

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1328

S.P. 480

In Senate, April 14, 2015

An Act To Clarify the Ownership of and Access to Ancient and Family Burying Grounds

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator CUSHING of Penobscot.
Cosponsored by Representative TEPLER of Topsham and
Senators: COLLINS of York, HAMPER of Oxford, KATZ of Kennebec, MASON of
Androscoggin, Representatives: CHENETTE of Saco, GOLDEN of Lewiston, MARTIN of
Sinclair, TURNER of Burlington.

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

2 **Sec. 1. 13 MRSA §1101-A, sub-§3-A** is enacted to read:

3 **3-A. Ground-penetrating radar.** "Ground-penetrating radar" means the
4 transmission of high-frequency radar pulses from a surface antenna into the ground,
5 which reflects signals that are detected by a radar receiver and used to image the
6 subsurface.

7 **Sec. 2. 13 MRSA §1101-B, sub-§1,** as amended by PL 2013, c. 421, §2, is
8 further amended to read:

9 **1. Access to ancient burying ground on privately owned land by a municipality**
10 **or its designated caretaker.** ~~The owner of~~ A person who owns a parcel of land that
11 contains an ancient burying ground shall provide a municipality or its caretaker
12 designated pursuant to section 1101 access necessary to perform the duties pursuant to
13 section 1101 and Title 30-A, section 2901. A municipality or its designated caretaker
14 may access an ancient burying ground on privately owned land annually or as determined
15 by the municipality or designated caretaker as necessary to protect and preserve the
16 ancient burying ground through activities including, but not limited to, the use of
17 photography, video recordings, geographic positioning systems and transcription of grave
18 marker inscriptions to document condition and preserve historic information. A
19 municipality or its designated caretaker may determine the location of unmarked graves
20 and cemetery boundaries through the use of ground-penetrating radar or other
21 identification techniques. Any unreasonable denial to provide access may result in the
22 owner being held responsible for any fines, court costs and attorney's fees incurred by
23 municipalities in legally obtaining access or for failing to meet the requirements of
24 section 1101.

25 **Sec. 3. 13 MRSA §1101-B, sub-§1-A** is enacted to read:

26 **1-A. Access to ancient burying ground on privately owned land by descendant**
27 **or relative of person buried in an ancient burying ground.** A person who owns a
28 parcel of land that contains an ancient burying ground shall provide a descendant or
29 relative of a person buried in the ancient burying ground, or the designated agent of the
30 descendant or relative, access to the ancient burying ground to protect and preserve the
31 ancient burying ground through activities including, but not limited to, the use of
32 photography, video recordings, geographic positioning systems and transcription of grave
33 marker inscriptions to document condition and preserve historic information. A
34 descendant or relative of a person buried in an ancient burying ground or the designated
35 agent of the descendant or relative may, at the expense of the descendant, relative or
36 designated agent, determine the location of unmarked graves and cemetery boundaries
37 through the use of ground-penetrating radar or other identification techniques and may
38 erect or repair fencing around the ancient burying ground or repair any gravestone within
39 the ancient burying ground. The municipal clerk of the municipality where the ancient
40 burying ground is situated shall notarize a document whereby a person who owns a parcel
41 of land that contains an ancient burying ground allows access to that burying ground to a

1 descendant or relative of a person buried in the ancient burying ground or the designated
2 agent of the descendant or relative.

3 **Sec. 4. 13 MRSA §1141** is amended to read:

4 **§1141. Grounds inalienable; description recorded**

5 When any persons appropriate for a burying ground a piece of land containing not
6 more than 1/2 of an acre, it ~~shall be~~ is exempt from attachment and execution, and
7 inalienable and indivisible by the owners without the consent of all; and must be kept
8 fenced or otherwise substantially marked and occupied as a burying ground. They shall
9 cause a written description of it, under their hands, attested by 2 disinterested witnesses,
10 to be recorded in the registry of deeds in the county or district where it lies or by the clerk
11 of the town where it is situated. If a descendant or relative of a person buried in the
12 burying ground or the designated agent of the descendant or relative, a municipality or its
13 designated agent, a historical society, a lineage society or the faculty of an educational
14 institution is unable to locate a record of the burying ground at the registry of deeds in the
15 county where the burying ground is situated, or in the records of the municipal clerk of
16 the municipality where the burying ground is situated, that individual or entity may file a
17 description of the location and boundaries of the burying ground, along with supporting
18 documentation, including photographs, with the municipal clerk of the municipality
19 where the burying ground is situated. The inability to locate a record of a burying ground
20 at the registry of deeds in the county where a burying ground is situated, or in the records
21 of the municipal clerk of the municipality where a burying ground is situated, does not
22 negate the ownership of a burying ground.

