



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-0821/P3
MED/MPG/FFK:all

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to repeal** 157.70 (2) (b) and 157.70 (2) (f); **to consolidate, renumber**
2 **and amend** 157.70 (5) (b) (intro.) and 1.; **to amend** 15.705 (1) (b), 44.02 (23),
3 70.11 (13), 157.70 (1) (c), 157.70 (2) (a), 157.70 (2) (e), 157.70 (2m) (b), 157.70
4 (2m) (c), 157.70 (2m) (d), 157.70 (3) (b), 157.70 (4) (a), 157.70 (5) (b) 2., 157.70
5 (5) (c) 1., 157.70 (5) (c) 2. (intro.), 157.70 (5) (c) 3., 157.70 (5) (c) 5., 157.70 (6) (a)
6 (intro.) and 157.70 (6) (c); and **to create** 157.70 (1) (em), 157.70 (1) (gm), 157.70
7 (2) (j), 157.70 (2c), 157.70 (2g), 157.70 (2j), 157.70 (2m) (g) and (h), 157.70 (4)
8 (cm), 157.70 (6) (bm), 157.70 (9m) and 709.03 (form) C. 21m. of the statutes;
9 **relating to:** disclosure of burial sites located on residential real estate and
10 various changes relating to the preservation and disturbance 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. Key provisions of the bill are summarized below.

Procedure and Evidence for Recording a Site in a Catalog

The bill specifies types of evidence that the director of the Wisconsin Historical Society (WHS) 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 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 a special inspection warrant when identifying and recording burial sites in a catalog. The bill also requires the director to consider the following types of evidence 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 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. Upon that notice, the procedure governing disturbances to uncataloged burial sites is not applicable until a final decision is made by the board, division or a court whether to record the site or land in the catalog.

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. 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 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 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 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 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, 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 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, the registry includes persons with an interest in any burial site.

Notice to Interested Persons of Application for Permit to Disturb

The bill 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 requires WHS and the Burial Sites Preservation Board to accept any electronic submission of applications and other documents required under the burial sites preservation law.

Real Estate Disclosure

The bill 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 adds this disclosure as a mandatory component of the "Real Estate Condition Report" used in residential real estate transactions. The bill directs the prospective buyer to contact WHS for further information regarding the presence, preservation, and potential disturbance of burial sites.

Definition of Notify

For purposes of the burial sites preservation law, the bill defines "notify" to mean "communicate by telephone, letter, or electronic mail or by other electronic means."

Annual Report Requirement

The bill creates a new annual report requirement. Under the bill, 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 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. In the event that no appeal is filed or the board upholds the director's decision, 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 creates a general, 30-day timeline by which the director must notify an owner after receiving a notification of a disturbance or possible disturbance to an uncataloged burial site in certain circumstances.

Disposition of Remains Determined to be of Tribal Descent

The bill requires the Wisconsin Inter-Tribal Repatriations Committee or its designee to 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 of Hearings and Appeals, to determine the appropriate disposition of human remains and objects removed from a burial site.

1 **SECTION 1.** 15.705 (1) (b) of the statutes is amended to read:

2 15.705 (1) (b) Three members who shall be members of federally recognized
3 Indian tribes or bands in this state, selected from names submitted by the Great
4 Lakes inter-tribal council and the Menominee tribe those tribes or bands. Each such
5 member shall be knowledgeable in the field of tribal preservation planning, history,
6 archaeology, or a related field or shall be an elder, traditional person, or spiritual
7 leader of his or her tribe.

NOTE: The committee requested a bill draft conforming to the second option set forth in the letter submitted by the Ho-Chunk Nation, which allows all Wisconsin-resident tribes or bands to submit names for selection as the three tribal board members. To be consistent with current statutory language, the bill draft refers to "federally recognized Indian tribes or bands in this state" rather than "Wisconsin-resident tribes or bands." Does this language adhere to the committee's intent?

8 **SECTION 2.** 44.02 (23) of the statutes is amended to read:

9 44.02 (23) Identify any archaeological site, including contiguous land
10 necessary to protect the site, in this state that is listed in the national register of
11 historic places in Wisconsin or the state register of historic places and that is not
12 cataloged under s. 157.70 (2) (a). Any information collected under this subsection the

1 disclosure of which would be likely to result in the disturbance of an archaeological
2 site is not subject to s. 19.35 (1).

