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

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

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

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

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

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

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

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

situated shall notarize a document whereby a person who owns a parcel of land that contains an ancient burying ground allows access to that burying ground to a descendant or relative of a person buried in the ancient burying ground or the designated agent of the descendant or relative.

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

§ 1141. Grounds inalienable; description recorded

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

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

§ 1142. Family burying grounds

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

ground is situated. The inability to locate a record of a family burying ground at the registry of deeds in the county where a burying ground is situated, or in the records of the municipal clerk of the municipality where a family burying ground is situated, does not negate ownership of the family burying ground by descendants or relatives of a person buried in the family burying ground. A person who owns a parcel of land that contains a family burying ground shall provide a descendant or relative of a person buried in the family burying ground, or the designated agent of the descendant or relative, access to the family burying ground to protect and preserve the family burying ground through activities including, but not limited to, the use of photography, video recordings, geographic positioning systems and transcription of grave marker inscriptions to document condition and preserve historic information. A descendant or relative of a person buried in a family burying ground or the designated agent of the descendant or relative may, at the expense of the descendant, relative or designated agent, determine the location of unmarked graves and cemetery boundaries through the use of ground-penetrating radar or other identification techniques and may erect or repair fencing around the family burying ground or repair any gravestone within the family burying ground.

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

SUMMARY

This bill creates the following provisions.

1. A municipality or its caretaker may access an ancient burying ground on privately owned land annually or as determined by the municipality or its designated caretaker.
2. A municipality or its designated caretaker may use photography, video recording, geographic positioning systems and transcription of grave marker inscriptions to document condition and preserve historic information in a burying ground.
3. A municipality or its designated caretaker may use ground-penetrating radar or other methods to determine the location of unmarked graves and cemetery boundaries.
4. A person who owns land that contains an ancient burying ground must provide a descendant or relative of a person buried in the ancient burying ground, or a descendant or relative's designated agent, access to the ancient burying ground for the purposes of protecting or preserving it.
5. A municipal clerk of the municipality where an ancient burying ground is located must notarize a document allowing access to an ancient burying ground on privately owned land to a descendant or relative of a person buried in an ancient burying ground or the designated agent of the descendant or relative by the person who owns the parcel of land.

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

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

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

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

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

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

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

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

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

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