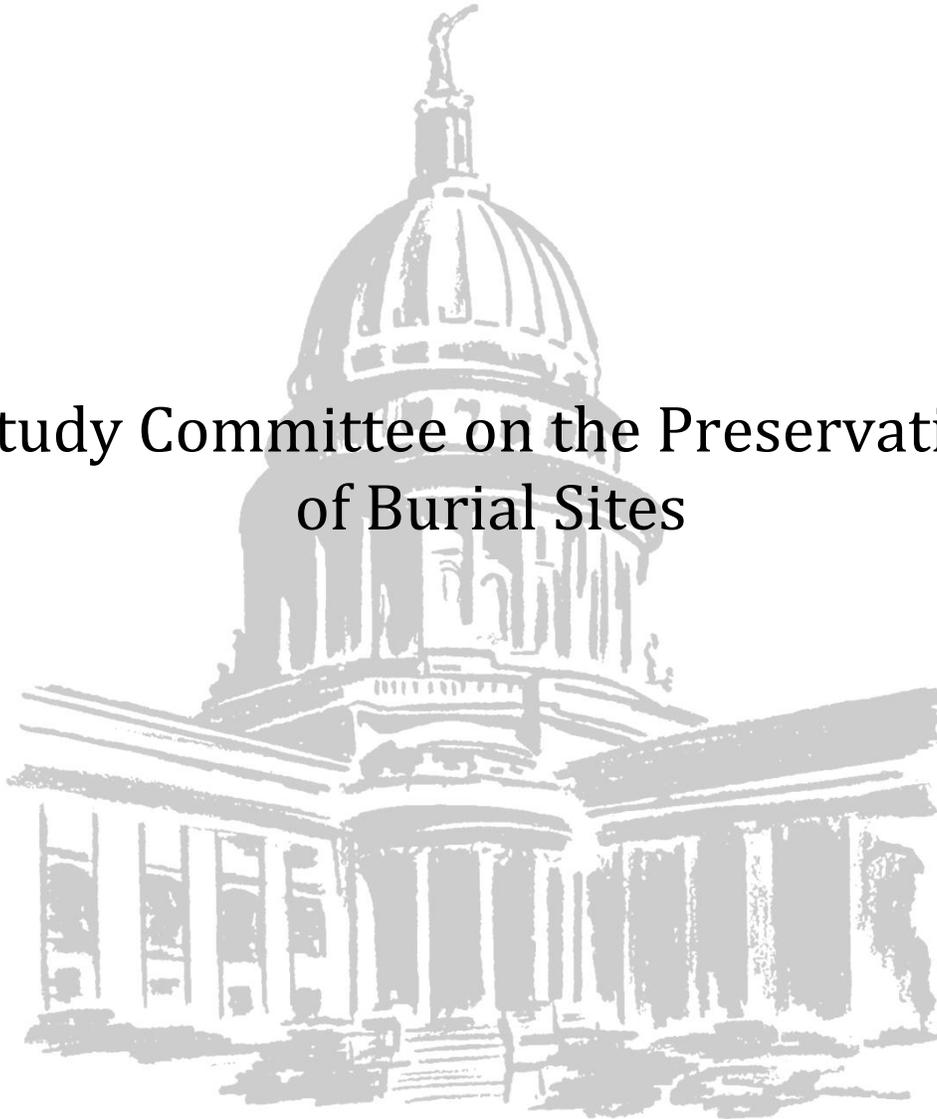


Report to the Joint Legislative Council

Study Committee on the Preservation of Burial Sites



January 13, 2017

LCR 2017-03

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304
Fax: (608) 266-3830

www.legis.wisconsin.gov/lc

STUDY COMMITTEE ON THE PRESERVATION OF BURIAL SITES

Prepared by:
Anna Henning, Senior Staff Attorney and Amber Otis, Staff Attorney
January 13, 2017

CONTENTS

PART I KEY PROVISIONS OF COMMITTEE RECOMMENDATIONS	3
LRB-0821/1, Relating to Disclosure of Burial Sites Located on Residential RealEstate and Various Changes Relating to the Preservation and Disturbance of Burial Sites.....	3
PART II COMMITTEE ACTIVITY	5
Assignment.....	5
Summary of Meetings.....	5
PART III RECOMMENDATIONS FOR INTRODUCTION BY THE JOINT LEGISLATIVE COUNCIL	11
LRB-0821/1, Relating to Disclosure of Burial Sites Located on Residential Real Estate and Various Changes Relating to the Preservation and Disturbance of Burial Sites.....	11
Background.....	11
Description.....	12
APPENDIX 1 - COMMITTEE AND JOINT LEGISLATIVE COUNCIL VOTES	17
APPENDIX 2 - JOINT LEGISLATIVE COUNCIL	19
APPENDIX 3 - COMMITTEE LIST	21
APPENDIX 4 - COMMITTEE MATERIALS LIST	23

PART I

KEY PROVISIONS OF COMMITTEE RECOMMENDATIONS

The Study Committee on the Preservation of Burial Sites recommends the bill draft described below to the Joint Legislative Council for introduction in the 2017-18 Session of the Legislature.

