



January 16, 2026

Heather Bailey
City of Madison Planning Division
Madison Municipal Building, Suite 017
215 Martin Luther King Jr. Blvd.
Madison, WI 53703

Dear Sir or Madam,

State law requires the Wisconsin Historical Society to identify and to record in a catalog all human burial sites in the state. The purpose of the law is to ensure that all human burials are granted equal treatment and protection without reference to ethnic origins, religious affiliation, or age of the burial site.

State law also instructs that burial sites must be removed from the catalog if such site is found to be destroyed or recorded in error.

Upon review, the Director is preparing formally remove Orton Park Cemetery (DA-1222/BDA-0175) from the Catalog of human burial sites, as a review of available documentation indicates all burials were systematically removed from the location following the closure of the cemetery in 1877. The Burial Sites Office will submit a Correction Instrument Document to the Dane County Register of Deeds accordingly. Enclosed is a map of the area that will be removed from the Catalog.

You have the right to object this removal from the catalog or submit comments on this proposal. **If you do, your response must be received by our office within 60 days of your receipt of this letter.** All comments should be submitted to the Burial Sites Office by physical mail or email at the addresses listed below.

Upon the expiration of the comment period, the Director of the Wisconsin Historical Society will review comments and make a final decision on whether the land should be removed from the catalog, and provide notice of that final decision.

If staff do not hear back from you within 60 days of your receipt of this letter, our office will proceed with the removal of this site from the Catalog.

Thank you,
Walker Good

Archaeologist
State Historic Preservation Office
Wisconsin Historical Society
608-264-6496
walker.good@wisconsinhistory.org

enc. Wis. Stats. 157.70, Map of Areas to be Removed from the Catalog

cc. Registry of Interested Persons, City of Madison, Dane County Historical Society

Collecting, Preserving, and Sharing Stories since 1846
816 State Street Madison, Wisconsin 53706

wisconsinhistory.org



DA-1222/BDA-0175 (Orton Park Cemetery) - Proposed Catalog Removal

0 25 50 100
Feet

 Cataloged Boundary

 Proposed Catalog Removal



19 Updated 15–16 Wis. Stats.

(3) Section 157.62 does not apply to a cemetery authority that is not required to be licensed under s. 440.91 (1) or registered under s. 440.91 (1m).

History: 1991 a. 269; 2005 a. 25; 2007 a. 174; 2015 a. 237.

157.63 Reporting and auditing exemptions; certification of compliance of cemetery organized and operated by, or affiliated with, a religious association. (1) In lieu of filing an annual report under s. 157.62 (2), a religious association or a cemetery authority of a cemetery that is affiliated with a religious association, or that religious association, may file an annual certification with the cemetery board as provided in this section.

(2) A certification under this section shall be made on a form prescribed and furnished by the cemetery board and include all of the following:

(a) The name and address of each cemetery to which the certification applies.

(b) A statement of a person who is legally authorized to act on behalf of the religious association under this section that, during the reporting period under s. 157.62, each cemetery and the cemetery authority of each cemetery specified under par. (a) have either fully complied or have substantially complied with ss. 157.11 (9g) (c) and 157.12 (3).

(3) If the statement under sub. (2) (b) includes a statement of substantial compliance, the statement under sub. (2) (b) must also specify those instances when the cemetery or cemetery authority did not fully comply with s. 157.11 (9g) or 157.12 (3).

(4) A certification under this section is effective for the 12-month period immediately following the reporting period under s. 157.62 (2) for which the cemetery authority is certified under this section to have fully or substantially complied with ss. 157.11 (9g) and 157.12 (3).

(5) During the effective period specified under sub. (4), the cemetery board may not audit the care funds or any records or accounts relating to the care funds of a cemetery to which a certification under this section applies.

(6) The religious society that is affiliated with a cemetery to which a certification under this section applies is liable for the damages of any person that result from the failure of the cemetery or cemetery authority to fully comply with s. 157.11 (9g) or 157.12 (3) during the reporting period under s. 157.62 (2) for which such compliance has been certified under this section.

History: 1989 a. 307; 1991 a. 269; 2015 a. 237; 2017 a. 329.

Cross-reference: See also ch. CB 2, Wis. adm. code.

