

1985 Assembly Bill 507

Date of enactment: April 29, 1986
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1985 Wisconsin Act 316

AN ACT to repeal chapter 155 (title) and 155.10; to renumber and amend 155.01 to 155.06 and 157.01 to 157.06; to amend chapter 157 (title), 27.012 (1) (f) and (h) and (4) (b), 62.23 (7) (c), 70.11 (13) and 700.40 (1) (a); and to create subchapter I (title) of chapter 157, subchapter II (title) of chapter 157, subchapter III of chapter 157, 15.07 (5) (o), 15.701 (4), 15.705 (1), 19.85 (1) (em), 20.245 (6), 59.97 (4) (m), 60.61 (2) (h) and 979.01 (1r) of the statutes, relating to the preservation of human burial sites, creating a burial sites preservation board attached to the historical society, granting a tax exemption, imposing a penalty and making an appropriation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

PREFATORY NOTE: This bill proposes statutory protection for human burial sites in this state. It was prepared at the direction of the legislative council American Indian study committee's subcommittee on Indian burial sites.

For detailed information on this bill, see the explanatory NOTES which are included in the bill.

SECTION 1. Legislative findings and purpose. (1)
The legislature finds that:

(a) Human burial sites which do not presently resemble well-tended and well-marked cemeteries are subject to a higher degree of vandalism and inadvertent destruction than well-tended and well-marked cemeteries.

(b) Over 80% of known prehistoric burial sites in many parts of this state have been damaged or destroyed.

(c) Some human burial sites and human remains may contain information of interest to science and may be subject to scientific study, which may include excavation.

(d) Human burial sites are subject to pillage and destruction for commercial purposes, including land development, agriculture, mining and sale of artifacts.

(e) Curiosity and the private collection of artifacts are other causes of the destruction of human burial sites.

(f) Existing law on cemeteries reflects the value society places on preserving human burials sites, but the law does not clearly provide equal and adequate protection or incentives to assure preservation of all human burial sites in this state.

(2) The legislature intends by this act to:

(a) Assure that all human burials be accorded equal treatment and respect for human dignity without reference to ethnic origins, cultural backgrounds or religious affiliations.

(b) Provide adequate protection for all interests related to any human burial site encountered during

archaeological excavation, metallic or nonmetallic mining, construction, agricultural activities, environmental impact assessments or other ground-disturbing activities, without causing avoidable or undue delay or hardship to any person who has an interest in using the land on which the burial site is located.

(c) Balance the interests of scientists, landowners, developers and others with an interest in a burial site, including those with a kinship interest and those with a general cultural, tribal or religious affiliation with the burial site.

NOTE: The legislative findings are intended to describe the range of concerns related to human burial sites. The provisions on legislative intent reflect the purposes which are intended to be accomplished by this bill.

SECTION 2. 15.07 (5) (o) of the statutes is created to read:

15.07 (5) (o) Members of the burial sites preservation board, \$25 per day.

NOTE: The bill provides members of the burial sites preservation board with a payment of \$25 per day for each meeting of the board. The \$25 payment is in addition to actual and necessary expenses of board members such as meals, lodging and transportation expenses. Full-time state employees do not receive the \$25 payment.

SECTION 3. 15.701 (4) of the statutes is created to read:

15.701 (4) **BURIAL SITES PRESERVATION BOARD.** The burial sites preservation board shall have the program responsibilities specified for the board under s. 157.70.

NOTE: This describes the responsibilities of the burial sites preservation board, as set forth in s. 157.70.

SECTION 4. 15.705 (1) of the statutes is created to read:

15.705 (1) **BURIAL SITES PRESERVATION BOARD.** There is created a burial sites preservation board attached to the historical society under s. 15.03, consisting of the state archaeologist, as a nonvoting member, the director of the historical society if the director is not serving as the state historic preservation officer, the state historic preservation officer, or her or his for-

mally appointed designee, who shall be a nonvoting member unless the director of the historical society is serving as the state historic preservation officer, and the following members appointed for 3-year terms:

(a) Three members, selected from a list of names submitted by the Wisconsin archeological survey, who shall have professional qualifications in the fields of archaeology, physical anthropology, history or a related field.

(b) Three members who shall be members of federally recognized Indian tribes or bands in this state, selected from names submitted by the Great Lakes inter-tribal council and the Menominee tribe. Each such member shall be knowledgeable in the field of tribal preservation planning, history, archaeology or a related field or shall be an elder, traditional person or spiritual leader of his or her tribe.

NOTE: The bill creates a burial sites preservation board, which will meet at least once every 3 months. The members of the board are nominated by the governor, and with the advice and consent of the senate appointed for 3-year terms.