LRB-0821/1, RELATING TO DISCLOSURE OF BURIAL SITES LOCATED ON RESIDENTIAL REAL ESTATE AND VARIOUS CHANGES RELATING TO THE PRESERVATION AND DISTURBANCE OF BURIAL SITES

LRB-0821/1 makes various changes relating to the burial sites preservation law. Key provisions include:

- A new disclosure requirement in the real estate condition report for certain residential properties.
- New evidentiary requirements and a new procedure to contest decisions to record burial sites and surrounding land in a catalog.
- A new statutory procedure for removing burial sites and land from the catalog.
- An increased statutory minimum width, and a new exception to the minimum width requirement, for the “sufficient contiguous land” to be recorded in a catalog together with a burial site.
- Modification of the method for selecting members of the Burial Sites Preservation Board to allow submissions of names from any federally-recognized tribe in the state.
- A new, optional role for the Wisconsin Inter-Tribal Repatriations Committee or its designee in decisions regarding the disposition of tribal remains and objects removed from a burial site.
- Various changes intended to clarify statutory discrepancies or reflect current practice.

PART II

COMMITTEE ACTIVITY

ASSIGNMENT

The Joint Legislative Council established the Study Committee on the Preservation of Burial Sites and appointed the chairperson by an April 18, 2016 mail ballot. The committee was directed to review s. 157.70, Stats., to determine whether the statute adequately balances the interests of scientists, landowners, developers and others with an interest in a burial site, including those with a kinship interest and those with a general cultural, tribal or religious affiliation with the burial site. The Study Committee was further directed to consider whether modifications to these procedures are necessary to protect all interests related to any human burial site encountered during archaeological excavation, metallic or nonmetallic mining, construction, agricultural activities, environmental impact assessments or other ground-disturbing activities, without causing avoidable or undue delay or hardship to any person who has an interest in using the land on which the burial site is located.

Membership of the Study Committee was appointed by a June 10, 2016 mail ballot. The final committee membership consisted of three Representatives, one Senator and nine public members. A list of committee members is included as **Appendix 3** to this report.

SUMMARY OF MEETINGS

The committee held five meetings on the following dates:

August 2, 2016

September 8, 2016

October 5, 2016

November 10, 2016

December 8, 2016

At the August 2, 2016 meeting, the Study Committee heard testimony from several invited speakers.

Ellsworth H. Brown, Ph.D., Director, Wisconsin Historical Society (WHS), provided an overview of WHS's role regarding the administration of the burial sites preservation law. Dr. Brown noted that the current burial sites preservation law generally works well and emphasized that the process of cataloging burial sites is currently implemented cooperatively with landowners. Dr. Brown proposed several modifications to current law. Following the presentation, Dr. Brown and **Chip Harry L. Brown III, Government Assistance and Training Specialist, WHS**, answered committee members' questions.

The committee then heard a panel presentation by representatives of the Department of Transportation (DOT). **Nate Yahn, Legislative Advisor, DOT**, introduced the panel. **Steve Krebs, Director, Bureau of Technical Services, DOT**, summarized the policies and procedures that the department employs when burial sites are encountered in connection with a transportation project. **Jim Becker, Archeology Program Manager, Bureau of Technical Services, DOT**, described a specific situation that arose during a reconstruction project in Calumetville and suggested possible modifications to current law. Together with **Jason Kennedy, Environmental Analysis Review Specialist, Bureau of Technical Services, DOT**, Mr. Krebs and Mr. Becker answered questions following their presentation.

Patricia Richards, Ph.D., Senior Scientist, Department of Anthropology, University of Wisconsin-Milwaukee, provided historical context regarding the burial sites preservation law and presented three case studies in which human remains buried in historical cemeteries were relocated.

After the conclusion of the presentations, Chair Loudenberg facilitated a preliminary discussion of various options for consideration.

At the September 8, 2016 meeting, the Study Committee heard testimony from several invited speakers and discussed topics summarized in Memo No. 1, *Topics for Committee Discussion*.

Robert "Ernie" Boszhardt, Archaeologist, provided an overview of Native American burial practices throughout Wisconsin's archaeological history and identified the major prehistoric eras comprising the 13,000 years that humans have been present in Wisconsin. He addressed the question of whether all effigy mounds signify burial of human remains.

Edith Leoso, Tribal Historic Preservation Officer for the Bad River Band of Lake Superior Chippewa Tribe, commented on the importance of preserving the graves of Native American ancestors and emphasized the necessity for public education regarding Native American culture and history. She stated that the tribes have a very good relationship with DOT after recently revising the protocol for inadvertent discoveries. **George Garvin, Ho-Chunk Nation Repatriation Researcher**, discussed his background in repatriation. He suggested removing the distinction between cataloged versus uncataloged sites and instead protecting all sites in the same manner. He also suggested stricter penalties for violations of the burial sites preservation law. With regard to reinterment, he noted that consultation with Native American tribes is critical.

Jarrold Burks, Ph.D., Ohio Valley Archaeology, Inc., described his current work as an archaeological consultant for private clients and provided a basic overview of geophysics, including the capabilities of three types of instruments: the magnetometer, ground penetrating radar (GPR), and the electrical resistance meter. Dr. Burks described how data is collected and analyzed using computer equipment, and how anomalies are identified through this process. Dr. Burks stated that geophysical instruments may be useful for detecting burials in mounds but cautioned that a lack of anomalies does not prove that a burial site does not exist.

