

**PROPOSALS PREPARED BY  
LEGISLATIVE COUNCIL STAFF  
AT THE DIRECTION OF VICE-  
CHAIR ROBERT BROOKS**

**DECEMBER 7, 2016**

## PROPOSAL 1

### Proposal:

Modify the procedure created in SECTION 13 of LRB-0821/P3 for contesting a decision of the Director of the Wisconsin Historical Society (WHS) to record a burial site (and contiguous land) in a catalog to allow **any interested person**, rather than only an owner under the current bill draft, to request a hearing (and appeal a decision of the Burial Sites Preservation Board).

### Instructions for specific changes to LRB-0821/P3:

- Page 6, line 1: After "of" insert "and person with an interest under sub. (2) (e) in"
- Page 6, line 2: After "owner" insert "or an interested person"
- Page 6, line 11: after "owner" insert ", person with an interest under sub. (2) (e),"
- Page 9, line 3: after "owner" insert "or interested person"
- Page 9, line 4: after "owner" insert "or interested person"
- Page 9, line 15: after "owner" insert "or interested person"
- Page 9, line 17: after "owner" insert "or any person with an interest under sub. (2) (e)"
- Page 9, line 22: after "owner" insert " or another interested person"

## PROPOSAL 2

### Proposal:

Create an expedited process for decisions regarding inadvertent discoveries of human remains.

### Instructions for specific changes to LRB-0821/P3:

- Add a new section amending s. 157.70 (3) (a) and (b) to add ", (4m)," after "(4)" in par. (a) and to add "and whether the burial site is subject to the procedure under sub. (4m)" after "(2) (a)" in par. (b).
- Add a new section creating s. 157.70 (4m), to read as follows (or something similar);

EXPEDITED PROCEDURE FOR INADVERTENT DISCOVERIES. (a) If the disturbance reported under sub. (3) was the result of an inadvertent discovery of a burial site through ground disturbing activities during the course of construction, the director shall, immediately after receiving the report under sub. (3), notify the owner, any person with an interest under sub. (2) (e), and the board of the procedure under this subsection and of the liabilities and penalties which apply for failure to comply with the procedure.

(b) No person 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 the disturbance is authorized by the board under par. (c).

(c) Within 15 days of receiving the notice under par. (a), the board shall hold a hearing and issue a decision directing the director to do one of the following with respect to the burial site:

1. Unless the construction activities are modified so as to avoid disturbance of the burial site, excavate, or approve a qualified archaeologist to excavate, the burial site to remove any human remains and objects related to the burial within a reasonable time, beginning within 30 days of when ground conditions permit, for disposition under sub. (6).

2. Commence the procedure under sub. (2) (a) to record burial sites and sufficient contiguous land in a catalog.

(d) The board shall immediately notify the director, owner, and any interested person of its decision. Within 48 hours from the notification, the owner has a right to request a contested case hearing regarding the board's decision. A hearing under this paragraph shall be conducted by the division.

- Add new cross references to sub. (4m) (c) in ss. 157.70 (2r), (3), (6) (a) and (8), Stats., and in SECTION 29.

## PROPOSAL 3

### Proposal:

In certain circumstances, allow an owner to utilize the procedures created in SECTION 13 of LRB-0821/P3 to contest the WHS Director's decision to catalog a site after a site has already been cataloged.

### Instructions for specific changes to LRB-0821/P3:

- Amend sub. (2g) (title) to add "PRIOR TO RECORDING" after "CATALOG".
- Create sub. (2h), which would read as follows (or something similar):

157.70 (2h) PROCEEDINGS TO CONTEST RECORDING IN A CATALOG SUBSEQUENT TO RECORDING. (a) For any burial site and contiguous land that was recorded in the catalog prior to [the effective date of the act], or that was recorded in the catalog after that date but for which no hearing was requested under sub. (2g) (a), an owner or another interested person may request a hearing before the board. If such a request is made, the board shall hold a hearing within 90 days after the date of the request. At the hearing, the director has the burden of proving, using the types of evidence described under sub. (2c) (b), that burial sites are present on the land. Following the hearing, the board shall issue a decision regarding whether to remove the burial site or land from the catalog. No later than 60 days after the hearing, the board shall send a copy of its decision to the director and owner or interested person. A hearing held under this paragraph is not a contested case hearing under ch. 227.

(b) Within 30 days after the date of the board's decision under par. (a), the owner or interested person shall have the right to a contested case hearing regarding whether the director should remove the burial site or land from the catalog. A hearing under this paragraph shall be conducted by the division.

(c) If the board decides to remove the site or land from the catalog and either no contested case hearing is requested within the period specified under par. (b) or the decision to remove land from the catalog is upheld as a final decision by the division or a court under par. (b), the director shall immediately do all of the following:

1. Remove the land from the catalog.
2. Submit a request to the register of deeds for the county in which the land is located to record a notice that the land has been removed from the catalog.

## PROPOSAL 4

### **Proposal:**

Authorize an owner to request that WHS conduct testing at the owner's expense, and require WHS to conduct such testing and provide data to the owner, prior to a hearing before the Burial Sites Preservation Board under SECTION 13 of LRB-0821/P3 to contest the recording of land in a catalog.

### **Instructions for specific changes to LRB-0821/P3:**

Page 9, line 8, following "request.", add: "Together with the request for a hearing, the owner may request additional testing, to be completed by an archeologist designated by the director and in a manner approved by that archeologist. The owner shall furnish payment for the estimated actual cost of such testing to the director prior to commencement of the testing. The director must provide the results of such testing to the owner prior to the hearing."

## PROPOSAL 5

### Proposal:

Allow interested parties to appeal a decision of the Burial Sites Preservation Board regarding a proposal to remove a burial site or land from the catalog under SECTION 14 of LRB-0821/P3.

### Instructions for specific changes to LRB-0821/P3:

- Page 11, after line 6: add a new subd. 4., which would read as follows (or something similar):

4. Within 30 days after the date of the board's decision under subd. 3., a person notified under subd. 1. shall have the right to a contested case hearing regarding whether the land should be removed from the catalog. A hearing under this paragraph shall be conducted by the division.

- Page 11, lines 7 to 9: replace those lines with the following text (or something similar):

5. If no appeal of a decision to remove land from the catalog is filed within the period specified under subd. 3., or if a decision to remove land from the catalog is upheld by the board following a hearing under subd. 3. and no hearing is requested under subd. 4., or if a decision to remove land from the catalog is upheld by the division following a hearing requested under subd. 4., the director shall immediately do all of the following: