

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1058, L.D. 1547, Bill, "An Act to Ensure Preservation of Burial Grounds"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 13 MRSA §1142 is amended to read:

§1142. Family burying grounds

When a person appropriates for a family burying ground a piece of land containing not more than 1/4 of an acre, causes a description of it to be recorded in the registry of deeds of the same county or by the clerk of the town where it is situated and substantially marks the bounds thereof of the burying ground or encloses it with a fence, it shall be is exempt from attachment and execution. No subsequent conveyance of it shall be is valid while any person is interred therein in the burying ground; but it shall must remain to him the person who appropriated, recorded and marked that burying ground and his to that person's heirs as a burial place forever. If property surrounding a burying ground appropriated pursuant to this section is conveyed, the property is conveyed by the person who appropriated the property or by an heir of that person and the conveyance causes the burying ground to be inaccessible from any public way, the conveyance is made subject to an easement for the benefit of the spouse, ancestors and descendants of any person interred in the burying ground. The easement may be used only by persons to walk in a direct route from the public way nearest the burying ground to the burying ground at reasonable hours.

Sec. 2. 13 MRSA §1371-A is enacted to read:

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4 §1371-A. Limitations on construction and excavation near burial sites

6 1. Known burial sites. Construction or excavation in the
8 area of a known burial site or within the boundaries of an
10 established graveyard must comply with any applicable land use
12 ordinance concerning burial sites or graveyards, whether or not
14 the burial site or graveyard is properly recorded in the deed to
16 the property. In the absence of local ordinances, construction
18 or excavation may not be conducted within 25 feet of a known
20 burial site or within 25 feet of the boundaries of an established
graveyard, whether or not the burial site or graveyard is
properly recorded in the deed to the property, except when the
construction or excavation is performed pursuant to a lawful
order or permit allowing the relocation of bodies or when
necessary for the construction of a public improvement, as
approved by the governing body of a city or town or, in the case
of a state highway, by the Commissioner of Transportation.

22 2. Undocumented burial site. The following procedures
24 apply to construction or excavation that threatens an
undocumented or unmarked burial site.

26 A. Whenever any person has knowledge that excavation or
28 other construction activity may disturb or is disturbing a
burial site, that person shall notify the local code
30 enforcement officer by providing an affidavit and any other
evidence of the location of the burial site.

32 B. Upon receipt of proper notification, the code
34 enforcement officer shall issue a stop-work order to the
person or entity responsible for the activity that threatens
to disturb the burial site.

36 C. Before the construction activity may continue, the
38 excavator or person who owns the land shall notify the
Director of the Maine Historic Preservation Commission and
40 the president of any local historical society of the
probable location of the burial site. The excavator or the
42 person who owns the land shall also arrange, at that
person's own expense, for appropriate investigation to
44 determine the existence and location of graves.

46 D. When the investigation is complete, if no human remains
48 are discovered, the person responsible for the investigation
shall notify the code enforcement officer of the results and
50 the code enforcement officer shall revoke the stop-work
order if satisfied that the investigation is complete and
accurate.

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E. If a burial site is discovered, excavation or construction may not continue except in accordance with subsection 1 and other applicable provisions of state law.

3. Application. This section applies only to burial sites and graveyards containing the bodies of humans.'

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STATEMENT OF FACT

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This amendment deletes the section of the bill requiring municipalities to keep records of every burial and to include burial sites on municipal tax maps. The amendment also clarifies references to code enforcement officers. Finally, the amendment provides for the creation of an easement for the benefit of relatives of persons interred in a family burial ground, when the land surrounding the cemetery is sold, leaving the relatives no access from a public way to the cemetery.

Reported by the Committee on Legal Affairs
Reproduced and distributed under the direction of the Clerk of the House
(5/30/91) (Filing No. H-495)