Following the presentations, Chair Loudenberg and Legislative Council staff facilitated committee discussion regarding Memo No. 1. First, the committee discussed whether the current

required width of at least five feet of “sufficient contiguous land” necessary to protect a burial site should be amended to reflect WHS’s current practice of seeking 15-foot widths.

Second, the committee discussed whether the procedural timelines set forth in WHS administrative rules and internal policies should be statutorily codified or modified. Members reached general consensus that this issue did not warrant further discussion.

The committee then discussed methods for providing information to land purchasers regarding burial sites on property. Committee members suggested adding a mandatory disclosure requirement to real estate forms and creating a searchable online database.

The committee also discussed whether the distinction between cataloged and uncataloged burial sites should remain and, if so, whether different terms should apply to that distinction. Members discussed that the distinction was intended to allow for sites with more documentation to be cataloged. Some members expressed that no distinction should exist and all burial sites should be subject to the same procedure for disturbance.

The committee then discussed the scope of the registry of persons interested in a burial site. The committee reached general consensus to clarify the statutory discrepancy described in Memo No. 1.

Next, the committee discussed whether the provisions for removing a burial site from the catalog should be codified, and if so, whether they should be modified.

Finally, the committee discussed landowner compensation. Members discussed whether a cataloging decision would be interpreted as an unconstitutional taking of property. Members further discussed ideas as to the form of compensation. Members asked Legislative Council staff to research whether other states’ laws allow for archaeological easements.

At the October 5, 2016 meeting, the Study Committee heard testimony from invited speakers and discussed the committee’s assignment.

Thomas D. Larson, Senior Vice President of Legal and Public Affairs, Wisconsin Realtors Association, summarized relevant information required to be disclosed on real estate condition reports under ch. 709, Stats. He explained that the condition report for vacant property currently includes a specific disclosure requirement for “burial sites, archaeological artifacts, mineral rights, orchards, or endangered species,” whereas the real estate condition report for real property that includes one to four dwelling units does not include a disclosure requirement specific to those features. He noted certain provisions in the real estate disclosure reports that may serve as examples if the committee chose to amend the real estate condition reports.

Ellsworth H. Brown, Ph.D., Director, Wisconsin Historical Society, addressed various topics arising from committee discussion since the committee’s initial meeting. He first addressed prior testimony regarding the potential for discovery of 20,000 to 30,000 new burial mounds in Wisconsin. He noted that most of those mounds are believed to have been lost or destroyed and expressed that it is unlikely that large numbers of new sites will be discovered.

He also provided information regarding WHS’s release of information concerning burial sites. He noted that WHS is legally obligated to protect that information. He stated that WHS is

currently working to create an alert system for potential building sites, which may be available to realtors and, perhaps, others involved in land transactions. He stated that he anticipated that the system will be operational within two or three months.

Finally, he discussed WHS's approach to cataloging burial sites. He described the decision process, which includes a staff recommendation to the WHS director, followed by a decision by the director.

He and **Chip Harry L. Brown III, Government Assistance and Training Specialist, WHS**, responded to questions from committee members throughout the presentation.

Following the presentations, Chair Loudenbeck and Legislative Council staff facilitated a continued discussion of Memo No. 1, *Topics for Committee Discussion*. First, the committee considered whether any modification should be made to the statutory definition of "human remains." After considerable discussion, committee members generally agreed to leave the definition of "human remains" unmodified.

Second, the committee discussed whether any change should be made to the statutory definition of "disturb" in the burial sites preservation law. After the discussion, a majority of committee members indicated through a straw poll that the definition should not be modified.

The committee then discussed the directive to catalog sites that are "likely to contain" burial sites. After considerable discussion, the committee directed Legislative Council staff to draft a bill for the committee's consideration that would replace the "likely to" language with thresholds for evidence similar to those enumerated under an administrative code provision relating to recording burial sites in a catalog.

Next, the committee discussed whether WHS's typical practice of obtaining a landowner's consent before recording a site in the catalog should be statutorily codified. The committee directed Legislative Council staff to prepare two alternative bill drafts for the committee's consideration.

Chair Loudenbeck then initiated a discussion of Memo No. 4, *Options for Committee Discussion*. The committee discussed requirements for including "sufficient contiguous land" surrounding a burial site. After a discussion, Chair Loudenbeck suggested that Legislative Council staff could prepare a bill draft that provides a 10-foot minimum width but includes exceptions for special situations.

At the November 10, 2016 meeting, the Study Committee reviewed six preliminary bill drafts and discussed the committee's assignment.

First, the committee discussed LRB-0401/P2, relating to cataloging land contiguous to a burial site, which increases the minimum width requirement for land contiguous to a cataloged burial site from five feet to 10 feet and provides an exception for situations in which the director determines, based on the unique characteristics of the land, that a shorter distance is sufficient to protect the burial site from disturbance. A majority of committee members expressed support for the bill draft.

Next, the committee discussed LRB-0402/P2, which makes three miscellaneous changes to current law. Committee members confirmed that the bill draft did not change any of the notice requirements to interested persons, but rather only changed the scope of those included in the registry. Committee members also discussed whether WHS has sufficient resources to accept electronic documents. The committee did not suggest any changes to the bill draft.