157.635 Regulations of cemetery organized and operated by, or affiliated with, a religious association. Nothing in this subchapter prohibits a religious association or a cemetery authority of a cemetery that is affiliated with a religious association from prohibiting the burial of the human remains of an individual in the cemetery if the individual was in a class of individuals who are prohibited under regulations adopted by the cemetery authority or religious association from being buried in the cemetery.

History: 1989 a. 307; 2015 a. 237.

157.637 Veteran burials. A cemetery authority of a cemetery, other than a cemetery that is organized and operated by, or affiliated with, a religious association, may not prohibit the burial of the human remains of a person specified in s. 45.61 (2) at the cemetery if the cemetery authority is paid in its usual and customary manner for the burial.

History: 2003 a. 70; 2005 a. 22; 2015 a. 237.

157.64 Penalties. (1) In addition to or in lieu of other remedies provided by law, any person who violates this subchapter or any rule promulgated under this subchapter may be required to forfeit not more than \$200 for each separate offense. Each day of continued violation constitutes a separate offense.

DISPOSITION OF HUMAN REMAINS

157.70

(2) Any person who intentionally does any of the following may be fined not more than \$5,000 or imprisoned for not more than 90 days, or both, for the first offense and may be fined not more than \$10,000 or imprisoned for not more than 9 months, or both, for each subsequent offense:

(a) Violates s. 157.08 (2) (b), 157.11 (9g), or 157.12 (2) (b), (c), or (d).

(b) Fails to handle funds for the improvement and care of a cemetery as required in s. 157.11 or 157.125.

(c) Fails to deposit or invest care funds or preneed trust funds as required in s. 157.19.

(d) Fails to file a report or files an incomplete, false or misleading report under s. 157.62 (1) or (2).

(e) Fails to maintain records as required in s. 157.62 (3) and (4).

(f) Files a false or misleading certification under s. 157.63.

(g) Violates s. 157.111.

(3) Any person who intentionally commits an act specified under sub. (2) (a) to (f) with intent to defraud may be punished for theft under s. 943.20.

History: 1989 a. 307; 1991 a. 269; 1993 a. 386; 2015 a. 237.

157.65 Enforcement. (1) (a) If the cemetery board has reason to believe that any person is violating or has violated this subchapter or any rule promulgated under this subchapter and that the continuation of that activity might cause injury to the public interest, the cemetery board may investigate.

(b) If the cemetery board has reason to believe that any person is violating s. 157.12 or any rule promulgated under s. 157.12 and that the continuation of that activity might cause injury to the public interest, the cemetery board may investigate.

(2) The department of justice or any district attorney, upon informing the department of justice, may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction any violation of this subchapter. The court may, prior to entry of final judgment, make such orders or judgments as may be necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action, if proof of such loss is submitted to the satisfaction of the court. The department of justice may subpoena persons and require the production of books and other documents, and may request the cemetery board to exercise its authority under sub. (1) to aid in the investigation of alleged violations of this subchapter.

(3) In lieu of instituting or continuing an action under this section, the department of justice may accept a written assurance of discontinuance of any act or practice alleged to be a violation of this subchapter from the person who has engaged in the act or practice. An assurance entered into under this subsection shall not be considered evidence of a violation of this subchapter, but a violation of the assurance shall be treated as a violation of this subchapter.

History: 1989 a. 307; 1995 a. 27 ss. 4405, 4406, 9116 (5); 2005 a. 25; 2011 a. 32; 2015 a. 237.

SUBCHAPTER III

BURIAL SITES PRESERVATION

157.70 Burial sites preservation. (1) **DEFINITIONS.** In this section:

(a) “Board” means the burial sites preservation board.

(b) “Burial site” means any place where human remains are buried.

(c) “Cataloged” means recorded under sub. (2) (a), (4) (e) or (6) (c) or s. 157.70 (2) (a), 2015 stats., or s. 157.70 (2) (b), 2015 stats.

(cm) “Dedicated” has the meaning given in s. 157.061 (4).

(d) “Director” means the director of the historical society or his or her formally appointed designee.

(e) “Disturb” includes defacing, mutilating, injuring, exposing, removing, destroying, desecrating or molesting in any way.

(em) “Division” means the division of hearings and appeals in the department of administration.

(f) “Human remains” means any part of the body of a deceased person in any stage of decomposition.