3 **SECTION 3.** 70.11 (13) of the statutes is amended to read:

4 70.11 (13) CEMETERIES. Land owned by cemetery authorities, as defined in s.
5 157.061 (2), and used exclusively as public burial grounds and tombs and
6 monuments therein, and privately owned burial lots; land adjoining such burial
7 grounds, owned and occupied exclusively by the cemetery authority for cemetery
8 purposes; personal property owned by any cemetery authority and necessary for the
9 care and management of burial grounds; burial sites and contiguous lands which are
10 cataloged under s. 157.70 (2) (a).

11 **SECTION 4.** 157.70 (1) (c) of the statutes is amended to read:

12 157.70 (1) (c) "Cataloged" means recorded under sub. (2) (a), (4) (e) or (6) (c) or
13 s. 157.70 (2) (a), 2015 stats., or s. 157.70 (2) (b), 2015 stats.

14 **SECTION 5.** 157.70 (1) (em) of the statutes is created to read:

15 157.70 (1) (em) "Division" means the division of hearings and appeals in the
16 department of administration.

17 **SECTION 6.** 157.70 (1) (gm) of the statutes is created to read:

18 157.70 (1) (gm) "Notify" means to communicate by telephone, letter, or
19 electronic mail or by other electronic means.

20 **SECTION 7.** 157.70 (2) (a) of the statutes is amended to read:

21 157.70 (2) (a) ~~Under a special inspection warrant as required under s. 66.0119,~~
22 ~~identify and record in a catalog~~ Identify burial sites in this state and, for burial sites
23 ~~which that~~ that are not dedicated, sufficient contiguous land necessary to protect the
24 burial site from disturbance, ~~and.~~ For any such burial site for which the director
25 determines there is sufficient evidence under sub. (2c), the director shall notify in

SECTION 7

1 ~~writing every owner of a~~ the burial site or of such and contiguous land so recorded
2 and identified that the site or land will be recorded in a catalog unless the owner
3 requests a hearing under sub. (2g) (a). The director shall include in the notice the
4 date by which the director intends to record the site or land in the catalog, which shall
5 be no less than 30 days after the date of the notice. If the director's determination
6 is not contested under sub. (2g) (a), the director shall record the site and land so
7 identified in a catalog. If the director's determination is contested under sub. (2g)
8 (a), the director shall record the site and land in the catalog only as subsequently
9 permitted by a final decision of the board, the division, or a court. Whenever a burial
10 site and land are recorded in the catalog under this paragraph, the director shall
11 notify every owner and any county or local historical society in the county where the
12 burial site or the land is located. Any information in the catalog related to the
13 location of any burial site, the disclosure of which would be likely to result in the
14 disturbance of the burial site or the cataloged land contiguous to the burial site, is
15 not subject to s. 19.35 (1). The A notice of a recording in the catalog shall include
16 information about the permit required under sub. (5) and the toll free number the
17 owner may call for more information. The director may, in order to carry out his or
18 her duties under this paragraph, obtain a special inspection warrant as provided in
19 s. 66.0119 if entry to the site has been refused. In this paragraph, "sufficient
20 contiguous land" means land that is within at least 5- 10 feet from any part of a burial
21 site, unless the director determines based on the unique characteristics of the land
22 that a shorter distance is sufficient to protect the burial site from disturbance.

23 **SECTION 8.** 157.70 (2) (b) of the statutes is repealed.

24 **SECTION 9.** 157.70 (2) (e) of the statutes is amended to read:

1 157.70 (2) (e) Establish a registry for any person whom the board determines
2 to have an interest in a cataloged burial site or class of cataloged burial sites under
3 sub. (2m) (b) or (c). The registry shall include the name of every person whom the
4 board determines to have an interest in the preservation of a burial site or in
5 providing for the reinterment of the human remains and objects related to burial in
6 the burial site if the burial site is disturbed and identify the burial site in which the
7 person is determined to have an interest. Any information in the registry related to
8 the location of any burial site, the disclosure of which would be likely to result in
9 disturbance of the burial site, is not subject to disclosure under s. 19.35 (1).

10 **SECTION 10.** 157.70 (2) (f) of the statutes is repealed.