The committee then discussed LRB-0404/P2, relating to disclosure of burial sites located on residential real estate, which requires a seller of property that includes one to four dwelling units to disclose to a prospective buyer whether the owner is aware of one or more burial sites on the property, and further directs the prospective buyer to contact WHS for more information. The bill draft adds this disclosure to the "Real Estate Condition Report" form used in residential real estate transactions. Committee members confirmed with WHS representatives that WHS would provide all information related to a property if a prospective buyer or a real estate agent contacted WHS pursuant to this disclosure. Public Member Goodkind noted that the disclosure's contact information for WHS required revision. Committee members did not suggest any other changes to the bill draft.

Next, the committee discussed LRB-0412/P2, relating to the preservation of burial sites, which changes current law governing the WHS Director's duty to record a burial site in a catalog. First, the bill draft repeals the duty to record sites "likely to be of archaeological interest" and areas "likely to contain burial sites." Second, it lists types of evidence for the director to consider when determining whether to catalog a burial site. Finally, the bill draft allows, but does not require, WHS to obtain a special inspection warrant to carry out its duties under s. 157.70, Stats. The committee requested several specific changes to the bill draft.

The committee then discussed LRB-0413/P2, relating to the preservation of burial sites, and LRB-0414/P2, relating to the preservation of burial sites, which provide two alternative approaches to the issue of landowners' consent. The committee's discussion focused on LRB-0413/P2, which creates an exception to the WHS Director's duty to catalog burial sites in situations where the landowner does not consent to cataloging. Under the bill draft, if the owner denies consent, the Director may not catalog the burial site without a declaratory judgment, which the Director may pursue in circuit court. Following a robust discussion, the committee directed Legislative Council staff to prepare a revised bill draft that would provide the landowner the right to request a hearing prior to the Director's decision to catalog a burial site.

Following the discussion of specific bill drafts, Chair Loudenberg and Legislative Council staff facilitated continued discussion of the options set forth in Legislative Council staff Memo. No. 4. First, the committee discussed whether terms other than "cataloged" and "uncataloged" would better describe the distinction between the different levels of protection afforded to burial sites. The committee did not reach consensus on this issue.

Second, the committee discussed the option to increase tribal involvement in decisions relating to excavation and disposition of tribal human remains and objects related to the burial. The committee directed the Legislative Council staff to prepare a bill draft granting such power to the Wisconsin Inter-Tribal Repatriations Committee, or its designee. The committee also

requested a bill draft which would allow all Wisconsin-resident tribes or bands to submit names for selection as the three tribal board members on the Burial Sites Preservation Board.

Third, the committee discussed whether to codify in statute a provision allowing for removal of a burial site from the catalog in certain circumstances. The committee reached general consensus that a removal provision should be codified, but discussed whether to amend the standard and procedure for removal from that which is currently provided in the administrative code. Committee members discussed several situations that may justify decataloging, such as excavation, natural disasters, or new technology. After ample discussion, the committee requested a bill draft that codifies a removal procedure similar to that which currently exists in administrative code, but would require an applicant to present evidence of an excavation or natural disaster, or present newly discovered evidence that would undermine the credibility of the evidence supporting the decision to catalog the site.

Next, the committee discussed the option to compensate landowners if a burial site is cataloged on the landowner's property. Chair Loudenberg and Legislative Council staff briefed the committee on research related to potential funding sources. Committee members suggested establishing public-private partnerships, or a fund that would accept private donations with a tribal or state matching donation. Chair Loudenberg noted that the WHS Director currently must make recommendations concerning burial sites on private property for acquisition by the state for purposes of preservation. She suggested that WHS could be required to include those recommendations in its biennial budget request or in an annual report to the Legislature.

Finally, the committee briefly discussed a memorandum submitted by DOT. Chair Loudenberg sought committee members' input on three topics: defining the term "notify" to include several forms of communication; allowing for existing infrastructure improvements that do not disturb the human remains or surface characteristics of a burial site; and specifying a 30-day time period in which the WHS director must respond to a request to disturb an uncataloged burial site. The committee agreed to review bill drafts at the next meeting pursuant to the first and third suggestions.

At the December 8, 2016 meeting, the Study Committee reviewed LRB-0821/P3, a bill draft that consolidated previous bill drafts and other changes for which there was general consensus at the November 10, 2016 meeting. Legislative Council staff summarized each section of the bill draft for the committee. Following the summary of each section, committee members asked questions and offered any comments or revisions. The committee also considered several proposed changes to the bill draft following the section-by-section overview and discussion.

Following extensive discussion regarding the bill draft, Public Member Conrad Goodkind moved, seconded by Public Member Kira Kaufmann, to finalize LRB-0821/P3 with the changes for which the committee had reached general consensus during its discussion. The motion was approved on a vote of Ayes, 9; Noes, 3. Senator Erpenbach was excused from the meeting prior to the final vote but indicated that he would have voted "Aye" if he had been present.

