

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 160

H.P. 135

House of Representatives, January 31, 2013

An Act To Amend the Laws Pertaining to Archaeological Sites

Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative JORGENSEN of Portland.
Cosponsored by Senator KATZ of Kennebec and
Representatives: DAUGHTRY of Brunswick, MONAGHAN-DERRIG of Cape Elizabeth,
SOCTOMAH of the Passamaquoddy Tribe.

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

2 **Sec. 1. 27 MRSA §373-A, sub-§7-A** is enacted to read:

3 **7-A. Protected site.** "Protected site" means a site that is:

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

5 (1) Listed in the National Register of Historic Places or judged eligible for
6 national register listing by the Maine Historic Preservation Commission and, if
7 the area is judged eligible for listing, the site designation is approved by the
8 appropriate land managing agency director or local governing body; and

9 (2) Posted;

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

13 (1) Listed in the National Register of Historic Places; and

14 (2) Posted; or

15 C. Subject to section 378.

16 **Sec. 2. 27 MRSA §373-A, sub-§8,** as amended by PL 1999, c. 748, §1, is further
17 amended to read:

18 **8. Site.** "Site" means an area containing archaeological artifacts or materials or other
19 evidence of habitation, occupation or other use by historic or prehistoric people, ~~and~~
20 ~~which is either:~~

21 ~~A. On or under state controlled land and is:~~

22 ~~(1) Listed in the National Register of Historic Places or judged eligible for~~
23 ~~national register listing by the Maine Historic Preservation Commission and, if~~
24 ~~the area is judged eligible for listing, the site designation is approved by the~~
25 ~~appropriate land managing agency director or local governing body; and~~

26 ~~(2) Posted;~~

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

30 ~~(1) Listed in the National Register of Historic Places; and~~

31 ~~(2) Posted; or~~

32 ~~C. Subject to section 378.~~

33 **Sec. 3. 27 MRSA §374,** as amended by PL 1989, c. 700, Pt. A, §113, is further
34 amended to read:

1 **§374. Legislative provisions**

2 **1. Purpose.** The people of this State benefit only when a protected site is
3 systematically excavated, analyzed and interpreted by a qualified principal investigator.

4 **2. Permit procedure.** The procedure for obtaining a permit to excavate a protected
5 site ~~shall be~~ is as follows.

6 A. Any person, agency or institution desiring to excavate a protected site ~~shall~~ must
7 submit a written application.

8 B. Application for a permit ~~shall~~ must be in the form of a letter and research proposal
9 directed to the Director of the Maine Historic Preservation Commission and ~~shall~~ be
10 accompanied by a copy of the preservation agreement attested by the Register of
11 Deeds and the written permission of the landowner to proceed with the excavation.
12 The landowner may give permission to excavate in the preservation agreement.

13 C. The permit to excavate ~~shall~~ must be cosigned by the Director of the Maine
14 Historic Preservation Commission and the Director of the State Museum, except for
15 state-controlled lands where the permit also ~~shall~~ must be cosigned by the director of
16 the agency with primary jurisdiction.

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

21 E. Upon receipt of an application, the permittors may issue a written permit
22 authorizing the excavation of the protected site for such term and upon such
23 conditions as they ~~deem~~ consider reasonable and ~~which~~ that are consistent with
24 subsection 3.

25 **3. Permit conditions.** The conditions ~~which~~ that may be imposed upon a permit are
26 as follows.

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

34 B. The permittors may require that an authorized representative of the State be
35 present to witness and document the removal of artifacts, specimens or materials
36 from state-controlled land.

37 C. The permit ~~shall~~ must clearly indicate the type of artifacts, specimens or materials
38 to be removed, the location of the protected site, the time of the proposed removal
39 activity or excavation, the legal name and address of the permittee and any other
40 limitations and requirements that may be imposed by the permittors.

