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Representative Loudenbeck
Chair, Legislative Council Study Committee on the Preservation of Burial Sites
Room 306 East, State Capitol
PO Box 8952
Madison, WI 53708

Dear Representative Loudenbeck,

I would like to start by thanking you for the opportunity to serve on the committee. I appreciate the passion of the committee members and the time spent trying to address the issues regarding the preservation of burial sites in Wisconsin. Although I'm grateful for the effort, I'm writing to explain my dissenting vote on the bill proposed by the Legislative Council Study Committee on the Preservation of Burial Sites.

The purpose of Wisconsin's burial sites preservation law is simple: preserve land in which human remains are buried. Preserving such land is essential in respecting religious traditions of cultures before us. It is necessary for the state of Wisconsin to protect land in which human remains are buried.

However, while this may be the goal of the law in theory, the reality has become something different altogether. Right now, the Director of the Wisconsin Historical Society can walk onto private property, seize a parcel of private land as a burial site, and completely restrict a landowner's use of that land and a buffer zone of land around it. At no point in this process is the director required to actually prove with certainty the existence of human remains. Bureaucratic processes at the Wisconsin Historical Society gives the director absolute discretion to seize and restrict the use of private property without having to prove with certainty the existence of human remains. This has happened to me personally. Over 25 years ago, the Wisconsin Historical Society seized part of my land without my consent and without proving the presence of human remains.

I volunteered to serve on the committee with the goal of promoting and protecting property rights for landowners facing this problem. I encouraged five solutions that both promote property rights and preserve burial sites.

First, the Wisconsin Historical Society should be required to prove with certainty the existence of human remains, and landowners should have the right to refuse cataloguing until the historical society proves the existence of human remains. It seems only fair that if a government wishes to seize private property without compensation, they should prove the need to do so. Nothing in the proposed bill requires the historical society to prove with certainty the existence of human remains.

Second, the historical society claimed it is their best practice to seek consent from landowners before cataloguing their land. I can tell you from experience, that is not their practice. The historical society catalogued my land without getting my consent. Law should dictate that unless human remains are proven to be present, landowners should have the right to deny the historical society the ability to seize and restrict private land. The bill does not afford landowners that right.

Third, the only way to truly prove if burial sites are present is to allow for minimally invasive testing in a method decided by the historical society and conducted under the supervision of an archaeologist selected by the historical society. I advocated that such testing both protects landowners from the unjustified seizing of land and truly identifies land the state should be protecting due to the presence of human remains. Nothing in the proposed bill requires the historical society to test land to verify the existence of human remains.

Fourth, I advocated for a method by which landowners with land currently catalogued can be removed from the registry if human remains are not detected on their property. I suggested that such landowners should have the ability to test their land in a method overseen by the historical society and an archeologist of their choosing. If testing did not prove the existence of remains, then the landowner has the right to use the property as they see fit. While the historical society currently does allow the landowner to provide evidence for removal from the catalogue, the law does not allow landowners to actually obtain evidence to prove there are no human remains. Unfortunately, the bill does not remedy that issue.

Lastly, No compensation is offered when the catalogued land is taken from the landowner's use. The committee discussed compensation and was mostly supportive of the idea. However, the committee didn't follow through when funding of the compensation became problematic.

I was hoping to work with committee members to find workable solutions to protect property owners. Unfortunately, that didn't happen. The bill proposed by the committee takes problems in the wrong direction and enables the director to seize even more land than he can under current law. A provision in the bill requires the director to double the size of the buffer zone around alleged burial sites; more land taken, more land restricted, and no ability for a landowner to ask for certain proof of human remains. The state of Wisconsin should not give unelected bureaucrats the unilateral ability to seize land.

I can't vote for a bill that takes away property rights and enables government to take private land. That's why I voted "no".

Sincerely,

Robert M. Shea