(g) “Interest” means an interest based on any of the following:

1. Direct kinship.
2. A cultural, tribal or religious affiliation.
3. A scientific, environmental or educational purpose.
4. Land use.
5. A commercial purpose not related to land use which is consistent with the purposes of this section.
6. Any other interest which the board deems to be in the public interest.

(gm) “Notify” means to communicate by letter or by electronic mail or other electronic means approved by the director.

(h) “Owner” means a person who owns or leases land on which a burial site is located.

(hm) “Person” includes the state.

(i) “Qualified archaeologist” means an individual who has a graduate degree in archaeology, anthropology or a closely related field and at least one year of full-time professional experience or equivalent specialized training in archaeological or physical anthropological research, administration or management, at least 4 months of supervised field and analytic experience in general North American archaeology or physical anthropology and a demonstrated ability to carry research to completion.

(1m) APPLICABILITY. This section does not apply to the disturbance of cataloged land contiguous to a cataloged burial site if the cataloged burial site was recorded under sub. (2) (i) before August 9, 1989.

(2) DIRECTOR’S DUTIES. The director shall:

(a) Identify burial sites in this state and, for burial sites that are not dedicated, sufficient contiguous land necessary to protect the burial site from disturbance. For any such burial site for which the director determines there is sufficient evidence under sub. (2c), the director shall notify every owner of the burial site and contiguous land so identified that the site or land will be recorded in a catalog unless the owner requests a hearing under sub. (2g) (a). The director shall include in the notice the date by which the director intends to record the site or land in the catalog, which shall be no less than 30 days after the date of the notice. If the director’s determination is not contested under sub. (2g) (a), the director shall record the site and land so identified in a catalog. If the director’s determination is contested under sub. (2g) (a), the director shall record the site and land in the catalog only as subsequently permitted by a final decision of the board, the division, or a court. Whenever a burial site and land are recorded in the catalog under this paragraph, the director shall notify every owner and any county or local historical society in the county where the burial site or the land is located. Any information in the catalog related to the location of any burial site, the disclosure of which would be likely to result in the disturbance of the burial site or the cataloged land contiguous to the burial site, is not subject to s. 19.35 (1). A notice of a recording in the catalog shall include information about the permit required under sub. (5) and the toll free number the owner may call for more information. The director may, in order to carry out his or her duties under this paragraph, obtain a special inspection warrant as provided in s. 66.0119 if entry to the site has been refused. In this paragraph, “sufficient contiguous land” means land that is within 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.

(c) Make recommendations concerning burial sites on private property for acquisition by the state or other public agencies to preserve the burial sites.

(d) Provide for and publicize a telephone service which allows any person in this state to call, without charge, the director to report a discovery or disturbance of a burial site.

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

(g) Assist Indian tribes, state agencies and other persons in any negotiation with any federal agency for the preservation of burial sites and human remains.

(h) Mediate, upon application of any owner or person in the registry under par. (e), any dispute related to the disturbance or proposed disturbance of a burial site.

(i) Cause a cataloged burial site to be recorded by the register of deeds of the county in which the burial site is located. The historical society shall reimburse the county for the cost of recording under this paragraph from the appropriation under s. 20.245 (1) (a).

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

1. The director’s current recommendations under par. (c).
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 sub. (4), including a summary of information submitted to the board in written reports under sub. (4) (f), since the previous report was issued.
4. A summary of applications received under sub. (5) since the previous report was issued, and information regarding the approval or denial of those applications by the director or the division.

5. A summary of appeals to the board under sub. (5) (c) 5. made since the previous report was issued.

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

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

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

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

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

- a. Church records.
- b. Deeds.
- c. Maps.
- d. Other written and oral sources.

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

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.
4. Oral histories.

(2g) PROCEEDINGS TO CONTEST RECORDING IN THE CATALOG. (a) If an owner wishes to contest a determination by the director under sub. (2) (a), the owner may, prior to the date stated in the

notice under sub. (2) (a) that the director will record the burial site and land in the catalog, request a hearing before the board to review the director's determination. If such a request is made, the board shall hold a hearing within 90 days after the date of the request. At the hearing, the director has the burden of proving, using the types of evidence described under sub. (2c) (b), that a burial site is present on the land. If a hearing is requested under this paragraph and the director has not yet physically inspected the land in question as permitted under sub. (2) (a), the director shall do so prior to the hearing. Following the hearing, the board shall issue a decision regarding whether to record the burial site or land in the catalog and, no later than 60 days after the hearing, shall send a copy of its decision to the director and the owner. A hearing held under this paragraph is not a contested case hearing under ch. 227.

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

(c) From the time of the notice under sub. (2) (a) that the site or land will be recorded in the catalog unless the owner requests a hearing under par. (a) until all proceedings under this subsection are concluded, notwithstanding sub. (4), no person may conduct any soil disturbance activity on the site or land, except that the proposed activity may be conducted if the director determines that the proposed activity will not disturb the burial site.

(2j) REMOVAL FROM CATALOG. (a) The director shall, on his or her own initiative or in response to a request from the owner or another interested person, propose that land be removed from the catalog if the director determines that no burial site is present on the land because of any of the following:

1. Naturally occurring changes to the landscape.
2. Removal of human remains from the burial site under sub. (4) (c) 3. a. or (5) (c) 3.
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 under sub. (2c), would have resulted in a determination not to record the burial site or land in the catalog.

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

2. Following the expiration of the comment period under subd. 1., the director shall review any comments submitted, make any appropriate modifications in response to those comments, and issue a decision regarding removal of the land from the catalog. The director shall provide notice of his or her decision to the persons notified under subd. 1.

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

4. Within 30 days after the date of the board's decision under subd. 3., a person notified under subd. 1. shall have the right to a contested case hearing regarding whether the land should be removed from the catalog. A hearing under this subdivision shall be conducted by the division.

5. If no appeal of a decision to remove land from the catalog is filed within the period specified under subd. 3., if a decision to remove land from the catalog is upheld by the board following an appeal to the board under subd. 3. and no hearing is requested

under subd. 4., or if a decision to remove land from the catalog is upheld by the division following a hearing requested under subd. 4., the director shall immediately do all of the following:

a. Remove the land from the catalog.

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

(2m) BOARD DUTIES. The board shall:

(a) Meet at least every 3 months.

(b) Determine which Indian tribes have an interest in any burial site or class of burial sites and notify the director for entry in the registry under sub. (2) (e).

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

(d) As it deems necessary, review determinations of the director and the division under sub. (5).

(e) As it deems necessary, review disposition actions taken by the director under sub. (6).

(f) As it deems appropriate, approve transfers of burial sites under sub. (6m) (b) 2.

(g) Hold hearings and issue decisions under sub. (2g) (a).

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

(2p) APPLICATION FOR REGISTRY. Any person may apply to the board for entry in the registry and shall indicate in which burial site she or he is claiming an interest.

(2r) SITE DISTURBANCE PROHIBITED. Except as provided under subs. (4) and (5) and ss. 157.111 and 157.112, no person may intentionally cause or permit the disturbance of a burial site or cataloged land contiguous to a cataloged burial site. This subsection does not prohibit normal agricultural or silvicultural practices which do not disturb the human remains in a burial site or the surface characteristics of a burial site.

(3) REPORT OF DISTURBED BURIAL SITES. (a) Except as provided under s. 979.01, a person shall immediately notify the director if the person knows or has reasonable grounds to believe that a burial site or the cataloged land contiguous to a cataloged burial site is being disturbed or may be disturbed contrary to the requirements of subs. (4) and (5).

(b) Upon receipt of any notice under par. (a), the director shall determine if the burial site which is the subject of the notice has been cataloged.

(4) PROCEDURE FOR UNCATALOGED BURIAL SITES. (a) If the director determines that a burial site reported under sub. (3) (a) is not cataloged, he or she shall immediately provide the person who made the report under sub. (3) (a) with confirmation that the report has been received and shall also immediately notify the owner of the burial site of the procedure under this subsection and of the liabilities and penalties which apply for failure to comply with the procedure. If the director deems it appropriate, he or she may notify the board, and any person who has or may have an interest in the burial site, that a burial site has been reported under sub. (3).

(b) No owner who has received notice under par. (a) may in any way intentionally cause or permit any activity which would disturb the burial site which is the subject of the notice unless authorized by the director under par. (c) 2. or (d).

(c) 1. Using information available concerning the burial site and the proposed activity, the director shall determine whether the proposed activity will disturb the burial site and whether the registry under sub. (2) (e) shows that any person has an interest in the burial site.

2. If the director determines that the proposed activity will not disturb the burial site or will disturb a burial site in which no person is shown on the registry under sub. (2) (e) to have an interest, he or she shall notify the owner of the owner's right to cause or permit the activity.

3. If the director determines that the proposed activity will disturb a burial site in which any other person who is not the owner

is shown on the registry under sub. (2) (e) to have an interest and that the interest is substantial, the director shall notify the owner that the owner may not cause or permit the activity unless the owner does one of the following:

a. Subject to s. 157.111, authorizes the director or a qualified archaeologist approved by the director to excavate the burial site to remove and analyze any human remains and objects related to the burial in the burial site from the burial site within a reasonable time, beginning within 30 days of when ground conditions permit, for disposition under sub. (6).

b. Changes the proposed activity so as not to disturb any burial site.

(cm) The director shall notify an owner under par. (c) 2. or 3., whichever is applicable, within 30 days after confirming receipt of a notification of a disturbance or possible disturbance under sub. (3) (a), except that if the director cannot make a determination under par. (c) 2. or 3. within that period, he or she shall notify the owner that additional time, which may not exceed 30 days, is necessary to make the determination, and include in that notification the reasons he or she needs additional time to make the determination.

(d) If the director determines that an owner has satisfied the requirements under par. (c) 3., he or she shall, within 30 days after making that determination, notify the owner of the owner's right to cause or permit any activity which is in keeping with the owner's action under par. (c) 3.

(e) If under par. (c) 3. a. all human remains and objects related to the burial in a burial site reported under sub. (3) (a) are not removed from the burial site, the director shall enter the burial site into the record prepared under sub. (2) (a).

(f) The director shall submit a written report to the board of any determination which he or she makes under this subsection.

(5) PROCEDURE FOR CATALOGED BURIAL SITES. (a) No person may intentionally cause or permit the disturbance of a cataloged burial site or the cataloged land contiguous to a cataloged burial site without a permit from the director issued under this subsection.

(b) 1. Any person who intends to cause or permit any activity on a cataloged burial site or on cataloged land contiguous to a cataloged burial site which in any way might disturb the burial site or the land shall apply to the director for a permit to disturb the burial site or the land. The application shall include the purpose of the disturbance.

2. The director shall notify any person shown on the registry under sub. (2) (e) to have an interest in the burial site of the proposed disturbance. The notice to any person under this subdivision shall include information on the notified person's right to a hearing on whether the director should grant a permit to disturb the burial site or the land.

(c) 1. Upon request of the applicant or any person notified under par. (b), or if the director determines that a hearing is necessary, the director shall request the division to conduct a hearing on whether a permit should be issued to disturb the burial site or the land which is the subject of the request. If in any part of the hearing the location of a burial site is the subject of the testimony, such part of the hearing shall be conducted in a session closed to the public and the record of such part of the hearing shall be exempt from disclosure under s. 19.35 (1).

1m. If a hearing is not requested or determined to be necessary under subd. 1., the director shall determine whether a permit should be issued to disturb the burial site or the land which is the subject of the application under par. (b) 1. If the director determines that the benefits to the permit applicant in disturbing the burial site or the land outweigh the benefits to all other persons shown on the registry under sub. (2) (e) to have an interest in not disturbing the burial site or the land, the director shall grant a permit to disturb the burial site or the land. In making the determination, the director shall consider the interest of the public in addition to any other interests. If the director determines that any of

the following classes of interest are represented, the director shall weight the interests in the following order of priority:

- a. Direct kinship.
- b. A cultural, tribal or religious affiliation.
- c. A scientific, environmental or educational purpose.
- cm. Historical and aesthetic significance of the burial site.
- d. Land use.
- e. A commercial purpose not related to land use which is consistent with the purposes of this section.
- f. Any other interest which the director deems to be in the public interest.

2. If a hearing is requested or determined to be necessary under subd. 1., the division shall conduct a hearing to determine whether the benefits to the permit applicant in disturbing the burial site or the land outweigh the benefits to all other persons shown on the registry under sub. (2) (e) to have an interest in not disturbing the burial site or the land. If the division finds in favor of the applicant, the division shall issue a determination in favor of granting a permit to disturb a burial site or the land which is the subject of the hearing under this paragraph. In making the determination, the division shall consider the interest of the public in addition to the interests of the parties. If any of the following classes of interest are represented in the hearing, the division shall weight the interests in the following order of priority:

- a. Direct kinship.
- b. A cultural, tribal or religious affiliation.
- c. A scientific, environmental or educational purpose.
- cm. Historical and aesthetic significance of the burial site.
- d. Land use.
- e. A commercial purpose not related to land use which is consistent with the purposes of this section.
- f. Any other interest which the board deems to be in the public interest.

2m. If the division makes a determination for granting a permit to disturb a burial site that is the subject of the hearing under this paragraph, the division may, except as provided in subd. 2o., determine the person to whom the human remains and objects related to the burial in the burial site should be transferred for analysis and reinterment or other appropriate disposition when the burial site is disturbed. In making such a determination, the division shall follow the order of priority prescribed in sub. (6) (a).

2o. If human remains and objects related to the burial in the burial site are determined by a qualified archaeologist approved by the director to be of tribal descent, the division shall request that the Wisconsin Inter-Tribal Repatriations Committee or its designee determine the appropriate disposition of the remains or objects. If the Wisconsin Inter-Tribal Repatriations Committee or its designee declines the director's request, the division shall determine the person to whom the remains and objects should be transferred as otherwise provided in subd. 2m. The Wisconsin Inter-Tribal Repatriations Committee or its designee shall submit to the director a written report of any disposition action taken under this subdivision.

3. If the determination under subd. 1m. or 2. is for granting a permit to disturb a burial site, the director shall grant the permit if the owner authorizes the director or a qualified archaeologist approved by the director to excavate the burial site to remove, within a reasonable time, beginning within 30 days of when ground conditions permit, for disposition under sub. (6), any human remains and objects related to the burial in the burial site to be disturbed under the permit.

4. A permit issued under this subsection shall be subject to s. 157.111 and may be subject to any other condition or exemption deemed necessary to limit the disturbance of a burial site or the land or to minimize any other burden on any person affected by granting the permit.

5. Any determination made by the director or the division under subd. 1m. or 2. may be appealed to the board.

(d) 1. The director may charge a fee to recover the cost of excavation of a cataloged burial site under par. (c) 3. on the basis of the historical society's assessment of the costs associated with excavation of the cataloged site.

2. The director may charge a fee to recover costs incurred by the historical society to analyze and reinter or otherwise dispose of human remains and other material under par. (c) 2m.

(6) DISPOSITION OF HUMAN REMAINS REMOVED FROM BURIAL SITES. (a) Except as provided in par. (bm), if human remains and objects related to the burial in the site are removed from a burial site under sub. (4) (c) 3. a. or (5) (c) 3. and the division has not determined under sub. (5) (c) 2m. the person to whom such remains and objects should be transferred for analysis and reinterment or other appropriate disposition, the director shall notify any person in the registry under sub. (2) (e) with an interest in the analysis and reinterment or appropriate disposition of such human remains and objects. The director shall transfer the remains and objects to such person for appropriate reinterment or other appropriate disposition upon receipt of a written application by any person with an interest in the analysis and reinterment or other appropriate disposition based on the following, in the order of priority stated, when persons in prior classes are not available at the time of application and in the absence of actual notice of opposition by a member of the same or a prior class:

1. Direct kinship.
2. A cultural, tribal or religious affiliation.
3. A scientific, environmental or educational purpose.
4. Any other interest which the board deems to be in the public interest.

(b) If the director cannot identify any person with an interest in reintering the human remains and objects received under par. (a), the director shall provide for reinterment or other disposition of the human remains and objects in an appropriate manner.

(bm) If human remains and objects related to the burial are removed from a burial site under sub. (4) (c) 3. a. or (5) (c) 3., the remains or objects are determined by a qualified archaeologist approved by the director to be of tribal descent, and the division has not determined under sub. (5) (c) 2m. the person to whom such remains and objects should be transferred for reinterment or other appropriate disposition, the director shall request that the Wisconsin Inter-Tribal Repatriations Committee or its designee determine the appropriate disposition of any tribal human remains or objects related to the burial. The director shall transfer the remains and objects for appropriate reinterment or other appropriate disposition as directed by the Wisconsin Inter-Tribal Repatriations Committee or its designee, unless the Wisconsin Inter-Tribal Repatriations Committee or its designee declines the director's request, in which case the director shall proceed with disposition of the remains and objects as otherwise provided in par. (a). The Wisconsin Inter-Tribal Repatriations Committee or its designee shall submit to the director a written report of any disposition action taken under this paragraph.