PART III

RECOMMENDATIONS FOR INTRODUCTION BY THE JOINT LEGISLATIVE COUNCIL

LRB-0821/1, RELATING TO DISCLOSURE OF BURIAL SITES LOCATED ON RESIDENTIAL REAL ESTATE AND VARIOUS CHANGES RELATING TO THE PRESERVATION AND DISTURBANCE OF BURIAL SITES

Background

The Study Committee developed and approved LRB-0821/1, relating to disclosure of burial sites located on residential real estate and various changes relating to the preservation and disturbance of burial sites, in response to the committee's charge.

The burial sites preservation law, set forth in s. 157.70, Stats., was initially enacted as a Legislative Council bill during the 1985 Legislative Session. At that time, state law generally prohibited the disinterment of human bodies in the context of cemeteries, but the extent to which the law applied to older or unmarked burial sites was not clear. As stated in 1985 Wisconsin Act 316, the intent of the law was to do all of the following:

- Assure that all human burials be accorded equal treatment and respect for human dignity without reference to ethnic origins, cultural backgrounds, or religious affiliations.
- Provide adequate protection for all interests related to any human burial site encountered during archaeological excavation, metallic or nonmetallic mining, construction, agricultural activities, environmental impact assessments or other ground disturbing activities, without causing avoidable or undue delay or hardship to any person who has an interest in using the land on which the burial site is located.
- Balance the interests of scientists, landowners, developers, and others with an interest in a burial site, including those with a kinship interest and those with a general cultural, tribal, or religious affiliation with the burial site.

The charge of the 2016 Study Committee was to examine whether the current burial sites preservation law achieves the second and third components of the above statement of intent.

The burial sites preservation law generally prohibits disturbing¹ a burial site², except as authorized under the law. [s. 157.70 (2r), Stats.] The law provides two separate procedures for

¹ "Disturb" includes defacing, mutilating, injuring, exposing, removing, destroying, desecrating, or molesting in any way. [s. 157.70 (1) (e), Stats.]

² "Burial site" means any place where human remains are buried. "Human remains" means any part of the body of a deceased person in any stage of decomposition. [s. 157.70 (1) (b) and (f), Stats.]

obtaining permission to disturb a burial site; which procedure applies depends on whether the burial site (and any surrounding land) is “cataloged” or “uncataloged.” Generally, the procedure for disturbing a cataloged burial site or land is relatively more stringent than the procedure for disturbing an uncataloged burial site.

Current law directs the WHS Director to record burial sites, and certain contiguous land surrounding a burial site, in a catalog, pursuant to a special inspection warrant. Current law also directs the WHS Director to record burial sites that are “likely to be of archaeological interest” and areas that are “likely to contain burial sites” in the catalog. [s. 157.70 (2) (a) and (2) (b), Stats.] The burial sites preservation statute does not currently specify any evidentiary considerations or standards for recording a site in a catalog.

The burial sites preservation law also creates the Burial Sites Preservation Board, a nine-member board attached to WHS. Among other duties, the law authorizes the board to review certain decisions of the WHS Director relating to proposals to disturb a cataloged burial site.

Description

The bill draft makes various changes relating to the burial sites preservation law. Key provisions of the bill draft are summarized below.

Procedure and Evidence for Recording a Site in a Catalog

The bill draft specifies types of evidence that the WHS Director must consider when determining whether to record a burial site in a catalog and clarifies certain aspects of the WHS Director’s cataloging authority. Current law directs the Director to utilize a special inspection warrant procedure to identify burial sites and record such sites in a catalog. Current law also directs the Director to record sites that are likely to be of archaeological interest or areas likely to contain burial sites in the catalog. The statutes do not currently specify types of evidence that the Director must consider when determining whether to record a site in the catalog.

The bill draft removes the directive to record sites that are likely to be of archaeological interest or areas likely to contain burial sites in a catalog. The bill draft amends the directive regarding the cataloging of burial sites to clarify that the Director may, but is not required to, utilize a special inspection warrant when identifying and recording burial sites in a catalog. The bill draft also requires the Director to consider the following types of evidence from any person when determining whether to record a site in the catalog: (1) physical evidence, as demonstrated by archaeological or written historical reports showing the presence of human remains or grave markers; (2) historical documentation; (3) oral depositions or affidavits; and (4) oral histories.

Procedure for Contesting a Decision to Record a Site in the Catalog

The bill draft creates a new procedure that applies when a landowner wishes to contest the WHS Director's decision to record a site in the catalog. At least 30 days prior to the date on which the Director intends to record a site in the catalog, the Director must notify the landowner that the site will be recorded in the catalog unless the owner requests a hearing before the Burial Sites Preservation Board. From the time of that notice and until all proceedings concerning whether to record a site in the catalog are concluded, no person may conduct any soil disturbance activity on

the site or land, unless the Director determines that the proposed activity will not disturb the burial site. The bill draft does not modify the general prohibition against disturbances to all burial sites under current law.

If the owner requests a hearing before the date on which the site is to be recorded in the catalog, the board must hold a hearing within 90 days of the hearing request. At the hearing, the Director has the burden of proving that there is sufficient evidence to catalog the site, using types of evidence specified under the bill draft. Following a hearing, the board must issue a decision regarding whether sufficient evidence exists to record the site in the catalog. The owner shall have the right to a contested case hearing on the board's decision.

