

CHAPTER 44

HISTORICAL SOCIETIES AND ARTS BOARD

	SUBCHAPTER I		
	STATE HISTORICAL SOCIETY		
	AND LOCAL HISTORICAL SOCIETIES		
44.01	Historical society; corporate structure.	44.30	Public policy.
44.015	Powers.	44.31	Definitions.
44.02	Historical society; duties.	44.32	Officer.
44.03	Affiliated societies.	44.33	Duties of the state review board.
44.04	School services.	44.34	Duties of the state historical society.
44.05	American history research center.	44.36	State register of historic places.
44.06	Depository of public documents.	44.39	State agency cooperation.
44.07	Museum extension service.	44.40	State agency decisions; negotiation.
44.09	District attorney, county, local and court records.	44.41	Protection and use of state agency property.
44.10	Regional depositories for records.	44.42	Negotiations with political subdivisions and school boards.
44.11	Central depository library.	44.44	Certification of historic preservation ordinances.
44.12	Educational facilities at Nelson Dewey state park.	44.45	List of locally designated historic places.
44.13	Educational facilities at Old Wade House state park.	44.47	Field archaeology.
44.14	Central depository loan collection, federal documents.	44.48	Archaeological resources.
44.15	Historical markers program.		
44.16	Circus World Museum Foundation.		SUBCHAPTER III
44.20	Historic sites.		ARTS BOARD
44.21	Historical society parking regulations.	44.51	Definitions.
	SUBCHAPTER II	44.53	Powers and duties.
	HISTORIC PRESERVATION PROGRAM	44.55	Executive secretary.
		44.56	Public service requirement.
		44.565	Arts challenge initiative grants.
		44.57	Fine arts in state buildings.
		44.60	Arts incubator grants and loans.
		44.62	Wisconsin regranting program.

SUBCHAPTER I

STATE HISTORICAL SOCIETY
AND LOCAL HISTORICAL SOCIETIES

44.01 Historical society; corporate structure. (1) The historical society shall constitute a body politic and incorporate by the name of “The State Historical Society of Wisconsin,” and shall possess all the powers necessary to accomplish the objects and perform the duties prescribed by law. The historical society shall be an official agency and the trustee of the state.

(2) The historical society may adopt, and change, a seal, a constitution and bylaws, promulgate rules, and elect such officers as the constitution or bylaws prescribe. The eligibility requirements for membership in the historical society shall be determined by the constitution and bylaws. There shall continue to be a board of curators for governing the historical society with powers substantially the same as at present.

(4) The historical society’s acceptance of any benefits granted it by law shall be conclusively deemed its complete acquiescence in all laws enacted concerning the organization and operation of the society.

History: 1971 c. 125; 1979 c. 110; 1983 a. 27; 1989 a. 359.

The historical society is a state agency. The board of curators falls within the coverage of ss. 893.82 and 895.46. 74 Atty. Gen. 54.

44.015 Powers. The historical society may:

(1) Acquire any interest in real or personal property by gift, bequest or otherwise in any amount and may operate, manage, sell, rent or convey real estate acquired by gift, bequest, foreclosure or other means, upon such terms and conditions as the board of curators deems for its interests but may not sell, mortgage, transfer or dispose of in any manner or remove from its buildings, except for temporary purposes, any article therein without authority of law.

(2) Sell, exchange or otherwise dispose of duplicate books, periodicals or museum objects, or books, periodicals and museum objects outside its field of collection.

(3) Accept collections of private manuscripts, printed materials, tapes, films, optical disks, materials stored in electronic for-

mat and artifacts, and it may enforce any reasonable restrictions on accessibility to the public, use or duplication of said collections which are agreed upon by the donor and the historical society.

(4) Take proper steps to promote the study of history by lectures, and diffuse and publish information relating to the description and history of the state.

(5) By rule, establish fees to recover costs under s. 44.02 (24).

(5m) Except as otherwise provided by law, establish fees for services or products or for admission to venues.

(7) Contract with the Wisconsin Historical Foundation, Inc., or any other nonstock, nonprofit corporation under ch. 181 for the purposes of administering the historical society’s membership program, soliciting and accepting contributions, gifts, grants, and bequests for the historical society, marketing the historical society’s goods and services, providing support for the operation, management, and development of the historical society’s programs, and performing other functions approved by the board of curators.

(10) Promulgate rules necessary to implement this chapter.

History: 1977 c. 29; 1987 a. 395, 399; 1991 a. 39; 1995 a. 27; 1999 a. 9; 2001 a. 109; 2003 a. 91.

Cross Reference: See also HS, Wis. adm. code.

44.02 Historical society; duties. The historical society shall:

(1) Serve as trustee of the state in the preservation and care of all records, both printed and written, and all articles and other materials of historic interest and significance placed in its custody, and interest itself constructively as the agent of the state in the preservation and care of all similar materials wherever they may be.

(2) Collect by gift, exchange or purchase books, periodicals, pamphlets, records, tracts, manuscripts, maps, charts and other papers, artifacts, relics, paintings, photographs and other materials illustrative of the history of this state in particular and of the West generally.