(c) The director shall record in the catalog prepared under sub. (2) (a) the site of any reinterment under par. (a), (b), or (bm).

(d) The director shall submit to the board a written report of any disposition action taken under this subsection.

(e) The board may review and modify any disposition action taken by the director under this subsection.

(6m) BURIAL SITES ON PUBLIC LANDS. (a) In this subsection, "municipality" has the meaning given under s. 66.0621 (1) (a) and includes the state.

(b) Notwithstanding any other provision of this section, a municipality:

2. May not transfer any burial site to any person who is not a municipality unless the transfer provides for preservation of the burial site from any disturbance by any person and unless the transfer is approved by the board.

3. Shall endeavor to take positive action to preserve any burial site on land it owns through appropriate land use management including but not limited to appropriate multiuse purposes such as nature preserves.

(7) ACTION BY ATTORNEY GENERAL. Upon request of the board, the attorney general or the district attorney of the proper county shall aid in any investigation, inspection, hearing or trial had under the provisions of this section and shall institute and prosecute all necessary actions or proceedings for the enforcement of such provisions and for the punishment of violations of the same. The attorney general or district attorney so requested shall report to or confer with the board regarding the request within 30 days after receipt of the request.

(8) REMEDIES. Any person who intentionally disturbs, without the authorization of the director under sub. (4) (c) 2. or (d), a burial site which is not cataloged or who intentionally disturbs, without a permit issued under sub. (5), a cataloged burial site or the cataloged land contiguous to a cataloged burial site is liable for attorney fees and damages or other appropriate relief to any person with an interest in preserving the burial site or in reintering the human remains and objects related to the burial in the burial site. Any person with an interest in preserving a burial site or in reintering the human remains in the burial site may bring an action for an injunction to prevent disturbance to the burial site or the cataloged land contiguous to a cataloged burial site or to obtain the human remains and objects related to the burial in the burial site for appropriate reinterment, in the order of priority specified in sub. (6) (a).

(9) PRESERVATION OF RIGHTS. The transfer of title to any property shall not change the rights and duties of any person under this section.

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

(10) PENALTIES. (a) Any person who fails to report the disturbance of a burial site or the cataloged land contiguous to a cataloged burial site as required under sub. (3) shall forfeit not less than \$100 nor more than \$1,000.

(b) Any person who intentionally disturbs a burial site which is not cataloged without the authorization of the director under sub. (4) (c) 2. or (d) shall forfeit not less than \$500 nor more than \$2,000 if the burial site is not dedicated or shall forfeit not less than \$1,000 nor more than \$10,000 if the burial site is dedicated.

(c) Any owner who intentionally causes or permits any activity which disturbs a burial site after receiving notice from the director under sub. (4) (a) without the authorization required under sub. (4) (c) 2. or (d) shall forfeit not less than \$1,000 nor more than \$10,000.

(d) Any person who intentionally causes or permits any activity which disturbs a cataloged burial site or the cataloged land contiguous to a cataloged burial site without a permit issued under sub. (5) shall forfeit not less than \$1,000 nor more than \$10,000.

(e) Any person who disturbs a burial site for commercial gain not related to use of the land where a burial site is located or who disturbs a cataloged burial site for commercial gain related to use of the land where a burial site is located in violation of this section may be fined not to exceed 2 times the gross value gained or 2 times the gross loss caused by the disturbance, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred, or imprisoned for not more than one year in the county jail or both. In calculating the amount of the fine based on personal injury, any measurement of pain and suffering shall be excluded.

History: 1985 a. 316; 1987 a. 27; 1989 a. 3, 31, 359; 1991 a. 39; 1993 a. 386; 1995 a. 357; 1999 a. 83; 1999 a. 150 s. 672; 2001 a. 16; 2017 a. 222; 2017 a. 365 s. 111.

Cross-reference: See also ch. HS 1, Wis. adm. code.

Note: 1985 Wis. Act 316, which created this section, contains extensive notes. Section 1 of 1985 Act 316 is entitled "Legislative findings and purpose."