11 **SECTION 11.** 157.70 (2) (j) of the statutes is created to read:

12 157.70 (2) (j) Submit an annual report to the legislature under s. 13.172 (2)
13 containing all of the following:

- 14 1. The director's current recommendations under par. (c).
- 15 2. The number of burial sites recorded in the catalog at the time the report is
16 prepared.
- 17 3. A summary of disturbance activities authorized under sub. (4), including a
18 summary of information submitted to the board in written reports under sub. (4) (f),
19 since the previous report was issued.
- 20 4. A summary of applications received under sub. (5) since the previous report
21 was issued, and information regarding the approval or denial of those applications
22 by the director or the division of hearings and appeals.
- 23 5. A summary of appeals to the board under sub. (5) (c) 5. made since the
24 previous report was issued.

SECTION 11

1 6. A summary of any other activities of the board since the previous report was
2 issued.

3 7. A summary of all violations of this section and all penalties imposed as a
4 result of those violations.

NOTE: SECTION 11 creates a duty for the historical society to submit an annual report to the legislature. The committee discussed the option of requiring the historical society to include in such a report recommendations concerning burial sites on private property for acquisition by the state or other public agencies to preserve the burial sites. Based on discussions with the committee's chair, the scope of the annual report requirement under SECTION 11 is broadened to include additional information regarding the preservation of burial sites in Wisconsin. The committee should consider whether it agrees with the annual report requirements set forth under SECTION 11.

5 **SECTION 12.** 157.70 (2c) of the statutes is created to read:

6 157.70 (2c) RELEVANT EVIDENCE FOR RECORDING IN THE CATALOG. (a) In this
7 subsection:

8 1. "Grave marker" means any surface indication of a burial, including
9 monuments, spirit houses, wooden crosses, or Indian mounds.

10 2. "Historical documentation" means information from any of the following
11 types of independent sources:

12 a. Church records.

13 b. Deeds.

14 c. Maps.

15 d. Other written and oral sources.

16 (b) In determining whether to record burial sites in the catalog under sub. (2)
17 (a), the director shall consider the following types of evidence:

18 1. Physical evidence, as demonstrated by archaeological or written historical
19 reports showing the presence of human remains or grave markers.

20 2. Historical documentation.

21 3. Oral depositions or affidavits.

1 4. Oral histories.

2 **SECTION 13.** 157.70 (2g) of the statutes is created to read:

3 157.70 (2g) PROCEEDINGS TO CONTEST RECORDING IN THE CATALOG. (a) If an owner
4 wishes to contest a determination by the director under sub. (2) (a), the owner may,
5 prior to the date stated in the notice under sub. (2) (a) that the director will record
6 the burial site and land in the catalog, request a hearing before the board to review
7 the director's determination. If such a request is made, the board shall hold a hearing
8 within 90 days after the date of the request. At the hearing, the director has the
9 burden of proving, using the types of evidence described under sub. (2c) (b), that
10 burial sites are present on the land. If a hearing is requested under this paragraph
11 and the director has not yet physically inspected the land in question as permitted
12 under sub. (2) (a), the director shall do so prior to the hearing. Following the hearing,
13 the board shall issue a decision regarding whether to record the burial site or land
14 in the catalog and, no later than 60 days after the hearing, shall send a copy of its
15 decision to the director and the owner. A hearing held under this paragraph is not
16 a contested case hearing under ch. 227.

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

21 (c) Upon notice under sub. (2) (a) that the site or land will be recorded in the
22 catalog unless the owner requests a hearing under par. (a), sub. (4) does not apply
23 with respect to the site or land unless the board, the division, or a court issues a final
24 decision determining that the site or land will not be recorded in the catalog.

NOTE: SECTION 13 sets forth the new procedure that applies when a landowner contests the director's decision to record a site in the catalog. This new procedure relates to the proposed amendments in SECTION 7 and thus the committee should review those provisions together. Does the new procedure reflect the committee's intent?

1 **SECTION 14.** 157.70 (2j) of the statutes is created to read:

2 **157.70 (2j) REMOVAL FROM CATALOG.** (a) The director shall, on his or her own
3 initiative or in response to a request from the owner or another interested person,
4 propose that land be removed from the catalog if the director determines that burial
5 sites are not present on the land because of any of the following:

6 1. Naturally occurring changes to the landscape.

