



# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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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**

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

A handwritten signature in cursive script that reads "R 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.

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