



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-0414/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 (2c) of
2 the statutes; **relating to:** the preservation of burial sites.

Analysis by the Legislative Reference Bureau

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

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft 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 consider or obtain the landowner's approval when exercising these duties.

The bill draft creates an exception to the director's duty to catalog by permitting, but not requiring, the director to refrain from recording land in the catalog if cataloging is against the wishes of the landowner.

3 **SECTION 1.** 157.70 (2) (a) of the statutes is amended to read:
4 157.70 (2) (a) Under a special inspection warrant as required under s. 66.0119,
5 identify and, except as provided in sub. (2c), record in a catalog burial sites in this

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

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

12 157.70 (2) (b) Identify and, except as provided in sub. (2c), record in a catalog
13 burial sites likely to be of archaeological interest or areas likely to contain burial
14 sites. Any information in the catalog related to the location of any burial site likely
15 to be of archaeological interest or of any area likely to contain a burial site, the
16 disclosure of which would be likely to result in the disturbance of the burial site or
17 the cataloged land contiguous to a cataloged burial site, is not subject to s. 19.35 (1).

18 **SECTION 3.** 157.70 (2c) of the statutes is created to read:

19 157.70 (2c) CATALOGING; EXCEPTION. The director may refrain from recording
20 land in the catalog under sub. (2) (a) or (b) if doing so is against the wishes of the
21 owner.

NOTE: This provision allows, but does not require, the director to refrain from the director's duty to catalog under sub. (2) (a) and (b) upon consideration of the landowner's wishes. The section setting forth the exception does not list any other circumstances in which the director may refrain from his or her duty to catalog. The committee may wish to consider whether other types of circumstances (such as lack of agency resources) should be added to a section titled “Cataloging; Exceptions” or if consideration of the landowner's position should not be included as an exception to sub. (2) (a) and (b) but rather inserted in some other manner.

NOTE: The term "owner" is defined in existing law at s. 157.70 (1) (h) to also include lessors of land. The committee may wish to consider whether the wishes of a person who is leasing land should be considered or not.

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(END)