The burial sites preservation board is attached, for administrative purposes only, to the historical society. The board has policy-making powers related to the burial sites preservation program and quasi-judicial powers related to decisions regarding permits for the disturbance of burial sites. The powers and duties of the board are created and set forth, in detail, in s. 157.70.

SECTION 6. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

	<u>1985-86</u>	<u>1986-87</u>
20.245 Historical society		
(6) BURIAL SITE CATALOG		
AND EXCAVATION		
(a) General program operations	GPR A -0-	67,448

SECTION 7. 20.245 (6) of the statutes is created to read:

20.245 (6) BURIAL SITE CATALOG AND EXCAVATION.
(a) *General program operations.* The amounts in the schedule for the catalog of burial sites under s. 157.70 (2) and excavations of burial sites under s. 157.70 (4) (c) 3. a.

NOTE: The bill provides an appropriation to the historical society for the purpose of implementing the new statutes related to the protection of burial sites.

SECTION 8. 27.012 (1) (f) and (h) and (4) (b) of the statutes are amended to read:

27.012 (1) (f) "Object" means ~~a man-made~~ an article, implement or other item of archaeological interest. "Object" does not include human remains, as defined in s. 157.70 (1) (f).

(h) "State site" or "state archaeological site" means a land or water area, owned by this state, where there are objects or other evidence of archaeological interest. ~~This term includes~~ Those terms include all aboriginal mounds and earthworks, ~~ancient burial grounds,~~ prehistoric and historical ruins, Indian mounds and objects and other archaeological and historical fea-

SECTION 5. 19.85 (1) (em) of the statutes is created to read:

19.85 (1) (em) Deliberating under s. 157.70 if the location of a burial site, as defined in s. 157.70 (1) (b), is a subject of the deliberation and if discussing the location in public would be likely to result in disturbance of the burial site.

NOTE: As a general rule, all meetings of governmental bodies must be held in open session. Meetings must be held at a place reasonably accessible to members of the public and open to all citizens at all times. The statutes provide various exemptions which permit a governmental body to meet in closed session.

This bill creates an exemption to permit the burial sites preservation board to meet in closed session for purposes of discussions which involve the location of a burial site if disclosure of the location to the public would be likely to result in disturbance of the burial site. The following points should be noted:

1. The exemption is not mandatory. The board will have to decide, on a case-by-case basis, whether to use the exemption.
2. The exemption is drafted narrowly. The board will not be able to use the exemption in all of its deliberations related to burial sites.
3. The board will be able to split its deliberations on specific burial sites into 2 segments. The board can conduct part of the discussion in open session, instructing parties not to mention the location of the burial site. The board can then commence a closed session, restricted to those aspects of the burial site which cannot be discussed without reference to its location.

tures on state land. Those terms do not include any burial site, as defined in s. 157.70 (1) (b).

(4) (b) If a site is located on privately owned land, ~~persons~~ any person wishing to dig or excavate at such a site ~~are~~ is strongly encouraged to secure a permit to do so. The applicant for a permit must submit the written consent of the owner. The director may not issue such a permit for any site which is a burial site, as defined in s. 157.70 (1) (b).

NOTE: Currently, s. 27.012 requires a permit for archaeological activities on state land and reserves to the state title to all objects found and data gathered in field archaeology on state sites. This statute is administered by the state archaeologist, an appointee of the director of the historical society.

The amendment to s. 27.012 removes burial sites located on state property from the archaeological permit procedure and makes the burial sites subject to the procedure under s. 157.70.

SECTION 9. 59.97 (4) (m) of the statutes is created to read:

59.97 (4) (m) Burial sites, as defined in s. 157.70 (1) (b).

NOTE: This provision is added to the list of purposes for which county zoning authority may be exercised. The current statutory list of county zoning purposes already includes simi-

lar authority which permits counties to regulate historic landmarks and historic districts.

Existing county zoning authority would permit zoning which would result in the protection of burial sites by creating conservancy districts or similar land use protections. The creation of a specific reference to burial sites is intended to serve 2 purposes:

1. It will remove any potential doubt that a county has statutory authority to protect burial sites through its zoning ordinance.
2. By creating explicit authority to protect burial sites, this language will encourage the protection of burial sites by identifying the protection of burial sites as an appropriate governmental function.

The subcommittee recognizes that tribal zoning within areas subject to tribal jurisdiction could also provide protection for burial sites. Tribal zoning would supersede municipal zoning which applies to the same land area.

SECTION 10. 60.61 (2) (h) of the statutes is created to read:

60.61 (2) (h) Provide for the preservation of burial sites, as defined in s. 157.70 (1) (b).

NOTE: This language pertains to town zoning authority. The purpose of this language is explained in the NOTE to s. 59.97 (4) (m).