If a hearing to contest the decision to record the site in the catalog has been requested, the bill draft requires the Director to physically inspect the land prior to recording a site in the catalog, if the director has not already done so.

Sufficient Contiguous Land Surrounding a Burial Site

The bill draft increases the minimum width of sufficient contiguous land that must be included around a burial site that is recorded in the catalog. Under current law, "sufficient contiguous land" means land that is at least five feet from any part of a burial site. The bill draft defines "sufficient contiguous land" to mean at least 10 feet from any part of a burial site, unless the Director determines, based on the unique characteristics of the land, that a shorter distance is sufficient to protect the burial site from disturbance.

Burial Sites Preservation Board Composition

The bill draft modifies the method for selecting members of Indian tribes or bands to serve as members of the Burial Sites Preservation Board. Under current law, three members of the board are selected from names submitted by the Great Lakes Inter-Tribal Council and the Menominee Tribe. Under the bill draft, those three members of the board are selected from names submitted by federally recognized Indian tribes or bands in this state.

Scope of the Registry of Interested Persons

The bill draft modifies the scope of the registry of persons interested in burial sites. Under current law, the WHS Director must maintain a registry of persons with an interest in a cataloged burial site or class of cataloged burial sites. Under the bill draft, the registry includes persons with an interest in any burial site.

Notice to Interested Persons of Application for Permit to Disturb

The bill draft requires the WHS Director, rather than an applicant as under current law, to notify any interested person shown on the registry of a proposed disturbance and information regarding the person's right to a hearing.

Electronic Submission

The bill draft requires WHS and the Burial Sites Preservation Board to accept, by any electronic means approved by the Director, any application and other document required under the burial sites preservation law.

Real Estate Disclosure

The bill draft requires that an owner of real property that includes one to four dwelling units disclose to a prospective buyer whether the owner is aware of one or more burial sites on the property. The bill draft adds this disclosure as a mandatory component of the “Real Estate Condition Report” used in residential real estate transactions. The bill draft directs the prospective buyer to contact WHS for further information regarding the presence, preservation, and potential disturbance of burial sites. The bill draft provides an alternative effective date of July 1, 2018 for the changes relating to the real estate disclosure form under s. 709.03, Stats.

Definition of Notify

For purposes of the burial sites preservation law, the bill draft defines “notify” to mean “communicate by letter, or electronic mail or by other electronic means approved by the Director.”

Annual Report Requirement

The bill draft creates a new annual report requirement. Under the bill draft, the WHS Director must submit an annual report to the Legislature that contains all of the following information: (1) the director's current recommendations concerning burial sites on private property for acquisition by the state or public agencies; (2) the number of burial sites recorded in the catalog at the time the report is prepared; (3) a summary of disturbance activities authorized under the uncataloged site disturbance procedure; (4) a summary of applications received under the cataloged site disturbance procedure; (5) a summary of appeals to the Burial Sites Preservation Board to contest a decision to record a site in the catalog; (6) a summary of any other activities of the board; and (7) a summary of all violations of the burial sites preservation law and all penalties imposed as a result of those violations. The initial report must be submitted seven months after the Act takes effect.

Procedure for Removal from the Catalog

The bill draft requires the WHS Director, on the Director's own initiative or in response to a request from the owner or another interested person, to propose that land be removed from the catalog, if the Director determines that there is not sufficient evidence for cataloging the land because of any of the following: (1) naturally occurring changes to the landscape; (2) removal of human remains from the burial site pursuant to removal and disposition procedures; or (3) newly discovered evidence that, if known at the time of the determination to record in the catalog, and taking into account the types of evidence required to be considered when determining whether to record a burial site or land in the catalog, would have resulted in a determination not to record in the catalog the burial site or land. If the Director proposes to remove land from the catalog, the Director must notify the owner, interested persons, county or local historical societies, the relevant municipality, and, if applicable, the person who submitted an application to have the site recorded. The Director must provide those persons with an opportunity to comment.

Following the comment period, the Director must review any comments, make appropriate modifications, issue a decision, and provide notice of the decision to the same persons who received the notice of the proposal. Those persons may appeal the Director's decision within 30 days. Such appeals are heard by the Burial Sites Preservation Board. Any person who was notified

and given the opportunity to comment has the right to a contested case hearing conducted by the Division of Hearings and Appeals regarding the board's decision. In the event that no appeal is filed, or the board upholds the Director's decision and no contested case hearing is requested, or if a decision to remove land from the catalog is upheld by the division following a contested case hearing, the bill requires the Director to remove the land from the catalog and submit a request to the relevant register of deeds to record a notice that the land has been removed from the catalog.

Timeline for Certain Procedures Concerning Uncataloged Sites

The bill draft creates a general, 30-day timeline by which the WHS Director must notify an owner that the owner may or may not cause or permit a proposed activity after receiving a notification of a disturbance or possible disturbance to an uncataloged burial site. The bill draft requires the Director to immediately provide confirmation that the Director has received a notification of a disturbance or possible disturbance. The 30-day period begins after that confirmation is provided.

Disposition of Remains Determined to be of Tribal Descent

The bill draft requires the WHS Director, or the division under the procedure for cataloged burial sites, to request that the Wisconsin Inter-Tribal Repatriations Committee or its designee determine the appropriate disposition of any remains and objects that are determined by a qualified archaeologist to be of tribal descent. Current law generally requires the WHS Director, or, in some cases, the division, to determine the appropriate disposition of human remains and objects removed from a burial site.

