

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1346

H.P. 936

House of Representatives, April 6, 2017

**An Act To Clarify Access to Landlocked Ancient and Family
Burying Grounds and To Clarify the Definition of Ancient Burying
Ground**

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

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative CASÁS of Rockport.
Cosponsored by Senators: BRAKEY of Androscoggin, CARPENTER of Aroostook, MASON
of Androscoggin.

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

2 **Sec. 1. 13 MRSA §1101-A, sub-§1**, as enacted by PL 1999, c. 700, §2, is
3 amended to read:

4 **1. Ancient burying ground.** "Ancient burying ground" means a private cemetery
5 established before 1880. "Ancient burying ground" may include but is not limited to a
6 private cemetery established before or pursuant to Public Law 1829, chapter 420, section
7 1 or Public Law 1839, chapter 392 or a family burying ground established before 1880.

8 Existence of an ancient burying ground may be documented in family papers, including,
9 but not limited to, deeds or manuscripts or published records of the history of the county
10 or municipality where the burying ground is located or on historic or current maps of the
11 area where the burying ground is located. Existence of an ancient burying ground may
12 also be documented in the records of the register of deeds in the county where the burying
13 ground was located when it was established or in the records of the municipality where
14 the burying ground was when it was established, but the lack of documentation does not
15 negate the existence of, or its status as, an ancient burying ground. The lack of apparent
16 marked boundaries for an ancient burying ground does not negate its existence or status
17 as an ancient burying ground.

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

20 **1. Access to ancient burying ground surrounded by privately owned land for a**
21 **municipality or its designated caretaker.** ~~The owner of~~ A person who owns a parcel of
22 land that surrounds an ancient burying ground shall provide a municipality or its
23 caretaker designated pursuant to section 1101 access necessary to perform the duties
24 pursuant to section 1101 and Title 30-A, section 2901. A municipality or its caretaker
25 designated pursuant to section 1101 may access an ancient burying ground surrounded by
26 privately owned land annually or as determined by the municipality or designated
27 caretaker as necessary to protect and preserve the ancient burying ground. Any
28 unreasonable denial ~~to provide~~ of access may result in the owner being held responsible
29 for any fines, court costs and attorney's fees incurred by municipalities in legally
30 obtaining access or for failing to meet the requirements of section 1101.

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

32 **1-A. Access to ancient burying grounds and family burying grounds**
33 **surrounded by privately owned land by descendant or other relative or designated**
34 **agent.** A person who owns a parcel of land that surrounds an ancient burying ground or
35 family burying ground shall provide a descendant or other relative of a person buried in
36 the ancient burying ground or family burying ground, or the designated agent of the
37 descendant or other relative, access to the ancient burying ground or family burying
38 ground pursuant to section 1142 to protect and preserve the ancient burying ground or
39 family burying ground. Any unreasonable denial of access may result in the owner of the
40 surrounding land being held responsible for any fines, court costs and attorney's fees
41 incurred by the descendants or other relatives in legally obtaining access.

1 The owner of the land surrounding an ancient burying ground or a family burying ground
2 may designate the route a person must use to access the burying ground and is not liable
3 for any injuries sustained by a person accessing the burying ground using the designated
4 route or within the boundaries of the burying ground. The designated route may not
5 present undue obstructions to passage. If an unobstructed route to the burying ground
6 does not exist, the owner of the land surrounding the ancient burying ground or family
7 burying ground shall file a notarized document listing all obstructions with the municipal
8 clerk of the municipality where the ancient burying ground or family burying ground is
9 situated.

10 A person who owns a parcel of land surrounding an ancient burying ground or a family
11 burying ground may file with the municipal clerk of the municipality where the ancient
12 burying ground or family burying ground is situated a notarized document allowing
13 access to that burying ground to a spouse, descendant or other relative of a person buried
14 in the ancient burying ground or family burying ground or the designated agent of the
15 spouse, descendant or other relative.

16 **Sec. 4. 13 MRSA §1142**, as amended by PL 1991, c. 412, §1, is further amended
17 to read:

18 **§1142. Family burying grounds**

19 When a person appropriates for a family burying ground a piece of land containing
20 not more than 1/4 of an acre, causes a description of it to be recorded in the registry of
21 deeds of the same county or by the clerk of the town where it is situated and substantially
22 marks the bounds of the burying ground or encloses it with a fence, it is exempt from
23 attachment and execution. No subsequent conveyance of it is valid while any person is
24 interred in the burying ground; but it must remain to the person who appropriated,
25 recorded and marked that burying ground and to that person's heirs as a burial place
26 forever. If property surrounding a burying ground appropriated pursuant to this section is
27 conveyed, the property is conveyed by the person who appropriated the property or by an
28 heir of that person and the conveyance causes the burying ground to be inaccessible from
29 any public way, the conveyance is made subject to an easement for the benefit of the
30 spouse, ancestors ~~and~~ descendants and other relatives of any person interred in the
31 burying ground or the designated agent of the spouse, ancestors, descendants and other
32 relatives of any person interred in the burying ground. The easement may be used ~~only~~
33 by persons only to walk in a direct route from the public way nearest the burying ground
34 to the burying ground ~~at reasonable hours~~ during daylight hours. The owner of the
35 property surrounding the family burying ground may designate, pursuant to section
36 1101-B, subsection 1-A, the direct route a person must use to access the family burying
37 ground and is not liable for any injuries sustained by a person accessing the family
38 burying ground while using the designated route or within the boundaries of the family
39 burying ground.

40 **SUMMARY**

41 This bill amends the law governing family burying grounds and ancient burying
42 grounds in the following ways.

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1. It amends the definition of "ancient burying ground."
2. It provides that a municipality or its caretaker may access an ancient burying ground surrounded by privately owned land annually or as determined necessary by the municipality or its designated caretaker.
3. It provides that a person who owns land that surrounds an ancient burying ground or a family burying ground must provide a descendant or other relative of a person buried in the burying ground, or a designated agent of the descendant or other relative, access to the burying ground for the purposes of protecting and preserving it.
4. If property surrounding a burying ground is conveyed causing the burying ground to be inaccessible from a public way, the bill provides that the conveyance is made subject to an easement for the benefit of the spouse, ancestors, descendants and other relatives or the designated agent of the spouse, ancestors, descendants and other relatives of any person interred in the burying ground. It also requires that the owner of the property surrounding the family burying ground designate the direct route a person must use to access the family burying ground and is not liable for injuries sustained by a person accessing the family burying ground.