



TO: MEMBERS OF THE STUDY COMMITTEE ON THE PRESERVATION OF BURIAL SITES

FROM: Ellsworth H. Brown, Ph.D., Ruth and Hartley Barker Director

RE: Wisconsin Historical Society Follow-up to the Legislative Council Preliminary Draft of Burial Sites Preservation Law, LRB-0821/P3

DATE: December 6, 2016

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As the Agency charged with carrying out the primary responsibilities under the State's burial sites preservation law, we are grateful for the opportunity to offer our comments and suggestions to the Committee as its study process has moved forward. We feel strongly that the Committee has done its work clarifying and improving the State's burial sites preservation law. We are thankful for Committee's thoughtful consideration in the proposed draft and support modifications in LRB-0821/P3, with the inclusion of two suggested technical changes that appear to be administrative in nature.

First, in Section 6 of the draft, the new definition of "Notify" includes "to communicate by telephone". Under "Notify", the law requires the Director to transmit facts to the landowner and others describing: burial site disturbances, projects proposing to disturb uncataloged and cataloged burial sites, and cataloging and decataloging of burial sites. These transmissions may result in contested legal disputes. It will be difficult or impossible to pursue or maintain legal actions predicated on telephone calls, the contents of which are unverifiable. We suggest that either the word "telephone" be removed from this draft definition or that any telephonic communication be followed up with a required written communication.

Second, pursuant to Section 21 of the draft, the Director shall notify Landowners within 30-days of receipt of a request to disturb an uncataloged burial site of any conditions associated with the disturbance. As stated in previous testimony, the Society has records of claims that disturbance requests were submitted to the Director, that the Director did not receive. We are concerned that a landowner could interpret the 30-day absence of response to mean the landowner may move forward with the disturbance without formal confirmation from the Director. We recommend language to be added to include a required immediate receipt from the Director of the initial disturbance request. This receipt requirement for the Director will protect both the landowner and the Director from a request having gone awry.