SECTION 11. 62.23 (7) (c) of the statutes is amended to read:

62.23 (7) (c) *Purposes in view.* Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to encourage the protection of groundwater resources; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; and to preserve burial sites, as defined in s. 157.70 (1) (b). Such regulations shall be made with reasonable consideration, among other things, of the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.

NOTE: This language pertains to the zoning authority of cities, villages and towns exercising village powers. The purpose of this language is explained in the NOTE to s. 59.97 (4) (m).

SECTION 12. 70.11 (13) of the statutes is amended to read:

70.11 (13) CEMETERIES. Land owned by cemetery associations and used exclusively as public burial grounds and tombs and monuments therein, and privately owned burial lots; land adjoining such burial grounds, owned and occupied exclusively by the association for cemetery purposes; personal property owned by any cemetery association and necessary for the care and management of burial grounds; burial sites and contiguous lands which are cataloged under s. 157.70 (2) (a).

NOTE: This bill provides a property tax exemption for land containing a burial site which is entered in the state catalog of burial sites under s. 157.70. This makes the property tax treatment of burial sites consistent with the property tax treatment of cemeteries. The director of the historical society identifies and records burial sites in the catalog, and determines the amount of contiguous land necessary to protect the burial site from disturbance.

SECTION 13. Chapter 155 (title) of the statutes is repealed.

SECTION 14. 155.01 to 155.06 of the statutes are renumbered 157.01 to 157.06, and 157.04, as renumbered, is amended to read:

157.04 Penalty. Any officer or person having a corpse in charge, and refusing to report and deliver it, when required by this ~~chapter~~ subchapter, or violating the provisions forbidding sale or delivery thereof, to be used outside the state, shall be liable to the person, university or medical school aggrieved, in the sum of ~~fifty dollars~~ \$50.

SECTION 15. 155.10 of the statutes is repealed.

NOTE: This section of existing law prohibits disturbance of a burial site and is punishable by imprisonment or a fine of up to \$500. Presumably it would apply to any burial site. It has been repealed and is incorporated into the penalty provisions of s. 157.70, as created in this bill.

SECTION 16. Chapter 157 (title) of the statutes is amended to read:

CHAPTER 157
CEMETERIES DISPOSITION OF
HUMAN REMAINS

SECTION 17. Subchapter I (title) of chapter 157 of the statutes is created to read:

CHAPTER 157
SUBCHAPTER I
CORPSES
[to precede s. 157.01]

SECTION 18. 157.01 to 157.06 of the statutes are renumbered 157.061 to 157.065, and 157.061 (intro.), as renumbered, is amended to read:

157.061 Definitions. (intro.) ~~As used~~ Except as otherwise provided, in this ~~chapter~~ subchapter:

NOTE: These sections combine present ch. 155 on corpses and present ch. 157 on cemeteries into one chapter (ch. 157) with a new title; each old chapter being a subchapter of the new chapter.

SECTION 19. Subchapter II (title) of chapter 157 of the statutes is created to read:

CHAPTER 157
SUBCHAPTER II
CEMETERIES
[to precede s. 157.061]

SECTION 20. Subchapter III of chapter 157 of the statutes is created to read:

CHAPTER 157
SUBCHAPTER III
BURIAL SITES PRESERVATION

157.70 Burial sites preservation. (1) DEFINITIONS.
In this section:

(a) "Board" means the burial site preservation board.

(b) "Burial site" means any place where human remains are buried.

(c) "Cataloged" means recorded under sub. (2) (a), (4) (e) or (6) (c).

(d) "Director" means the director of the historical society or his or her formally appointed designee.

(e) "Disturb" includes defacing, mutilating, injuring, exposing, removing, destroying, desecrating or molesting in any way.

(f) "Human remains" means any part of the body of a deceased person in any stage of decomposition.

(g) "Interest" means an interest based on any of the following:

1. Direct kinship.
2. A cultural, tribal or religious affiliation.
3. A scientific, environmental or educational purpose.
4. Land use.
5. A commercial purpose not related to land use which is consistent with the purposes of this section.
6. Any other interest which the board deems to be in the public interest.

(h) "Owner" means a person who owns or leases land on which a burial site is located.

(i) "Qualified archaeologist" means an individual who has a graduate degree in archaeology, anthropology or a closely related field and at least one year of full-time professional experience or equivalent specialized training in archaeological or physical anthropological research, administration or management, at least 4 months of supervised field and analytic experience in general North American archaeology or physical anthropology and a demonstrated ability to carry research to completion.