COMMITTEE AND JOINT LEGISLATIVE COUNCIL VOTES

The following draft was recommended by the Study Committee on the Preservation of Burial Sites.

STUDY COMMITTEE VOTE

The Study Committee voted by a December 21, 2016 mail ballot to recommend the following bill draft to the Joint Legislative Council for introduction in the 2017-2018 Session of the Legislature. The vote on the bill draft was as follows:

- LRB-0821/1, relating to disclosure of burial sites located on residential real estate and various changes relating to the preservation and disturbance of burial sites, passed by a vote of Ayes, 10 (Reps. Loudenbeck, Brooks, and Considine; Sen. Erpenbach; and Public Members Goodkind, Grignon, Quackenbush, Green, Kaufmann, and Porter); Noes, 1 (Public Member Shea); and Not Voting, 2 (Public Members Oeth and Wuebben).

JOINT LEGISLATIVE COUNCIL

<u>SENATE MEMBERS</u>	<u>ASSEMBLY MEMBERS</u>
Roger Roth, Co-Chair Senate President Appleton	Robert Brooks, Co-Chair Assistant Majority Leader Saukville
Alberta Darling JFC Co-Chair River Hills	Tyler August Speaker Pro Tempore Lake Geneva
Scott Fitzgerald Majority Leader Juneau	Joan Ballweg Markesan
Howard Marklein President Pro Tempore Spring Green	Peter Barca Minority Leader Kenosha
Mark Miller Monona	Dianne Hesselbein Assistant Minority Leader Middleton
Terry Moulton Chippewa Falls	Gordon Hintz JFC Ranking Minority Oshkosh
Jerry Petrowski Marathon	Cory Mason Racine
Fred A. Risser Madison	John Nygren JFC Co-Chair Marinette
Jennifer Shilling Minority Leader La Crosse	John Spiros Marshfield
Lena Taylor JFC Ranking Minority Milwaukee	Jim Steineke Majority Leader Kaukauna
Van Wanggaard Racine	Robin Vos Speaker Rochester

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

Terry C. Anderson, Director, Legislative Council Staff 1 East Main Street, Suite 401, Madison, WI 53703-3382

COMMITTEE LIST

Legislative Council Study Committee on Preservation of Burial Sites

Chair Amy Loudenbeck, Representative
10737 S. State Rd. 140
Clinton, WI 53525

Dave Considine, Representative
N6194 Breezy Hill Rd.
Baraboo, WI 53913

Conrad Goodkind, President, Board of Curators
Wisconsin Historical Society
Quarles and Brady, LLP
411 W. Wisconsin Ave., Ste. 2350
Milwaukee, WI 53202

David Grignon, Historic Preservation Dept. Director
Menominee Indian Tribe of WI
P.O. Box 910
Keshena, WI 54135

Justin Oeth, Attorney
Reinhart Attorneys at Law
22 East Mifflin Street, Suite 600
P.O. Box 2018
Madison, WI 53701

Bill Quackenbush, Preservation Representative
Ho-Chunk Nation
W7972 U.S. Highway 12
Black River Falls, WI 54615

Chad Wuebben, Owner/President
Encore Construction
6840 Schneider Rd.
Middleton, WI 53562

Vice Chair Robert Brooks, Representative
204 E. Dekora St.
Saukville, WI 53080

Jon Erpenbach, Senator
2316 Clark Street
Middleton, WI 53562

William Green, Director, Logan Museum of Anthropology
Beloit College
700 College Street
Beloit, WI 53511

Kira Kaufmann, Principal Investigator
Midwest Archaeological Research Services
10408 Coraggio Ct.
P.O. Box 203
Argonne, WI 54511

E. Glen Porter, Owner/Operator/Cematarian
Highland Memorial Park
14875 W. Greenfield Ave.
New Berlin, WI 53151

Robert Shea, President
Wingra Stone Company/Wingra Redi-Mix
P.O. Box 44284
Madison, WI 53744

STUDY ASSIGNMENT: The Study Committee is directed to review s. 157.70, Stats., to determine whether the statute adequately balances the interests of scientists, landowners, developers and others with an interest in a burial site, including those with a kinship interest and those with a general cultural, tribal or religious affiliation with the burial site. The Study Committee shall consider whether modifications to these procedures are necessary to protect all interests related to any human burial site encountered during archaeological excavation, metallic or nonmetallic mining, construction, agricultural activities, environmental impact assessments or other ground-disturbing activities, without causing avoidable or undue delay or hardship to any person who has an interest in using the land on which the burial site is located.

13 MEMBERS: 3 Representatives; 1 Senator; and 9 Public Members.

LEGISLATIVE COUNCIL STAFF: Anna Henning, Senior Staff Attorney; Amber Otis, Staff Attorney; and Tracey Young, Support Staff.

COMMITTEE MATERIALS LIST

[Copies of documents are available at www.legis.wisconsin.gov/lc.]