23 **Sec. 5. 13 MRSA §1142**, as amended by PL 1991, c. 412, §1, is further amended
24 to read:

25 **§1142. Family burying grounds**

26 When a person appropriates for a family burying ground a piece of land containing
27 not more than 1/4 of an acre, causes a description of it to be recorded in the registry of
28 deeds of the same county or by the clerk of the town where it is situated and substantially
29 marks the bounds of the burying ground or encloses it with a fence, it is exempt from
30 attachment and execution. No subsequent conveyance of it is valid while any person is
31 interred in the burying ground; but it must remain to the person who appropriated,
32 recorded and marked that burying ground and to that person's heirs as a burial place
33 forever. ~~If property surrounding a burying ground appropriated pursuant to this section is~~
34 ~~conveyed, the property is conveyed by the person who appropriated the property or by an~~
35 ~~heir of that person and the conveyance causes the burying ground to be inaccessible from~~
36 ~~any public way, the conveyance is made subject to an easement for the benefit of the~~
37 ~~spouse, ancestors and descendants of any person interred in the burying ground. The~~
38 ~~easement may be used only by persons to walk in a direct route from the public way~~
39 ~~nearest the burying ground to the burying ground at reasonable hours. A descendant or~~
40 ~~relative of a person buried in a family burying ground or the designated agent of a~~
41 ~~descendant or relative may file a description of the location and boundaries of the burying~~
42 ~~ground, along with supporting documentation, including photographs, with the municipal~~
43 ~~clerk of the municipality where the burying ground is situated. If a descendant or relative~~

1 of a person buried in a family burying ground cannot be located, the municipality or its
2 designated agent, a historical society, a lineage society or the faculty of an educational
3 institution may file the description of the burying ground with the municipal clerk of the
4 municipality where the burying ground is situated. The inability to locate a record of a
5 family burying ground at the registry of deeds in the county where a burying ground is
6 situated, or in the records of the municipal clerk of the municipality where a family
7 burying ground is situated, does not negate ownership of the family burying ground by
8 descendants or relatives of a person buried in the family burying ground. A person who
9 owns a parcel of land that contains a family burying ground shall provide a descendant or
10 relative of a person buried in the family burying ground, or the designated agent of the
11 descendant or relative, access to the family burying ground to protect and preserve the
12 family burying ground through activities including, but not limited to, the use of
13 photography, video recordings, geographic positioning systems and transcription of grave
14 marker inscriptions to document condition and preserve historic information. A
15 descendant or relative of a person buried in a family burying ground or the designated
16 agent of the descendant or relative may, at the expense of the descendant, relative or
17 designated agent, determine the location of unmarked graves and cemetery boundaries
18 through the use of ground-penetrating radar or other identification techniques and may
19 erect or repair fencing around the family burying ground or repair any gravestone within
20 the family burying ground.

21 If property surrounding a burying ground appropriated pursuant to this section is
22 conveyed, the property is conveyed by the person who appropriated the property or by an
23 heir of that person and the conveyance causes the burying ground to be inaccessible from
24 any public way, the conveyance is made subject to an easement for the benefit of the
25 spouse, ancestors, descendants and relatives of any person interred in the burying ground.
26 The easement may be used only by persons to walk in a direct route from the public way
27 nearest the burying ground to the burying ground during daylight hours. The owner of
28 the property surrounding the family burying ground shall designate the direct route a
29 person must use to access the family burying ground and is not liable for any injuries
30 sustained by a person accessing the family burying ground using the designated route or
31 within the boundaries of the family burying ground.

32 **SUMMARY**

33 This bill creates the following provisions.

34 1. A municipality or its caretaker may access an ancient burying ground on privately
35 owned land annually or as determined by the municipality or its designated caretaker.