(2) DIRECTOR'S DUTIES. The director shall:

(a) Under a special inspection warrant as required under s. 66.122, identify and record in a catalog burial sites in this state, together with sufficient contiguous land necessary to protect the burial site from disturbance, and notify in writing every owner of a burial site so recorded and any county or local historical society in the county where the burial site is located. Any information in the catalog related to the location of any burial site, the disclosure of which would be likely to result in the disturbance of the burial site, is not subject to s. 19.35 (1). The notice shall include information about the permit required under sub. (5) and the toll free number the owner may call for more information.

(b) Identify and record in a catalog burial sites likely to be of archaeological interest or areas likely to contain burial sites. Any information in the catalog related to the location of any burial site likely to be of archaeological interest or of any area likely to contain a burial site, the disclosure of which would be likely to

result in the disturbance of the burial site, is not subject to s. 19.35 (1).

(c) Make recommendations concerning burial sites on private property for acquisition by the state or other public agencies to preserve the burial sites.

(d) Provide for and publicize a telephone service which allows any person in this state to call, without charge, the director to report a discovery or disturbance of a burial site.

(e) Establish a registry for any person whom the board determines to have an interest in a cataloged burial site or class of cataloged burial sites under sub. (2m) (b) or (c). The registry shall include the name of every person whom the board determines to have an interest in the preservation of a burial site or in providing for the reinterment of the human remains and objects related to burial in the burial site if the burial site is disturbed and identify the burial site in which the person is determined to have an interest. Any information in the registry related to the location of any burial site, the disclosure of which would be likely to result in disturbance of the burial site, is not subject to disclosure under to s. 19.35 (1).

(f) Assist owners in identifying persons to be notified under sub. (5) (b) 2.

(g) Assist Indian tribes, state agencies and other persons in any negotiation with any federal agency for the preservation of burial sites and human remains.

(h) Mediate, upon application of any owner or person in the registry under par. (e), any dispute related to the disturbance or proposed disturbance of a burial site.

(i) Cause a cataloged burial site to be recorded by the register of deeds of the county in which the burial site is located. The historical society shall reimburse the county for the cost of recording under this paragraph from the appropriation under s. 20.245 (6) (a).

(2m) BOARD DUTIES. The board shall:

(a) Meet at least every 3 months.

(b) Determine which Indian tribes in this state have an interest in any cataloged burial site or class of cataloged burial sites and notify the director for entry in the registry under sub. (2) (e).

(c) Determine which applicants for entry in the registry under sub. (2p) have an interest in a cataloged burial site or class of cataloged burial sites.

(d) As it deems necessary, review determinations of the director and the division of hearings and appeals in the department of administration under sub. (5).

(e) As it deems necessary, review disposition actions taken by the director under sub. (6).

(f) As it deems appropriate, approve transfers of burial sites under sub. (6m) (b) 2.

(2p) APPLICATION FOR REGISTRY. Any person may apply to the board for entry in the registry and shall indicate in which burial site she or he is claiming an interest.

(2r) **SITE DISTURBANCE PROHIBITED.** Except as provided under subs. (4) and (5), no person may intentionally cause or permit the disturbance of a burial site. This subsection does not prohibit normal agricultural or silvicultural practices which do not disturb the human remains in a burial site or the surface characteristics of a burial site.

(3) **REPORT OF DISTURBED BURIAL SITES.** (a) Except as provided under s. 979.01, a person shall immediately notify the director if the person knows or has reasonable grounds to believe that a burial site is being disturbed or may be disturbed contrary to the requirements of subs. (4) and (5).

(b) Upon receipt of any notice under par. (a), the director shall determine if the burial site which is the subject of the notice has been cataloged under sub. (2) (a).

(4) **PROCEDURE FOR UNCATALOGED BURIAL SITES.** (a) If the director determines that a burial site reported under sub. (3) is not cataloged under sub. (2) (a), he or she shall immediately notify the owner of the burial site of the procedure under this subsection and of the liabilities and penalties which apply for failure to comply with the procedure. If the director deems it appropriate, he or she may give notice to the board, and to any person who has or may have an interest in the burial site, that a burial site has been reported under sub. (3).

(b) No owner who has received notice under par. (a) may in any way intentionally cause or permit any activity which would disturb the burial site which is the subject of the notice unless authorized by the director under par. (c) 2 or (d).

(c) 1. Using information available concerning the burial site and the proposed activity, the director shall determine whether the proposed activity will disturb the burial site and whether the registry under sub. (2) (e) shows that any person has an interest in the burial site.

2. If the director determines that the proposed activity will not disturb the burial site or will disturb a burial site in which no person is shown on the registry under sub. (2) (e) to have an interest, he or she shall notify the owner of the owner's right to cause or permit the activity.

