



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-0412/P2
MED:kjf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to repeal* 157.70 (2) (b); *to amend* 44.02 (23), 70.11 (13), 157.70 (1) (c),
2 157.70 (2) (a), 157.70 (3) (b) and 157.70 (4) (a); and *to create* 157.70 (2c) of the
3 statutes; **relating to:** the preservation of burial sites.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Study Committee on the Preservation of Burial Sites.

The bill specifies types of evidence that the director of the historical society [may/must] consider when determining whether to record a burial site in a catalog and clarifies certain aspects of the director's cataloging authority.

Current law directs the director of the historical society 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 a catalog. The statutes do not currently specify types of evidence that the director may consider when determining whether a site

should be cataloged. However, a list of evidence is set forth in an administrative code procedure relating to review of cataloging requests initiated by persons other than the director.

The bill 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 amends the directive regarding the cataloging of burial sites to clarify that the director may, but is not required to, utilize the special inspection warrant process when identifying and recording burial sites in a catalog. The bill also sets forth types of evidence that the director [may/must] consider when determining whether to record a given site in the catalog. The types of evidence are borrowed from the administrative code provision relating to cataloging requests initiated by persons other than the director.

1 **SECTION 1.** 44.02 (23) of the statutes is amended to read:

2 44.02 **(23)** Identify any archaeological site, including contiguous land
3 necessary to protect the site, in this state that is listed in the national register of
4 historic places in Wisconsin or the state register of historic places and that is not
5 cataloged under s. 157.70 ~~(2)~~(a). Any information collected under this subsection the
6 disclosure of which would be likely to result in the disturbance of an archaeological
7 site is not subject to s. 19.35 (1).

8 **SECTION 2.** 70.11 (13) of the statutes is amended to read:

9 70.11 **(13)** CEMETERIES. Land owned by cemetery authorities, as defined in s.
10 157.061 (2), and used exclusively as public burial grounds and tombs and
11 monuments therein, and privately owned burial lots; land adjoining such burial
12 grounds, owned and occupied exclusively by the cemetery authority for cemetery
13 purposes; personal property owned by any cemetery authority and necessary for the
14 care and management of burial grounds; burial sites and contiguous lands which are
15 cataloged under s. 157.70 ~~(2)~~(a).

16 **SECTION 3.** 157.70 (1) (c) of the statutes is amended to read:

17 157.70 **(1)** (c) "Cataloged" means recorded under sub. (2) (a), (4) (e) or (6) (c) or
18 s. 157.70 (2) (a), 2015 stats., or s. 157.70 (2) (b), 2015 stats.

19 **SECTION 4.** 157.70 (2) (a) of the statutes is amended to read:

1 157.70 (2) (a) ~~Under a special inspection warrant as required under s. 66.0119,~~
2 identify Identify and record in a catalog burial sites in this state and, for burial sites
3 which are not dedicated, sufficient contiguous land necessary to protect the burial
4 site from disturbance, and notify in writing every owner of a burial site or of such land
5 so recorded and any county or local historical society in the county where the burial
6 site or the land is located. Any information in the catalog related to the location of
7 any burial site, the disclosure of which would be likely to result in the disturbance
8 of the burial site or the cataloged land contiguous to the burial site, is not subject to
9 s. 19.35 (1). The notice shall include information about the permit required under
10 sub. (5) and the toll free number the owner may call for more information. The
11 director may obtain a special inspection warrant as provided in s. 66.0119 in order
12 to carry out his or her duties under this paragraph. In this paragraph, “sufficient
13 contiguous land” means land that is within at least 5 feet from any part of a burial
14 site.

15 **SECTION 5.** 157.70 (2) (b) of the statutes is repealed.

16 **SECTION 6.** 157.70 (2c) of the statutes is created to read:

17 157.70 (2c) RELEVANT EVIDENCE FOR CATALOGING. (a) In this subsection:

18 1. “Grave marker” means any surface indication of a burial, including stone
19 monuments, spirit houses, wooden crosses, or prehistoric Indian mounds.

NOTE: The definition of “grave marker” (and the other definitions in this paragraph) are borrowed from current administrative code provisions. During the study committee’s October 5, 2016, meeting, Senator Erpenbach requested that s. 157.70, Stats., be amended to specify that burial mounds constitute grave markers. Does the above definition satisfy that suggestion? If so, does that approach fit with the committee’s intent?

20 2. “Historical documentation” means information from any of the following
21 types of independent sources:

22 a. Church records

1 b. Deeds.

2 c. Maps.

3 d. Other written and oral sources.

4 (b) In determining whether to catalog a burial site under sub. (2) (a), the
5 director [may/shall] consider any of the following types of evidence:

6 1. Physical evidence, as demonstrated by archaeological or written historical
7 reports showing the presence of human bones or grave markers.

8 2. Historical documentation.

9 3. Oral depositions or affidavits.

10 4. Oral histories.

NOTE: Does the list of evidence above fit the committee's intent?

11 **SECTION 7.** 157.70 (3) (b) of the statutes is amended to read:

12 157.70 (3) (b) Upon receipt of any notice under par. (a), the director shall
13 determine if the burial site which is the subject of the notice has been cataloged ~~under~~
14 ~~sub. (2) (a).~~

15 **SECTION 8.** 157.70 (4) (a) of the statutes is amended to read:

16 157.70 (4) (a) If the director determines that a burial site reported under sub.
17 (3) is not cataloged ~~under sub. (2) (a)~~, he or she shall immediately notify the owner
18 of the burial site of the procedure under this subsection and of the liabilities and
19 penalties which apply for failure to comply with the procedure. If the director deems
20 it appropriate, he or she may give notice to the board, and to any person who has or
21 may have an interest in the burial site, that a burial site has been reported under sub.
22 (3).

23

(END)