7 2. Removal of human remains from the burial site under sub. (4) (c) 3. a. or (5)
8 (c) 3.

9 3. Newly discovered evidence that, if known at the time of the determination
10 to record in the catalog, and taking into account the types of evidence required to be
11 considered under sub. (2c), would have resulted in a determination not to record in
12 the catalog the burial site or land.

13 (b) 1. If the director proposes to remove land from the catalog under par. (a),
14 the director shall notify the owner, interested persons listed on the registry under
15 sub. (2) (e), county or local historical societies, the relevant municipality, and, if
16 applicable, the person who submitted an application to have the site recorded in the
17 catalog of the director's proposal to remove the land from the catalog, and invite those
18 persons to submit comments on the proposal. The director shall allow comments for
19 a period of no less than 60 days.

20 2. Following the expiration of the comment period under subd. 1., the director
21 shall review any comments submitted, make any appropriate modifications in
22 response to those comments, and issue a decision regarding removal of the land from

1 the catalog. The director shall provide notice of his or her decision to the persons
2 notified under subd. 1.

3 3. Within 30 days after the date of the notice described in subd. 2., a person
4 notified under subd. 1. may appeal the director's decision to the board. The board
5 shall review the director's decision and issue a final decision as to whether the land
6 should be removed from the catalog.

7 4. If no appeal is filed within the period specified under subd. 3. or if a decision
8 to remove land from the catalog is upheld by the board following an appeal under
9 subd. 3., the director shall immediately do all of the following:

10 a. Remove the land from the catalog.

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

NOTE: The committee requested a bill draft that codifies in statute a procedure similar to that which currently exists in administrative code for removing a burial site from the catalog, but modifying the standard to specify the types of evidence to be offered to the director when determining whether to remove a burial site from the catalog. Does the language set forth in SECTION 14 reflect the committee's intent?

13 **SECTION 15.** 157.70 (2m) (b) of the statutes is amended to read:

14 157.70 **(2m)** (b) Determine which Indian tribes in this state have an interest
15 in any cataloged burial site or class of cataloged burial sites and notify the director
16 for entry in the registry under sub. (2) (e).

17 **SECTION 16.** 157.70 (2m) (c) of the statutes is amended to read:

18 157.70 **(2m)** (c) Determine which applicants for entry in the registry under sub.
19 (2p) have an interest in a cataloged burial site or class of cataloged burial sites.

20 **SECTION 17.** 157.70 (2m) (d) of the statutes is amended to read:

1 157.70 **(2m)** (d) As it deems necessary, review determinations of the director
2 and the division of hearings and appeals in the department of administration under
3 sub. (5).

4 **SECTION 18.** 157.70 (2m) (g) and (h) of the statutes are created to read:

5 157.70 **(2m)** (g) Hold hearings and issue decisions under sub. (2g) (a).

6 (h) Review decisions of the director and issue final decisions regarding removal
7 of land from the catalog under sub. (2j) (b) 3.

8 **SECTION 19.** 157.70 (3) (b) of the statutes is amended to read:

9 157.70 **(3)** (b) Upon receipt of any notice under par. (a), the director shall
10 determine if the burial site which is the subject of the notice has been cataloged under
11 sub. (2) (a).

12 **SECTION 20.** 157.70 (4) (a) of the statutes is amended to read:

13 157.70 **(4)** (a) If the director determines that a burial site reported under sub.
14 (3) is not cataloged under sub. (2) (a), he or she shall immediately notify the owner
15 of the burial site of the procedure under this subsection and of the liabilities and
16 penalties which apply for failure to comply with the procedure. If the director deems
17 it appropriate, he or she may give notice to notify the board, and to any person who
18 has or may have an interest in the burial site, that a burial site has been reported
19 under sub. (3).

20 **SECTION 21.** 157.70 (4) (cm) of the statutes is created to read:

21 157.70 **(4)** (cm) The director shall notify an owner under par. (c) 2. or 3.,
22 whichever is applicable, within 30 days after receiving a notification of a disturbance
23 or possible disturbance under sub. (3) (a), except that, if the director cannot make a
24 determination under par. (c) 2. or 3. within that period, he or she shall notify the
25 owner that additional time, which may not exceed 30 days, is necessary to make the

1 determination, and include in that notification the reasons he or she needs
2 additional time to make the determination.