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

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

13 **5. Permit possession.** The permit ~~shall~~ must be retained in the personal possession
14 of the permittee during the course of removal activities; and ~~shall~~ must be made available
15 for inspection upon demand of any authorized representative of the State. Any person or
16 persons engaged in excavation on a protected site who do not produce a valid permit
17 upon demand of an authorized representative of the State; are presumptively engaged in
18 unauthorized excavation.

19 **Sec. 4. 27 MRSA §375, sub-§1,** as enacted by PL 1981, c. 55, §7, is amended to
20 read:

21 **1. Definition of unlawful excavation.** "Unlawful excavation" means unauthorized
22 excavation at a protected site, unless:

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

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

26 **Sec. 5. 27 MRSA §376,** as amended by PL 1989, c. 700, Pt. A, §114, is further
27 amended to read:

28 **§376. Antiquities recovered from protected sites**

29 **1. State-owned artifacts to remain in Maine.** No artifacts, objects, specimens or
30 materials originating from a protected site on state-controlled land may be authorized to
31 leave the State permanently without written permission of the permitors. They may be
32 loaned for a term specified by the permitors for proper study or exhibit.

33 **2. Sale of artifacts.** Attempts to sell, offers of sale and sale of artifacts, objects or
34 specimens, excavated after the effective date of this Act, whether excavated lawfully or
35 unlawfully from a protected site, without the written permission of the permit grantors or
36 the Director of the Maine Historic Preservation Commission and the Director of the State
37 Museum, are punishable by a civil penalty not greater than twice the price for which
38 artifacts, objects ~~or~~ or specimens are sold or offered for sale.

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

6 **4. Artifact ownership.** Artifacts, objects, materials and specimens recovered from
7 protected sites on state-controlled land are the property of the State Museum. Artifacts,
8 objects, specimens or materials originating from a site on other than state-controlled land
9 are the property of the landowner and ~~shall~~ must be deposited with a suitable repository
10 as designated by the landowner in the preservation agreement, or the permit.

11 **Sec. 6. 27 MRSA §377**, as amended by PL 1995, c. 502, Pt. E §30 and PL 2011, c.
12 657, Pt. W, §7, is further amended to read:

13 **§377. Protection of site location information**

14 In order to protect the site or protected site from unlawful excavation or harm, any
15 information ~~on~~ in the possession of the Maine Historic Preservation Commission, the
16 State Museum, the Division of Parks and Public Lands, other state agencies or the
17 University of Maine System about the location or other attributes of any site ~~in the~~
18 ~~possession of the Maine Historic Preservation Commission, the State Museum, the~~
19 ~~Division of Parks and Public Lands, other state agencies or the University of Maine~~
20 ~~System~~ or protected site may be deemed by the Maine Historic Preservation Commission
21 or State Museum to be confidential and exempt from Title 1, chapter 13. Such data ~~shall~~
22 must be made available for the purpose of archaeological research. The directors of the
23 Maine Historic Preservation Commission and the State Museum shall jointly adopt rules
24 establishing standards and procedures for obtaining the data, and may impose reasonable
25 requirements on its use, including requirements of confidentiality.

26 **Sec. 7. 27 MRSA §378**, as amended by PL 1999, c. 748, §3, is further amended to
27 read:

28 **§378. Emergency designation as protected site**

29 In the case of an area containing archaeological materials or artifacts that is directly
30 threatened with unauthorized excavation, the Director of the Maine Historic Preservation
31 Commission, with the written permission of the landowner, may designate the area as a
32 protected site that is subject to this chapter for a period not to exceed 10 years. The
33 director and the landowner shall specify in writing the area that is subject to this chapter.
34 All sites given emergency designation under this section must be posted against
35 unauthorized excavation.

36 **SUMMARY**

37 This bill amends the laws governing the excavation of archaeological sites. This bill
38 amends the law to distinguish between sites and protected sites, and clarifies that any
39 information concerning protected sites in the possession of certain state agencies may be
40 deemed confidential.