36 2. A municipality or its designated caretaker may use photography, video recording,
37 geographic positioning systems and transcription of grave marker inscriptions to
38 document condition and preserve historic information in a burying ground.

39 3. A municipality or its designated caretaker may use ground-penetrating radar or
40 other methods to determine the location of unmarked graves and cemetery boundaries.

1 4. A person who owns land that contains an ancient burying ground must provide a
2 descendant or relative of a person buried in the ancient burying ground, or a descendant
3 or relative's designated agent, access to the ancient burying ground for the purposes of
4 protecting or preserving it.

5 5. A municipal clerk of the municipality where an ancient burying ground is located
6 must notarize a document allowing access to an ancient burying ground on privately
7 owned land to a descendant or relative of a person buried in an ancient burying ground or
8 the designated agent of the descendant or relative by the person who owns the parcel of
9 land.

10 6. A descendant or relative of a person buried in an ancient burying ground, or the
11 agent of a descendant or relative, may use photography, video recording, geographic
12 positioning systems and transcription of grave marker inscriptions to document condition
13 and preserve historic information in the burying ground. A descendant or relative of a
14 person buried in an ancient burying ground, or the designated agent of a descendant or
15 relative, may also erect and repair fencing and repair gravestones.

16 7. A descendant or relative of a person buried in an ancient burying ground or the
17 designated agent of a descendant or relative may employ a person to use ground-
18 penetrating radar or other methods to determine the location of unmarked graves and
19 cemetery boundaries.

20 8. The inability to locate a record of a burying ground at a registry of deeds in the
21 county in which the burying ground is located or in the records of the municipal clerk of
22 the municipality in which the burying ground is located does not negate ownership of the
23 burying ground.

24 9. If a descendant or relative of a person buried in the burying ground, or the
25 designated agent of a descendant or relative, a municipality or its designated agent, a
26 historical society, a lineage society or the faculty of an educational institution is unable to
27 locate records of a burying ground, that individual or entity may file a description of the
28 location and boundaries of the burying ground, along with supporting documentation,
29 with the municipal clerk of the municipality where the burying ground is located.

30 10. The inability to locate a record of a family burying ground at a registry of deeds
31 of the county in which the family burying ground is located or in the records of the
32 municipal clerk of the municipality in which the family burying ground is located does
33 not negate ownership of a family burying ground by descendants or relatives of a person
34 buried in the family burying ground.

35 11. A descendant or relative of a person buried in a family burying ground, or the
36 designated agent of a descendant or relative, may file a description of the location and
37 boundaries of the burying ground, along with supporting documentation, with the
38 municipal clerk of the municipality where the burying ground is located. If a descendant
39 or relative of a person buried in a family burying ground cannot be located, the
40 municipality or its designated agent, a historical society, a lineage society or the faculty
41 of an educational institution may file the description of the burying ground.

1 12. A descendant or relative of a person buried in a family burying ground, or the
2 designated agent of a descendant or relative, may use photography, video recording,
3 geographic positioning systems and transcription of grave marker inscriptions to
4 document condition and preserve historic information in the burying ground. A
5 descendant or relative of a person buried in a family burying ground, or the designated
6 agent of a descendant or relative, may also erect and repair fencing and repair
7 gravestones.

8 13. A descendant or relative of a person buried in a family burying ground, or the
9 designated agent of a descendant or relative, may employ a person to use ground-
10 penetrating radar or other methods to determine the location of unmarked graves and
11 cemetery boundaries.

12 14. A relative of a person interred in a family burying ground is given an easement to
13 access the burying ground if a property surrounding the burying ground is conveyed in a
14 way that makes it inaccessible from any public way. Current statute already gives this
15 benefit to the spouse, ancestors and descendants of a person interred in a family burying
16 ground. Under this bill, the easement may be used only during daylight hours, and the
17 property owner must designate the direct route a person must use to access the family
18 burying ground.

19 15. The property owner who gives access to the spouse, ancestors, descendants and
20 relatives of a person interred in a family burying ground is not liable for any injuries
21 sustained by a person accessing the burying ground by the designated direct route or
22 within the boundaries of the burying ground.