3. If the director determines that the proposed activity will disturb a burial site in which any other person who is not the owner is shown on the registry under sub. (2) (e) to have an interest and that the interest is substantial, the director shall notify the owner that the owner may not cause or permit the activity unless the owner does one of the following:

a. Authorizes the director or a qualified archaeologist approved by the director to excavate the burial site to remove and analyze any human remains and objects related to the burial in the burial site from the burial site within a reasonable time, beginning within 30 days of when ground conditions permit, for disposition under sub. (6).

b. Changes the proposed activity so as not to disturb any burial site.

(d) If the director determines that an owner has satisfied the requirements under par. (c) 3, he or she shall notify the owner of the owner's right to cause or permit any activity which is in keeping with the owner's action under par. (c) 3.

(e) If under par. (c) 3, a all human remains and objects related to the burial in a burial site reported under sub. (3) (a) are not removed from the burial site, the director shall enter the burial site into the record prepared under sub. (2) (a).

(f) The director shall submit a written report to the board of any determination which he or she makes under this subsection.

(5) **PROCEDURE FOR CATALOGED BURIAL SITES.** (a) No person may intentionally cause or permit the disturbance of a cataloged burial site without a permit from the director issued under this subsection.

(b) Any person who intends to cause or permit any activity on a cataloged burial site which in any way might disturb the burial site shall:

1. Apply to the director for a permit to disturb the burial site. The application shall include the purpose of the disturbance and the names and addresses of any persons notified under subd. 2. The director shall send the applicant the names of any person in the registry with an interest in the burial site.

2. On a form provided by the director, notify any person whose name the director has sent under subd. 1 of the proposed disturbance. The notice to any person under this subdivision shall include information on the notified person's right to a hearing on whether the director should grant a permit to disturb the burial site.

(c) 1. Upon request of the applicant or any person notified under par. (b), or if the director determines that a hearing is necessary, the director shall request the division of hearings and appeals in the department of administration to conduct a hearing on whether a permit should be issued to disturb the burial site which is the subject of the request. If in any part of the hearing the location of a burial site is the subject of the testimony, such part of the hearing shall be conducted in a session closed to the public and the record of such part of the hearing shall be exempt from disclosure under s. 19.35 (1).

1m. If a hearing is not requested or determined to be necessary under subd. 1, the director shall determine whether a permit should be issued to disturb the burial site which is the subject of the application under par. (b) 1. If the director determines that the benefits to the permit applicant in disturbing the burial site outweigh the benefits to all other persons shown on the registry under sub. (2) (e) to have an interest in not disturbing the burial site, the director shall grant a permit to disturb the burial site. In making the determination, the director shall consider the interest of the public in addition to any other interests. If the direc-

tor determines that any of the following classes of interest are represented, the director shall weight the interests in the following order of priority:

- a. Direct kinship.
- b. A cultural, tribal or religious affiliation.
- c. A scientific, environmental or educational purpose.
- d. Land use.
- e. A commercial purpose not related to land use which is consistent with the purposes of this section.
- f. Any other interest which the director deems to be in the public interest.

2. If a hearing is requested or determined to be necessary under subd. 1, the division of hearings and appeals in the department of administration shall conduct a hearing to determine whether the benefits to the permit applicant in disturbing the burial site outweigh the benefits to all other persons shown on the registry under sub. (2) (e) to have an interest in not disturbing the burial site. If the division finds in favor of the applicant, the division shall issue a determination in favor of granting a permit to disturb a burial site which is the subject of the hearing under this paragraph. In making the determination, the division shall consider the interest of the public in addition to the interests of the parties. If any of the following classes of interest are represented in the hearing, the division shall weight the interests in the following order of priority:

- a. Direct kinship.
- b. A cultural, tribal or religious affiliation.
- c. A scientific, environmental or educational purpose.
- d. Land use.
- e. A commercial purpose not related to land use which is consistent with the purposes of this section.
- f. Any other interest which the board deems to be in the public interest.

2m. If the division makes a determination for granting a permit to disturb a burial site which is the subject of the hearing under this paragraph, the division may determine the person to whom the human remains and objects related to the burial in the burial site should be transferred for analysis and reinterment or other appropriate disposition when the burial site is disturbed. In making such a determination, the division shall follow the order of priority prescribed in sub. (6) (a).

3. If the determination under subd. 1m or 2 is for granting a permit to disturb a burial site which is the subject of the hearing under this paragraph, the director shall grant the permit if the owner authorizes the director or a qualified archaeologist approved by the director to excavate the burial site to remove, within a reasonable time, beginning within 30 days of when ground conditions permit, for disposition under sub. (6), any human remains and objects related to the burial in the burial site to be disturbed under the permit.

4. A permit issued under this subsection may be subject to any condition or exemption deemed necessary to limit the disturbance of a burial site or to minimize any other burden on any person affected by granting the permit.

