

MAINE STATE LEGISLATURE

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MS
R 416

Date: 5/27/19

(Filing No. H-416)

STATE AND LOCAL GOVERNMENT

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
124TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 97, L.D. 113, Bill, "An Act Regarding Construction and Excavation near Burial Sites"

Amend the bill by striking out everything after the title and before the summary and inserting the following:

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, a malfunctioning septic system has polluted a shellfish bed and that shellfish bed can be reopened if the construction of a private sewer connection to a public sewer line is approved; and

Whereas, the immediate repair of a malfunctioning septic system is needed to protect the public's health and the local shellfish industry; and

Whereas, a change in the laws governing construction and excavation near burial sites is necessary to ensure the immediate repair of the septic system; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 13 MRSA §1371-A, sub-§1, as amended by PL 2007, c. 112, §2, is repealed and the following enacted in its place:

1. Known burial sites. Construction or excavation near a known burial site or within the boundaries of an established cemetery must comply with any applicable land use ordinance concerning burial sites or established cemeteries, whether or not the burial site or established cemetery is properly recorded in the deed to the property. In the absence of local ordinances, construction or excavation may not be conducted within 25 feet of a known burial site or within 25 feet of the boundaries of an established cemetery.

COMMITTEE AMENDMENT

1 whichever is the greater, whether or not the burial site or established cemetery is properly
2 recorded in the deed to the property, except:

3 A. When the construction or excavation is performed pursuant to a lawful order or
4 permit allowing the relocation of bodies;

5 B. When necessary for the construction of a public improvement, as approved by the
6 governing body of a municipality or, in the case of a state highway, by the
7 Commissioner of Transportation; or

8 C. When necessary for the construction of a private sewer line connection to a public
9 sewer system if:

10 (1) No other practicable alternative exists to connecting to a public sewer
11 system;

12 (2) No other practicable alternative exists to excavation or construction within 25
13 feet;

14 (3) The excavation or construction is at the maximum possible distance from the
15 cemetery or burial site;

16 (4) The construction of the private sewer line connection is approved by the
17 governing body of the municipality and the regulating division within the
18 Department of Health and Human Services;

19 (5) Public notice is provided by the affected municipality that allows 2 weeks for
20 members of the public to submit testimony prior to any approval, construction or
21 excavation and any testimony is also submitted by the municipality to the
22 regulating division within the Department of Health and Human Services; and

23 (6) No excavation or construction equipment is placed on any part of the
24 cemetery or burial site or within 10 feet of the cemetery or burial site at any time
25 during the construction of the sewer connection.

26 This paragraph is repealed June 30, 2010.

27 A municipality may enforce this subsection or any local ordinance concerning burial sites
28 or established cemeteries pursuant to Title 30-A, section 4452, including the assessment
29 of civil penalties.

30 In the event of any violation of this subsection, the Attorney General may seek to enjoin a
31 further violation, in addition to any other remedy.

32 **Emergency clause.** In view of the emergency cited in the preamble, this
33 legislation takes effect when approved.'

34 SUMMARY

35 This amendment replaces the bill. It allows for the construction of a private sewer
36 line connection to a public sewer system within the 25-foot setback from a cemetery only
37 if the following conditions are met: there is no practical alternative to connecting to the
38 public sewer line; there is no practical alternative to excavation or construction within 25

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1 feet; that the construction is approved by the municipality and the regulating division
2 within the Department of Health and Human Services; there is a 2-week opportunity for
3 the public to express opposition to the construction; the construction takes place as far as
4 possible from the cemetery; and the construction equipment is not placed on any part or
5 within 10 feet of the cemetery at any time. This provision is repealed June 30, 2010. The
6 amendment also adds an emergency preamble and emergency clause.

COMMITTEE AMENDMENT