NOTE: The committee should consider whether a 30-day deadline should also apply to s. 157.70 (4) (d), Stats., which requires the director to notify the owner of the right to cause or permit any activity if the director determines that the owner has satisfied the requirements under par. (c) 3.

3 **SECTION 22.** 157.70 (5) (b) (intro.) and 1. of the statutes are consolidated,
4 renumbered 157.70 (5) (b) 1. and amended to read:

5 157.70 (5) (b) 1. Any person who intends to cause or permit any activity on a
6 cataloged burial site or on cataloged land contiguous to a cataloged burial site which
7 in any way might disturb the burial site or the land shall: ~~1. Apply~~ apply to the
8 director for a permit to disturb the burial site or the land. The application shall
9 include the purpose of the disturbance ~~and the names and addresses of any persons~~
10 ~~notified under subd. 2.~~ ~~The director shall send the applicant the names of any person~~
11 ~~in the registry with an interest in the burial site.~~

12 **SECTION 23.** 157.70 (5) (b) 2. of the statutes is amended to read:

13 157.70 (5) (b) 2. ~~On a form provided by the~~ The director; shall notify any person
14 ~~whose name the director has sent under subd. 1.~~ shown on the registry under sub.
15 (2) (e) to have an interest in the burial site of the proposed disturbance. The notice
16 to any person under this subdivision shall include information on the notified
17 person's right to a hearing on whether the director should grant a permit to disturb
18 the burial site or the land.

19 **SECTION 24.** 157.70 (5) (c) 1. of the statutes is amended to read:

20 157.70 (5) (c) 1. Upon request of the applicant or any person notified under par.
21 (b), or if the director determines that a hearing is necessary, the director shall request
22 the ~~division of hearings and appeals in the department of administration~~ to conduct
23 a hearing on whether a permit should be issued to disturb the burial site or the land

1 which is the subject of the request. If in any part of the hearing the location of a burial
2 site is the subject of the testimony, such part of the hearing shall be conducted in a
3 session closed to the public and the record of such part of the hearing shall be exempt
4 from disclosure under s. 19.35 (1).

5 **SECTION 25.** 157.70 (5) (c) 2. (intro.) of the statutes is amended to read:

6 157.70 (5) (c) 2. (intro.) If a hearing is requested or determined to be necessary
7 under subd. 1., the ~~division of hearings and appeals in the department of~~
8 ~~administration~~ shall conduct a hearing to determine whether the benefits to the
9 permit applicant in disturbing the burial site or the land outweigh the benefits to all
10 other persons shown on the registry under sub. (2) (e) to have an interest in not
11 disturbing the burial site or the land. If the division finds in favor of the applicant,
12 the division shall issue a determination in favor of granting a permit to disturb a
13 burial site or the land which is the subject of the hearing under this paragraph. In
14 making the determination, the division shall consider the interest of the public in
15 addition to the interests of the parties. If any of the following classes of interest are
16 represented in the hearing, the division shall weight the interests in the following
17 order of priority:

18 **SECTION 26.** 157.70 (5) (c) 3. of the statutes is amended to read:

19 157.70 (5) (c) 3. If the determination under subd. 1m. or 2. is for granting a
20 permit to disturb a burial site ~~which is the subject of the hearing under this~~
21 ~~paragraph~~, the director shall grant the permit if the owner authorizes the director
22 or a qualified archaeologist approved by the director to excavate the burial site to
23 remove, within a reasonable time, beginning within 30 days of when ground
24 conditions permit, for disposition under sub. (6), any human remains and objects
25 related to the burial in the burial site to be disturbed under the permit.

1 **SECTION 27.** 157.70 (5) (c) 5. of the statutes is amended to read:

2 157.70 (5) (c) 5. Any party in a hearing under this paragraph may appeal the
3 determination made by the director or the division under subd. 1m. or 2. may be
4 appealed to the board.

