or unlawfully from a site, without the written permission of the permit grantors or the Director of 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 of 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 recovered from sites on state-controlled land are the property of the State Museum Bureau. Artifacts, objects, specimens or materials originating from a site on other than state-controlled land are the property of the landowner and shall be deposited with a suitable repository as designated by the landowner in the preservation agreement, or the permit.

§ 377. Protection of site location information

In order to protect the site from unlawful excavation or harm, any information on the location or other attributes of any site in the possession of the Maine Historic Preservation Commission, the State Museum Bureau, the Bureau of Parks and Recreation, other state agencies or the University of Maine may be deemed by the Maine Historic Preservation Commission or State Museum Bureau to be confidential and exempt from Title 1, chapter 13. Such data shall be made available for the purpose of archaeological research. The directors of the Maine Historic Preservation Commission and the State Museum Bureau shall jointly adopt rules establishing standards and procedures for obtaining the data, and may impose reasonable requirements on its use, including requirements of confidentiality.

STATEMENT OF FACT

This new draft of L. D. 56 has the same purpose as the bill: To allow the State 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.

This bill:

1. Identifies as "sites" 2 classes of areas containing archaeological artifacts:
 - A. State-controlled land that is listed in the National Register of Historic Places and is posted; and
 - B. Privately-owned land that is the subject of a preservation agreement between the landowner and the Maine Historical Preservation Commission, and is on the National Register of Historic Places and is posted;
2. Requires a permit for excavating at sites, excavation at privately-owned sites can be done only with the owner's permission, and establishes a civil violation penalty for violation of the excavation provision;

3. Places state-owned archaeological artifacts under the control of the State Museum Bureau and the Maine Historical Preservation Commission; artifacts from private property remain under the control of the owners; and

4. Establishes a procedure for obtaining information on the location or other attributes of sites, to protect them from unlawful excavation or harm.

All participation of private landowners in the program will be voluntary on the part of the landowners.