



# 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.