

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

H.P. 135 - L.D. 160

An Act To Amend the Laws Pertaining to Archaeological Sites

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

Sec. 1. 27 MRSA §372, sub-§3 is enacted to read:

3. Consultation with federally recognized Indian tribes. In recognition of the interests of the federally recognized Indian tribes in this State in their archaeological heritage and in accordance with the requirements of federal law, including the National Historic Preservation Act of 1996, as amended, and the federal Native American Graves Protection and Repatriation Act, the Maine Historic Preservation Commission and the State Museum shall consult with federally recognized Indian tribes in this State concerning adequate and appropriate curation of archaeological materials excavated from protected sites.

Sec. 2. 27 MRSA §373-A, sub-§7-A is enacted to read:

7-A. Protected site. "Protected site" means a site that is:

A. On or under state-controlled land and is:

(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

(2) Posted;

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:

(1) Listed in the National Register of Historic Places; and

(2) Posted; or

C. Subject to section 378.

Sec. 3. 27 MRSA §373-A, sub-§8, as amended by PL 1999, c. 748, §1, is further amended to read:

8. 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:~~

~~A. On or under state controlled land and is:~~

~~(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~~

~~(2) Posted;~~

~~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:~~

~~(1) Listed in the National Register of Historic Places; and~~

~~(2) Posted; or~~

~~C. Subject to section 378.~~

Sec. 4. 27 MRSA §374, as amended by PL 1989, c. 700, Pt. A, §113, is further amended to read:

§374. Legislative provisions

1. Purpose. The people of this State benefit only when a protected site is systematically excavated, analyzed and interpreted by a qualified principal investigator.

2. Permit procedure. The procedure for obtaining a permit to excavate a protected site ~~shall be~~ is as follows.

A. Any person, agency or institution desiring to excavate a protected site ~~shall~~ must submit a written application.

B. Application for a permit ~~shall~~ must be in the form of a letter and research proposal directed to the Director of the Maine Historic Preservation Commission and ~~shall~~ be accompanied by a copy of the preservation agreement attested by the Register of Deeds and the written permission of the landowner to proceed with the excavation. The landowner may give permission to excavate in the preservation agreement.

C. The permit to excavate ~~shall~~ must 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~~ must be cosigned by the director of the agency with primary jurisdiction.

D. The application ~~shall~~ must 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 permitors may issue a written permit authorizing the excavation of the protected site for such term and upon such conditions as they ~~deem~~ consider reasonable and ~~which~~ that are consistent with subsection 3.

3. Permit conditions. The conditions ~~which~~ that may be imposed upon a permit are 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 protected 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 permitors 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~~ must clearly indicate the type of artifacts, specimens or materials to be removed, the location of the protected 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 permitors.

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.

4. Permit revocation. All permitors, or their authorized representatives, may revoke or suspend a permit if there is evidence to indicate that the permittee has violated or exceeded the limitations of ~~his~~ the permit, or if there is evidence to indicate that artifacts, materials or the protected site are being unnecessarily defaced, damaged or destroyed in the course of ~~their~~ removal. Any willful violation of the provisions or limitations of a permit is grounds for immediate revocation of the permit and ~~shall~~ must be construed as unauthorized excavation.

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

Sec. 5. 27 MRSA §375, sub-§1, as enacted by PL 1981, c. 55, §7, is amended to read:

1. 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.

Sec. 6. 27 MRSA §376, as amended by PL 1989, c. 700, Pt. A, §114, is further amended to read:

§376. Antiquities recovered from protected sites

1. 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 permitors. They may be loaned for a term specified by the permitors 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 ~~or~~ 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.

4. 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. 7. 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:

§377. Protection of site location information

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 State Museum, the Division of Parks and Public Lands, other state agencies or the University of Maine System about the location or other attributes of any site ~~in the possession of the Maine Historic Preservation Commission, the State Museum, the Division of Parks and Public Lands, other state agencies or the University of Maine System~~ or protected site may be ~~deemed~~ designated by the Maine Historic Preservation Commission or State Museum ~~to be~~ as 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 Maine Historic Preservation Commission and the State Museum shall jointly adopt rules establishing standards and procedures for obtaining the data, and may impose reasonable requirements on its use, including requirements of confidentiality. The directors of the Maine Historic Preservation Commission and the State Museum shall establish procedures for reviewing no less frequently than once every 10 years information designated as confidential under this section in order to determine whether continued confidentiality is necessary and, if not, to remove the confidentiality designation.

Sec. 8. 27 MRSA §378, as amended by PL 1999, c. 748, §3, is further amended to read:

§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 protected 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.