



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-0413/P2  
MED:amn

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1 **AN ACT** *to amend* 157.70 (2) (a) and 157.70 (2) (b); and *to create* 157.70 (5g) of  
2 the statutes; **relating to:** the preservation of burial sites.

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***Analysis by the Legislative Reference Bureau***

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Study Committee on the Preservation of Burial Sites.

Under current law, the director of the state historical society has a duty to identify and record in a catalog burial sites and is authorized to use a special inspection warrant to carry out this duty. In addition, the director has a duty to identify and record in the catalog burial sites likely to be of archaeological interest or areas likely to contain burial sites. Current law does not require the director to obtain the landowner's consent when exercising these duties.

This bill draft creates an exception to the director's duty to catalog when an owner denies consent for the owner's land to be recorded in the catalog. If an owner denies such consent, the director may not record the land in the catalog without a declaratory ruling under s. 806.04, Stats. The bill draft permits, but does not require, the director to seek a declaratory ruling in circuit court. In that proceeding, the director has the burden of proving, depending on the type of land identified, that burial sites, burial sites likely to

be of archaeological interest, or areas likely to contain burial sites are present on the land. Finally, the bill draft eliminates the historical society's authority to use a special inspection warrant to identify and catalog burial sites.

1           **SECTION 1.** 157.70 (2) (a) of the statutes is amended to read:

2           157.70 (2) (a) ~~Under a special inspection warrant as required under s. 66.0119,~~  
3 ~~identify~~ Identify and, subject to sub. (5g) (a), record in a catalog burial sites in this  
4 state and, for burial sites which are not dedicated, sufficient contiguous land  
5 necessary to protect the burial site from disturbance, and notify in writing every  
6 owner of a burial site or of such land so recorded and any county or local historical  
7 society in the county where the burial site or the land is located. Any information  
8 in the catalog related to the location of any burial site, the disclosure of which would  
9 be likely to result in the disturbance of the burial site or the cataloged land  
10 contiguous to the burial site, is not subject to s. 19.35 (1). The notice shall include  
11 information about the permit required under sub. (5) and the toll free number the  
12 owner may call for more information. In this paragraph, "sufficient contiguous land"  
13 means land that is within at least 5 feet from any part of a burial site.

NOTE: The bill draft eliminates the historical society's authority to use a special inspection warrant to identify and catalog burial sites. The committee may wish to consider whether the declaratory ruling procedure is an adequate substitution.

14           **SECTION 2.** 157.70 (2) (b) of the statutes is amended to read:

15           157.70 (2) (b) Identify and, subject to sub. (5g) (b), record in a catalog burial  
16 sites likely to be of archaeological interest or areas likely to contain burial sites. Any  
17 information in the catalog related to the location of any burial site likely to be of  
18 archaeological interest or of any area likely to contain a burial site, the disclosure of  
19 which would be likely to result in the disturbance of the burial site or the cataloged  
20 land contiguous to a cataloged burial site, is not subject to s. 19.35 (1).

21           **SECTION 3.** 157.70 (5g) of the statutes is created to read:

1           157.70 **(5g)** COURT ACTION. (a) If an owner denies consent for land to be recorded  
2 in the catalog under sub. (2) (a), the land may be recorded in the catalog only  
3 following a declaratory ruling issued under s. 806.04. The director may bring an  
4 action for such a ruling in the circuit court for the county in which the land is located.  
5 In any such action, the director has the burden of proving that burial sites are  
6 present on the land, and the court shall make findings of fact as to that question. If  
7 the court finds that burial sites are present on the land, the director shall record the  
8 land in the catalog.

NOTE: The committee may wish to consider whether the director should have a deadline by which the action must be filed in circuit court. For example, the deadline could be a certain number of days from the date on which the director identified the burial site, or the date on which the director notified the owner, or the date on which the owner denied consent. The committee may also wish to consider including a statutory prohibition on disturbances to the land during the pendency of the proceeding.

9           (b) If an owner denies consent for land to be recorded in the catalog under sub.  
10 (2) (b), the land may be recorded in the catalog only following a declaratory ruling  
11 issued under s. 806.04. The director may bring an action for such a ruling in the  
12 circuit court for the county in which the land is located. In any such action, the  
13 director has the burden of proving that burial sites likely to be of archaeological  
14 interest or areas likely to contain burial sites are present on the land, and the court  
15 shall make findings of fact as to that question. If the court finds that burial sites  
16 likely to be of archaeological interest or areas likely to contain burial sites are present  
17 on the land, the director shall record the land in the catalog.

NOTE: Do the procedures set forth in SECTION 3 regarding the director's role and the court's authority reflect the committee's intent?

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**(END)**