August 2, 2016 Meeting 10:00 a.m. Room 411 South, State Capitol

- 1985 Wisconsin Act 316
- Memorandum, from Nate Yahn, Legislative Advisor, Wisconsin Department of Transportation (August 2, 2016)
- Presentation by Patricia Richards, Ph.D., Department of Anthropology, University of Wisconsin - Milwaukee
- Section 157.70, Stats.
- Staff Brief 2016-04, Preservation of Burial Sites (July 22, 2016)
- PowerPoint Presentation, Wisconsin Historical Society
- Minutes of the August 2, 2016 meeting

September 8, 2016 Meeting 10:00 a.m. Room 412 East, State Capitol

- Presentation by Robert "Ernie" Boszhardt, Archaeologist
- Presentation by Jarrod Burks, Ph.D., Ohio Valley Archaeology, Inc.
- Chapters HS 1 and 2, Wisconsin Administrative Code
- Memorandum, Department of Defense (September 11, 2012)
- Memo No. 1, "Topics for Committee Discussion," (September 1, 2016)
- Memo No. 2, "Burial Preservation Laws in Wisconsin's Neighboring States," (September 1, 2016)
- Memo No. 3, "Appellate Procedure for Determinations Under Wisconsin's Current Burial Sites Preservation Law," (September 1, 2016)
- "Native American Mounds as Burial Mounds and Markers," (March 2011), submitted by Amy L. Rosebrough, Ph.D.
- Memorandum, from Ellsworth H. Brown, Ph.D., Ruth and Hartley Barker, Director (September 2, 2016)
- Burial Law Process Time Frames
- Request to Obtain Information About Archaeological and/or Burial Sites
- Minutes of the September 8, 2016 meeting

October 5, 2016 Meeting 10:00 a.m. Legislative Council Large Conference Room

- Letter from Wisconsin Inter-Tribal Repatriations Committee

- Chapter 709, Stats., "Disclosures by Owners of Real Estate," distributed by Thomas Larson, Wisconsin Realtors Association
- The 2016 Florida Statutes, distributed by Thomas Larson, Wisconsin Realtors Association
- Memo No. 4, "Options for Committee Discussion" (September 23, 2016)
- Memo No. 5, "Federal Law Regarding Preservation of Cultural Resources" (September 23, 2016)
- Memo No. 6, "Archaeological Easements," (September 23, 2016)
- Memorandum, "Burial Site Data," from Ellsworth H. Brown, Ph.D., and Ruth Hartley Barker, Director, Wisconsin Historical Society (October 5, 2016 - Corrected Copy)
- Minutes of the October 5, 2016 meeting

November 10, 2016 Meeting 10:00 a.m. Room 412 East, State Capitol

- LRB-0401/P2, relating to cataloging land contiguous to a burial site
- LRB-0402/P2, relating to registry of and notice to persons having an interest in a burial site and submission of electronic documents to the State Historical Society and Burial Sites Preservation Board
- LRB-0404/P2, relating to disclosure of burial sites located on residential real estate
- LRB-0412/P2, relating to the preservation of burial sites
- LRB-0413/P2, relating to the preservation of burial sites
- LRB-0414/P2, relating to the preservation of burial sites
- Memorandum, "Suggested Modifications to Wis. Stat. s. 157.70 (Burial Sites Preservation)," from Nate Yahn, Legislative Advisor, Department of Transportation (October 17, 2016)
- Letter from Ho-Chunk Nation (November 9, 2016)
- Memorandum, "Documenting and cataloging Extant Mounds," submitted by Wisconsin Historical Society
- Part 1 - Sample Burial Site File (Mound Group), provided by the Wisconsin Historical Society
- Part 2 - Sample Burial Site File (Mound Group), provided by the Wisconsin Historical Society
- Sample burial site File (cemetery), provided by the Wisconsin Historical Society
- "Status of Burial Mound Sites in Wisconsin," submitted by the Wisconsin Historical Society
- "Man Mound Designated as National historic Landmark," article submitted by Senator Jon Erpenbach
- Minutes of the November 10, 2016 meeting

December 8, 2016 Meeting 10:00 a.m. Room 411 South, State Capitol

- Proposals prepared by the Legislative Council staff at the direction of Vice-Chair Brooks
- Letter, submitted by Dean Collins, retired Assistant Chief of Police, City of Brookfield Police Department (December 8, 2016)
- LRB-0821/P3, relating to disclosure of burial sites located on residential real estate and various changes relating to the preservation and disturbance of burial sites

- LRB-1008/P1, relating to state acquisition of lands containing burial sites
- Memo No. 7, "Penalties for Violations of the Burial Sites Preservation Law," (December 1, 2016)
- Memorandum, from the Wisconsin Historical Society, "Wisconsin Historical Society Response to the Legislative Council Preliminary Draft Legislation Relating to State Acquisition of Lands Containing Burial Sites, LRB-1008/P1 (December 7, 2016)
- A response from the Wisconsin Historical Society concerning LRB-0821/P3
- Wisconsin Historical Society Responses to Five Proposals Submitted by Representative Brooks (December 8, 2016)
- Minutes of the December 8, 2016 meeting

December 21, 2016 Mail Ballot

- LRB-0821/1, relating to disclosure of burial sites located on residential real estate and various changes relating to the preservation and disturbance of burial sites
- Mail Ballot
- Mail Ballot Results