5 **SECTION 28.** 157.70 (6) (a) (intro.) of the statutes is amended to read:

6 157.70 (6) (a) (intro.) If Except as provided in par. (bm), if human remains and
7 objects related to the burial in the site are removed from a burial site under sub. (4)
8 (c) 3. a. or (5) (c) 3. and the division has not determined under sub. (5) (c) 2m. the
9 person to whom such remains and objects should be transferred for analysis and
10 reinterment or other appropriate disposition, the director shall notify any person in
11 the registry under sub. (2) (e) with an interest in the analysis and reinterment or
12 appropriate disposition of such human remains and objects. The director shall
13 transfer the remains and objects to such person for appropriate reinterment or other
14 appropriate disposition upon receipt of a written application by any person with an
15 interest in the analysis and reinterment or other appropriate disposition based on
16 the following, in the order of priority stated, when persons in prior classes are not
17 available at the time of application and in the absence of actual notice of opposition
18 by a member of the same or a prior class:

19 **SECTION 29.** 157.70 (6) (bm) of the statutes is created to read:

20 157.70 (6) (bm) If human remains and objects related to the burial are removed
21 from a burial site under sub. (4) (c) 3. a. or (5) (c) 3., the remains or objects are
22 determined by a qualified archaeologist approved by the director to be of tribal
23 descent, and the division has not determined under sub. (5) (c) 2m. the person to
24 whom such remains and objects should be transferred for reinterment or other
25 appropriate disposition, the Wisconsin Inter-Tribal Repatriations Committee or its

1 designee shall determine the appropriate disposition of any tribal human remains
2 or objects related to the burial. The director shall transfer the remains and objects
3 for appropriate reinterment or other appropriate disposition as directed by the
4 Wisconsin Inter-Tribal Repatriations Committee or its designee. The Wisconsin
5 Inter-Tribal Repatriations Committee or its designee shall submit to the director a
6 written report of any disposition action taken under this paragraph.

NOTE: SECTION 29 of the bill draft grants the Wisconsin Inter-Tribal Repatriations Committee, or its designee, the power to make dispositional decisions regarding tribal human remains and objects related to the burial. Does SECTION 29 reflect the committee's intent? The committee should consider whether the division of hearing and appeals, when deciding to grant a permit to disturb a cataloged burial site, should retain the authority to determine the disposition of tribal human remains and objects related to the burial, or if an exception should be made to that authority when human remains and objects related to the burial are of tribal descent, with such decisions determined instead by the Wisconsin Inter-Tribal Repatriations Committee, or its designee.

7 **SECTION 30.** 157.70 (6) (c) of the statutes is amended to read:

8 157.70 (6) (c) The director shall ~~enter into~~ record in the catalog prepared under
9 sub. (2) (a) the site of any reinterment under par. (a) ~~or~~, (b), or (bm).

10 **SECTION 31.** 157.70 (9m) of the statutes is created to read:

11 157.70 (9m) ELECTRONIC SUBMISSION OF DOCUMENTS. The historical society and
12 the board shall accept the electronic transmittal of any application or other
13 document required to be submitted under this subchapter.

14 **SECTION 32.** 709.03 (form) C. 21m. of the statutes is created to read:

15 **709.03** (form)

1 C. 21m. I am aware of one or more burial sites on the
2 property. (For information regarding the
3 presence, preservation, and potential distur-
4 bance of burial sites, contact the Wisconsin
5 Historical Society at 608-264-6535 or
6 www.wisconsinhistory.org.)

7 **SECTION 33. Nonstatutory provisions.**

8 (1) Notwithstanding section 709.035 of the statutes, the treatment of section
9 709.03 (form) C. 21m. of the statutes does not require a property owner who has
10 furnished to a prospective buyer of the property an original or amended report before
11 the effective date of this subsection to submit an amended report with respect to the
12 information required by section 709.03 (form) C. 21m. of the statutes.

13 (2) The director of the historical society or his or her formally appointed
14 designee shall submit the initial report required under section 157.70 (2) (j) of the
15 statutes no later than the first day of the 7th month beginning after the effective date
16 of this subsection. With respect to the information under section 157.70 (2) (j) 3. to
17 6. of the statutes, the director shall include in the initial report information covering
18 the one-year period prior to the date the report is issued.

NOTE: Under SECTION 33, the director of the historical society must submit the
initial report to the legislature no later than the first day of the 7th month after the act
takes effect, which, under SECTION 35, will be on the first day of the 4th month beginning
after publication. Does the committee agree with the timeline set forth under these
sections?

19 **SECTION 34. Initial applicability.**

20 (1) The treatment of section 709.03 (form) C. 21m. of the statutes first applies
21 to reports furnished on the effective date of this subsection.

