



Wisconsin Department of Transportation

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TO: Members, Study Committee on the Preservation of Burial Sites

The Honorable Amy Loudbeck, Chair
The Honorable Robert Brooks, Vice-Chair

FROM: Nate Yahn, Legislative Advisor
Wisconsin Department of Transportation

SUBJECT: Suggested Modifications to Wis. Stat. § 157.70 (Burial Sites Preservation)

The Wisconsin Department of Transportation (WisDOT) would like to provide committee members with some suggested modifications to the existing burial sites preservation law under s. 157.70, Stats., as the committee continues its work reviewing and discussing potential changes to the various procedures and requirements specified under current law.

WisDOT recognizes the significance of the state's rich historic heritage. It is important to achieve an appropriate balance between cultural resource stewardship and the desire for timely and low-cost delivery of projects in Wisconsin. Since the provisions of s. 157.70, Stats., first took effect beginning in 1987, the department has been fully committed to the successful compliance of its existing statutory obligations set forth in state law.

For the committee's first meeting held on August 2, 2016, the department was asked to present information on its existing policies and procedures regarding burial sites, and to also provide the committee with some suggested revisions to current law. At that meeting, WisDOT subject matter experts shared some of their expertise and past experiences in the area of burial site preservation, and had mentioned a few possible modifications to certain aspects in state law governing the preservation of burial sites in Wisconsin.

In follow-up to the August 2, 2016 committee meeting, the department would like to submit for consideration the following modifications under s. 157.70, Stats., relating to burial sites preservation.

Proposed Modifications – Burial Sites Preservation Law

- Define the term “burial”, rather than “burial site”, as any place where human remains are buried.
- Redefine “burial site” to mean any place where human remains are buried and which is located within the boundaries of an area identified in the catalog, recorded with the register of deeds, listed on the inventory of historical places, or specified on a map or plat.
- Modify the existing definition of “disturb” in s. 157.70(1)(e), Stats., to exclude activities that do not cause a disturbance to the surface or subsurface characteristics of the existing aggregate material.
- Create in s. 157.70, Stats, the following two definitions:
 - “Permit” includes funded, permitted, licensed, or approved by the owner or the director.
 - “Notify” means communication delivered by telephone, letter, electronic mail, or any other electronic means.
- Specify in s. 157.70(2)(a), Stats., that the director of the historical society shall consult with the person who owns or leases land on which a burial site is located, in the event a burial site is in immediate threat of disturbance not in accordance with the existing procedures for uncataloged and cataloged burial sites specified under s. 157.70(4) and (5), Stats.
- Remove the existing requirement in s. 157.70(2)(a), Stats., that the director of the historical society provide *written* notification for when a burial site or contiguous land is cataloged.
- Remove the existing requirement in s. 157.70(2)(d), Stats., that the director of the historical society provide for and publicize a *telephone service* for any person in this state to call when reporting a discovery or disturbance of a burial site, and instead require that the director provide for and publicize the manner in which a person can *notify* the director.
- Repeal the existing requirement in s. 157.70(2)(f), Stats., for the director of the historical society to assist owners in identifying the persons to be notified from the registry.
- Expand the meeting requirement of the burial sites preservation board specified in s. 157.70(2m)(a), Stats., to also include during the event of an emergency.
- Specify that existing infrastructure improvements, which do not disturb the human remains in a burial site or the surface characteristics of a burial site, are also not prohibited under s. 157.70(2r), Stats.

- Under s. 157.70(4), Stats., relating to procedures for uncataloged burial sites, allow any person who intends to cause or permit any activity which in any way might disturb a burial site which is not cataloged or the land contiguous to a burial site which is not cataloged to apply to the director of the historical society for a permit to disturb the burial site or the land. The application shall include the purpose of the disturbance.
- Specify that the notification required from the director of the historical society under s. 157.70(4)(c)2. and 3., Stats., shall be provided within 30 days after receipt of the request to disturb, and require that the director notify the applicant if additional time, not to exceed 30 days, is necessary to make a determination. If the director notifies the applicant that additional time is necessary, specify that the notice must include the reasons for needing additional time.
- Specify in s. 157.70(4)(d), Stats., that a determination made by the director of the historical society that permits the proposed activity is valid for the entire duration of the proposed activity, but subject to further review if additional information becomes available concerning the burial site and the proposed activity that warrants a new application to be submitted.
- Remove the existing requirement under s. 157.70(5)(b)1., Stats., that an application submitted to the director of the historical society, for a permit to disturb a cataloged burial site or the cataloged land contiguous to a cataloged burial site, include the names and addresses of any persons notified from the registry. In addition, remove the requirement that the director send the applicant the names of any person in the registry with an interest in the burial site.
- Specify in s. 157.70(5)(b)2., Stats., that the historical society director, not the applicant, must notify any person in the registry with an interest to the proposed disturbance.
- Require the request, from the director of the historical society under s. 157.70(5)(c)1., Stats., for a hearing to be conducted by the Department of Administration's Division of Hearings and Appeals, to be made within 30 days after receipt of the request to disturb, and require that the director notify the applicant if additional time, not to exceed 30 days, is necessary to determine if a hearing is necessary. If the director notifies the applicant that additional time is necessary, specify that the notice must include the reasons for needing additional time.
- Under s. 157.70(6m)(b), Stats., relating to burial sites on public lands, specify that a **cataloged** burial site may not be transferred by a municipality to any person who is not a municipality, unless the transfer provides for preservation of the burial site from any disturbance by any person and is approved by the burial sites preservation board.

- Specify under s. 157.70(6m)(b), Stats., that an ***uncataloged*** burial site may not be transferred by a municipality to any person who is not a municipality, unless the transfer is approved by the burial sites preservation board, or provides for preservation of the burial site from any disturbance by any person and the cataloging of the burial site if adequate historical documentation exists or, if no adequate historical documentation exists, is approved by the burial sites preservation board.

Thank you for your consideration. If you have any questions, please contact me at (608) 266-1114.