

# **126th MAINE LEGISLATURE**

# FIRST REGULAR SESSION-2013

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	 	-	 

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.

Millient M. Mac Jailand

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.

H.P. 135

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 6 7 8	(1) Listed in the National Register of Historic Places or judged eligible for national register listing by the Maine Historic Preservation Commission and, if the area is judged eligible for listing, the site designation is approved by the appropriate land managing agency director or local governing body; and
9	(2) Posted;
10 11 12	B. The subject of a preservation agreement between the landowner or landowners and the Maine Historic Preservation Commission pursuant to Title 33, section 1551 and is:
13	(1) Listed in the National Register of Historic Places; and
14	(2) Posted; or
15	C. Subject to section 378.
16 17	Sec. 2. 27 MRSA §373-A, sub-§8, as amended by PL 1999, c. 748, §1, is further amended to read:
18 19 20	<b>8.</b> Site. "Site" means an area containing archaeological artifacts or materials or other evidence of habitation, occupation or other use by historic or prehistoric people, and which is either:.
21	A. On or under state controlled land and is:
22 23 24 25	(1) Listed in the National Register of Historic Places or judged eligible for national register listing by the Maine Historic Preservation Commission and, if the area is judged eligible for listing, the site designation is approved by the appropriate land managing agency director or local governing body; and
26	(2) Posted;
27 28 29	B. The subject of a preservation agreement between the landowner or landowners and the Maine Historic Preservation Commission, pursuant to Title 33, section 1551 and is:
30	(1) Listed in the National Register of Historic Places; and
31	(2) Posted; or
32	C. Subject to section 378.
33 34	Sec. 3. 27 MRSA §374, as amended by PL 1989, c. 700, Pt. A, §113, is further amended to read:

#### 1 §374. Legislative provisions

2 **1. Purpose.** The people of this State benefit only when a <u>protected</u> 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.

- A. Any person, agency or institution desiring to excavate a <u>protected</u> site shall <u>must</u>
  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.
- C. The permit to excavate shall <u>must</u> be cosigned by the Director of the Maine
   Historic Preservation Commission and the Director of the State Museum, except for
   state-controlled lands where the permit also shall <u>must</u> be cosigned by the director of
   the agency with primary jurisdiction.
- D. The application shall <u>must</u> state the nature and specific location of the artifacts, specimens and materials to be removed, the legal name and address of the person, agency or institution seeking authorization and the date or dates on which the artifacts, specimens or materials are to be removed.
- E. Upon receipt of an application, the permittors may issue a written permit authorizing the excavation of the <u>protected</u> site for such term and upon such conditions as they <u>deem consider</u> reasonable and <u>which that</u> are consistent with subsection 3.

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

- A. In order to minimize damage to state-controlled lands and to artifacts, specimens or materials to be removed, and, in order to ensure the recording and preservation of significant data regarding those artifacts, specimens, materials or <u>protected</u> sites, the permit may set forth requirements or limitations regarding the methods and equipment to be employed in the removal, the procedures to be followed in documenting the removal and the report or reports, if any, to be submitted to officials or agencies of the State upon completion of the removal activities.
- B. The permittors may require that an authorized representative of the State be
   present to witness and document the removal of artifacts, specimens or materials
   from state-controlled land.
- C. The permit shall <u>must</u> clearly indicate the type of artifacts, specimens or materials to be removed, the location of the <u>protected</u> site, the time of the proposed removal activity or excavation, the legal name and address of the permittee and any other limitations and requirements that may be imposed by the permittors.

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

6 **4. Permit revocation.** All permittors, 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.

**5. Permit possession.** The permit shall <u>must</u> be retained in the personal possession of the permittee during the course of removal activities, and shall <u>must</u> be made available for inspection upon demand of any authorized representative of the State. Any person or persons engaged in excavation on a <u>protected</u> site who do not produce a valid permit upon demand of an authorized representative of the State, are presumptively engaged in unauthorized excavation.

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

   20
   read:
- Definition of unlawful excavation. "Unlawful excavation" means unauthorized
   excavation at a protected site, unless:
- A. A demonstrable emergency situation existed relating to the survival of the
   protected site; and
- 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

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

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

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

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

Sec. 6. 27 MRSA §377, as amended by PL 1995, c. 502, Pt. E §30 and PL 2011, c.
 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 information on in the possession of the Maine Historic Preservation Commission, the 15 State Museum, the Division of Parks and Public Lands, other state agencies or the 16 University of Maine System about the location or other attributes of any site in the 17 possession of the Maine Historic Preservation Commission, the State Museum, the 18 Division of Parks and Public Lands, other state agencies or the University of Maine 19 System or protected site may be deemed by the Maine Historic Preservation Commission 20 21 or State Museum to be confidential and exempt from Title 1, chapter 13. Such data shall must be made available for the purpose of archaeological research. The directors of the 22 Maine Historic Preservation Commission and the State Museum shall jointly adopt rules 23 establishing standards and procedures for obtaining the data, and may impose reasonable 24 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**

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

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## SUMMARY

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