5. Any party in a hearing under this paragraph may appeal the determination under subd. 1m or 2 to the board.

(6) DISPOSITION OF HUMAN REMAINS REMOVED FROM BURIAL SITES. (a) If human remains and objects related to the burial in the site are removed from a burial site under sub. (4) (c) 3. a or (5) (c) 3 and the division has not determined under sub. (5) (c) 2m the person to whom such remains and objects should be transferred for analysis and reinterment or other appropriate disposition, the director shall notify any person in the registry under sub. (2) (e) with an interest in the analysis and reinterment or appropriate disposition of such human remains and objects. The director shall transfer the remains and objects to such person for appropriate reinterment or other appropriate disposition upon receipt of a written application by any person with an interest in the analysis and reinterment or other appropriate disposition based on the following, in the order of priority stated, when persons in prior classes are not available at the time of application and in the absence of actual notice of opposition by a member of the same or a prior class:

1. Direct kinship.
2. A cultural, tribal or religious affiliation.
3. A scientific, environmental or educational purpose.
4. Any other interest which the board deems to be in the public interest.

(b) If the director cannot identify any person with an interest in reintering the human remains and objects received under par. (a), the director shall provide for reinterment or other disposition of the human remains and objects in an appropriate manner.

(c) The director shall enter into the catalog prepared under sub. (2) (a) the site of any reinterment under par. (a) or (b).

(d) The director shall submit to the board a written report of any disposition action taken under this subsection.

(e) The board may review and modify any disposition action taken by the director under this subsection.

(6m) BURIAL SITES ON PUBLIC LANDS. (a) In this subsection, "municipality" has the meaning given under s. 66.066 (1) (a) and includes the state.

(b) Notwithstanding any other provision of this section, a municipality:

1. May not intentionally cause or permit the disturbance of any burial site on land it owns.
2. May not transfer any burial site to any person who is not a municipality unless the transfer provides for preservation of the burial site from any disturb-

ance by any person and unless the transfer is approved by the board.

3. Shall endeavor to take positive action to preserve any burial site on land it owns through appropriate land use management including but not limited to appropriate multiuse purposes such as nature preserves.

(7) ACTION BY ATTORNEY GENERAL. Upon request of the board, the attorney general or the district attorney of the proper county shall aid in any investigation, inspection, hearing or trial had under the provisions of this section and shall institute and prosecute all necessary actions or proceedings for the enforcement of such provisions and for the punishment of violations of the same. The attorney general or district attorney so requested shall report to or confer with the board regarding the request within 30 days after receipt of the request.

(8) REMEDIES. Any person who intentionally disturbs, without the authorization of the director under sub. (4) (c) 2 or (d), a burial site which is not cataloged or who intentionally disturbs, without a permit issued under sub. (5), a cataloged burial site is liable for attorney fees and damages or other appropriate relief to any person with an interest in preserving the burial site or in reintering the human remains and objects related to the burial in the burial site. Any person with an interest in preserving a burial site or in reintering the human remains in the burial site may bring an action for an injunction to prevent disturbance to the burial site or to obtain the human remains and objects related to the burial in the burial site for appropriate reinterment, in the order of priority specified in sub. (6) (a).

(9) PRESERVATION OF RIGHTS. The transfer of title to any property shall not change the rights and duties of any person under this section.

(10) PENALTIES. (a) Any person who fails to report the disturbance of a burial site as required under sub. (3) shall forfeit not less than \$100 nor more than \$500.

(b) Any person who intentionally disturbs a burial site which is not cataloged without the authorization of the director under sub. (4) (c) 2 or (d) shall forfeit not less than \$500 nor more than \$1,000.

(c) Any owner who intentionally causes or permits any activity which disturbs a burial site after receiving notice from the director under sub. (4) (a) without the authorization required under sub. (4) (c) 2 or (d) shall forfeit not less than \$1,000 nor more than \$5,000.

(d) Any person who intentionally causes or permits any activity which disturbs a cataloged burial site without a permit issued under sub. (5) shall forfeit not less than \$1,000 nor more than \$5,000.

(e) Any person who disturbs a burial site for commercial gain not related to use of the land where a burial site is located or who disturbs a cataloged burial site for commercial gain related to use of the land where a burial site is located in violation of this section may be fined not to exceed 2 times the gross value

gained or 2 times the gross loss caused by the disturbance, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred, or imprisoned for not more than one year in the county jail or both. In calculating the amount of the fine based on personal injury, any measurement of pain and suffering shall be excluded.

NOTE: Below is a summary of s. 157.70.

Scope of the Draft

The bill provides statutory protection for all human burial sites in this state. The bill does not distinguish between different types of burial sites. Also, the bill does not make distinctions according to the age of the burial site.

