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An Act Regarding Construction and Excavation near Burial Sites

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, a malfunctioning septic system has polluted a shellfish bed and that shellfish bed can be reopened if the construction of a private sewer connection to a public sewer line is approved; and

Whereas, the immediate repair of a malfunctioning septic system is needed to protect the public's health and the local shellfish industry; and

Whereas, a change in the laws governing construction and excavation near burial sites is necessary to ensure the immediate repair of the septic system; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 13 MRSA §1371-A, sub-§1, as amended by PL 2007, c. 112, §2, is repealed and the following enacted in its place:

1. Known burial sites. Construction or excavation near a known burial site or within the boundaries of an established cemetery must comply with any applicable land use ordinance concerning burial sites or established cemeteries, whether or not the burial site or established cemetery is properly recorded in the deed to the property. In the absence of local ordinances, construction or excavation may not be conducted within 25 feet of a known burial site or within 25 feet of the boundaries of an established cemetery, whichever is the greater, whether or not the burial site or established cemetery is properly recorded in the deed to the property, except:

A. When the construction or excavation is performed pursuant to a lawful order or permit allowing the relocation of bodies;

B. When necessary for the construction of a public improvement, as approved by the governing body of a municipality or, in the case of a state highway, by the Commissioner of Transportation; or

C. When necessary for the construction of a private sewer line connection to a public sewer system if:

(1) No other practicable alternative exists to connecting to a public sewer system;

(2) No other practicable alternative exists to excavation or construction within 25 feet;

(3) The excavation or construction is at the maximum possible distance from the cemetery or burial site;

(4) The construction of the private sewer line connection is approved by the governing body of the municipality and the regulating division within the Department of Health and Human Services;

(5) Public notice is provided by the affected municipality that allows 2 weeks for members of the public to submit testimony prior to any approval, construction or excavation and any testimony is also submitted by the municipality to the regulating division within the Department of Health and Human Services; and

(6) No excavation or construction equipment is placed on any part of the cemetery or burial site or within 10 feet of the cemetery or burial site at any time during the construction of the sewer connection.

This paragraph is repealed June 30, 2010.

A municipality may enforce this subsection or any local ordinance concerning burial sites or established cemeteries pursuant to Title 30-A, section 4452, including the assessment of civil penalties.

In the event of any violation of this subsection, the Attorney General may seek to enjoin a further violation, in addition to any other remedy.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective June 9, 2009.