The definition of "burial site" refers primarily to places where human remains have been intentionally interred. The term also includes sites where human remains have been buried accidentally, as by a landslide, or sites where human remains left in the open have subsequently been covered by soil. The definition does not include sites where skeletal material is found on the surface of the land.

Responsibilities of the Director

The bill creates new duties for the director of the state historical society. The director may delegate these duties to an employe of the historical society. The primary duties of the director are to: (1) identify and catalog burial sites and notify the owner of property on which a cataloged burial site is located; (2) identify and catalog places where burial sites are likely to be located; (3) identify persons with an interest in cataloged burial sites and prepare a register of those persons; (4) administer the new statutes which restrict the disturbance of burial sites; and (5) supervise the disposition of human remains and objects which are removed from a burial site.

Information about the location of cataloged burial sites is not subject to disclosure as public records.

The director also has a variety of other duties, including making recommendations concerning state or municipal acquisition of burial sites and mediating disputes between property owners and persons interested in a burial site.

Burial Sites Preservation Board

The bill creates a part-time burial sites preservation board. The members are nominated by the governor, and appointed with the advice and consent of the senate.

The board includes: (1) 3 members with professional qualifications in archaeology, physical anthropology, history or related fields; (2) 3 members of federally recognized Indian tribes or bands in Wisconsin with a knowledge of tribal preservation planning, history, archaeology or related fields or with a position as an elder, traditional person or spiritual leader of the tribe; and (3) the director of the historical society. The state archeologist and the state historic preservation officer serve as nonvoting members. The Indian members are recommended to the governor by the Great Lakes inter-tribal council and the Menominee Tribe. The other 3 professional members are recommended by the Wisconsin archeological survey.

All of the public members are appointed for 3-year terms.

The burial sites preservation board is attached, for administrative purposes only, to the historical society. The board is a part-time body with policy-making powers related to the burial sites preservation program and quasi-judicial powers related to decisions regarding permits for the disturbance of burial sites. The primary duties of the board are: (1) to develop the detailed policies necessary to implement the state burial sites preservation program; (2) to review the decisions of the director or the administrative hearing examiner concerning applications for permits to disturb cataloged burial sites; and (3) to review deci-

sions of the director regarding the disposition of human remains and objects related to burial which are removed from a burial site.

Initially, the board's duties will focus on developing policies to implement the state burial sites preservation program. The statutes cannot deal with all of the contingencies and fact situations which will occur as the program is implemented. In particular, the board will need to develop additional criteria for including burial sites in the state catalog. For example, the board will need to develop policies for sites where a burial site is known to exist but the precise location is not known. Also, the board will need to develop specific policies for resolving conflicts when more than one person has a substantial interest in a burial site or in reinterment of human remains and objects related to the burial.

The board also has other responsibilities, including a requirement to approve transfers by municipalities of municipal property containing a burial site.

Duty to Report Disturbance of Burial Sites

The bill creates a requirement, imposed on all persons, to immediately notify the director of the historical society if the person knows or has grounds to believe that a burial site is being disturbed without authorization. A person who fails to report a disturbance of a burial site is subject to a forfeiture.

The reporting requirement does not apply to deaths which must be reported to the police or to the medical examiner or coroner.

Protection of Burial Sites

1. Uncataloged Burial Sites

No person may intentionally disturb a burial site which is not listed in the state catalog of burial sites unless the disturbance is authorized by the director. The bill creates a procedure for obtaining this authorization.

If the director determines that a proposed activity will not disturb the burial site or will disturb a burial site in which no person on the register has an interest, the director is required to permit the activity. If the director determines that the activity will disturb a burial site in which a person on the register has a substantial interest, the owner must either permit a qualified archaeologist to excavate the burial site or change the activity so as not to disturb the burial site. The owner must allow a reasonable time for the excavation, beginning within 30 days after the time when ground conditions are suitable for excavation.

The director is required to enter an uncataloged burial site into the state burial site catalog if all human remains are not removed from the site.

A person who intentionally disturbs an uncataloged burial site without authorization is subject to a forfeiture of not less than \$500 nor more than \$1,000. An owner who intentionally disturbs or permits the disturbance of an uncataloged burial site without authorization after receiving notice of the statutory requirements is subject to a forfeiture of not less than \$1,000 nor more than \$5,000.

2. Cataloged Burial Sites

If a burial site is included in the state burial site catalog, a person may only disturb the burial site pursuant to a permit issued by the director. The person must notify anyone listed on the register whom the director determines to have an interest in the burial site and must apply for a permit to disturb the burial site.

A permit to disturb a burial site is issued if the benefits to the applicant in disturbing the burial site outweigh the benefits to any other person with an interest in not disturbing the burial site. The bill includes priorities for the various types of interests in a burial site. A person with an interest in a burial site may request a contested case hearing on the decision to issue a permit. Portions of a contested case hearing which relate to the

location of a cataloged burial site must be held in closed session, and those parts of the hearing record are not subject to disclosure as public records.

If a permit is issued to disturb the burial site, the owner must authorize the director or a qualified archaeologist approved by the director to excavate the burial site to remove any human remains. The owner must allow a reasonable time for the excavation, beginning within 30 days after the time when ground conditions are suitable for excavation.

A person who intentionally disturbs or permits the disturbance of a cataloged burial site without a permit is subject to a forfeiture of not less than \$1,000 nor more than \$5,000.

Disposition of Human Remains and Objects Related to Burial

If human remains and objects related to burial are removed from a burial site, the director or the hearing examiner must attempt to identify persons with an interest in the reinterment or other appropriate disposition of the human remains and objects. If such a person is identified, the remains and objects are transferred to the person for appropriate reinterment or other appropriate disposition. The bill includes priorities if more than one person has an interest in reinterment or other appropriate disposition.

If the director cannot identify a person with an interest in reinterment or other disposition of the human remains and objects, the director provides for reinterment or other disposition.

Burial Sites on Public Lands

The bill creates an additional protection for burial sites on publicly owned land. A public body may not convey land containing a burial site unless the transfer is approved by the burial sites preservation board.

Remedies

The bill requires the attorney general or the district attorney of the appropriate county to investigate and prosecute the violations of the burial site statute.

The bill also creates a private remedy in which a person with an interest in the burial site may bring an action for an injunction to prevent further disturbance to the burial site. A person who intentionally disturbs a burial site without authorization of the director is liable for damages or other appropriate relief, and attorney fees, to any person with an interest in the burial site.

Disturbing a Burial Site for Commercial Gain

A person who disturbs a burial site for commercial gain commits a misdemeanor and is subject to a criminal penalty. The monetary portion of the penalty is a fine not to exceed 2 times the gross value gained or 2 times the gross loss caused by the disturbance, whichever is greater. This penalty is modeled after the racketeering statute, s. 946.84. In addition to or in lieu of the fine, the bill provides for imprisonment in the county jail for not more than one year.

SECTION 21. 700.40 (1) (a) of the statutes is amended to read:

700.40 (1) (a) "Conservation easement" means a holder's nonpossessory interest in real property imposing any limitation or affirmative obligation the purpose of which includes retaining or protecting natural, scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, preserving a burial site, as defined in s. 157.70 (1) (b), or preserving the historical, architect-

tural, archaeological or cultural aspects of real property.

NOTE: This clarifies that a conservation easement may be created to protect a burial site.

SECTION 22. 979.01 (1r) of the statutes is created to read:

979.01 (1r) If the coroner or medical examiner is notified of a death under sub. (1) and determines that his or her notification of the death was not required under sub. (1), he or she shall notify the director of the historical society under s. 157.70 (3).

NOTE: This provides that discoveries of human remains which are reported to the coroner or medical examiner will be referred to the director of the historical society if the coroner or medical examiner does not have reason to take jurisdiction of the discovery.

SECTION 23. **Nonstatutory provisions.** (1)
APPOINTMENT OF FIRST MEMBERS OF THE BURIAL SITES

SECTION 24. **Program responsibility changes.** In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

A	B	C
Statute Sections	References Deleted	References Inserted
15.101 (9)	none	157.70 (5)(c)
15.191 (intro.)	155.01	157.01
15.251 (intro.)	none	157.70 (7)
15.401 (17)	155.01 (1)	157.01 (1)
15.911 (intro.)	155.02 (3), 155.03 (2)	157.02 (3), 157.03 (2)

SECTION 25. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
32.06 (intro.)	ch. 157	subch. II of ch. 157
32.57 (2)(k)	157.03	157.062
32.57 (2)(k)	157.05	157.064
60.23 (16)	ch. 157	subch. II of ch. 157
69.37	155.02	157.02
69.38 (1)(a)	155.02	157.02
69.45 (1)	155.02	157.02
157.03, as renumbered	155.02 (3)	157.02 (3)
157.065 (1)(b) 5, as renumbered	157.03	157.062
157.065 (3)(e), as renumbered	157.05	157.064
157.11 (4)	157.03	157.062
187.01 (3)	ch. 157	subch. II of ch. 157
187.04	ch. 157	subch. II of ch. 157
187.10 (4)	ch. 157	subch. II of ch. 157
343.17 (1)(b)	155.06 (4)(b)	157.06 (4)(b)
343.17 (1)(c)	155.06 (6)	157.06 (6)
343.17 (1)(d) and (3)(b)	155.06	157.06
445.03 (1)(b)	ch. 155	subch. I of ch. 157

SECTION 26. **Effective date.** This act takes effect on January 1, 1987.