(3) Conduct research in the history of Wisconsin in particular and of the West generally.

44.02 HISTORICAL SOCIETIES AND ARTS BOARD

(4) Inculcate through publications, museum extension services and other media a wider and fuller knowledge and appreciation of the history of Wisconsin and its significance.

(5) Keep its main library and museum rooms open at all reasonable hours on business days for the reception of the residents of this state who may wish to visit the library or museum. Except as provided under subs. (5g) and (5m), the historical society may collect a fee from residents and shall collect a fee from nonresidents for admission to historic sites or buildings acquired, leased or operated by the historical society, including areas within state parks or on other state-owned lands which incorporate historic buildings, restorations, museums or remains and which are operated by the historical society by agreement with the department of natural resources or other departments, or for lectures, pageants or similar special events, or for admission to defray the costs of special exhibits in its several buildings of documents, objects or other materials not part of the historical society's regular collections but brought in on loan from other sources for such special exhibitions or for use of the main library. The historical society shall take action on a continuing basis to raise funds from private sources for the operation of its main library. The historical society may procure and sell or otherwise dispose of postcards, souvenirs and other appropriate merchandise to help defray the costs of operating its several plants and projects.

(5g) (a) Not charge a fee for use of the main library by any member of the historical society, any member of the faculty or academic staff of the University of Wisconsin System, any student enrolled in the University of Wisconsin System or any other person exempted by rule of the historical society. The historical society may not charge a fee for use of the main library by any other person unless the historical society submits a fee schedule to the joint committee on finance that includes the specific fee to be charged to different categories of persons and an identification of any persons exempted by rule of the historical society. The fee schedule of the historical society shall be implemented if the committee approves the report, or does not schedule a meeting for the purpose of reviewing the report within 14 working days after receipt of the report.

(b) Charge a fee for research services provided by the historical society to any nonresident who is not specifically exempted under par. (a).

(5m) Not charge a fee for admission to the museum until construction of the museum is completed. Fees collected from admissions shall be used to support public programming.

(5s) Except as provided in s. 16.84 (2), have responsibility for security at the museum.

(6) Thoroughly catalog the entire collections of the society for the more convenient reference of all persons who have occasion to consult the collections. The society may loan to libraries, educational institutions and other organizations or to private individuals in good standing items from the collections of the society.

(8) Bind, except when microfilmed or transferred to optical disks or electronic format, the unbound books, documents, manuscripts, pamphlets, and especially newspaper files in its possession.

(9) Take an active interest in the preservation and use of the noncurrent public records of historical importance of counties, cities, villages, towns, school districts and other local governmental units and courts.

(10) Conduct a research center in American history for the benefit of the students and faculty of the University of Wisconsin System as well as for members of the general public and to facilitate the further understanding by the general public of the significance of the American experiment.

(11) Work with the auxiliaries, affiliates and chapters established under s. 44.03 in the encouragement, stimulation and development of worthwhile historical projects and undertakings at the county and local level.

(12) Be the custodian of the official series of the portraits of the governors of Wisconsin under s. 44.53 (1) (g) and maintain the portraits in proper condition. The society may permit any or all of the portraits to be exhibited in such state buildings for such periods of time as it deems feasible.

(13) To faithfully expend and apply all money received to the fulfillment of its duties and purposes as directed by law.

(14) To hold all its present and future property for the state.

(15) To promote a wider appreciation of the American heritage with particular emphasis on the collection, advancement and dissemination of knowledge of the history of Wisconsin and of the West.

(16) To collect, embody, arrange and preserve in authentic form, a library of books, pamphlets, maps, charts, manuscripts, papers, paintings, statuary, and other materials illustrative of the history of the state.

(17) To preserve the memory of its early pioneers, and to obtain and preserve narratives of their exploits, perils, and adventures.

(18) To exhibit faithfully the antiquities, and the past and present condition, and resources of Wisconsin.

(20) Have authority to operate, maintain, acquire and develop outdoor historic sites related to the outdoor recreation program under s. 23.30.

(21) Serve as the principal historic preservation agency of the state and in that capacity carry out a program of preservation of historic properties as specified under subch. II of ch. 44.

(22) Acquire, maintain and operate historic properties representative of this state's rural and urban heritage.

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

(24) Promulgate by rule procedures, standards and forms necessary to certify, and shall certify, expenditures for preservation or rehabilitation of historic property for the purposes of s. 71.07 (9r). These standards shall be substantially similar to the standards used by the secretary of the interior to certify rehabilitations under 26 USC 47 (c) (2).

(25) In cooperation with and upon request of the board on the U.S.S. Wisconsin, maintain a permanent exhibit at a suitable location in this state relating to the history of the 2 battleships named "Wisconsin".

(26) With the department of administration, promulgate rules identifying historically significant materials and obtain historically significant surplus materials under s. 16.72 (5) (c).

(27) Administer the historical markers program under s. 44.15.

(28) Annually distribute the amount appropriated under s. 20.245 (1) (b) as a grant to the Wisconsin Black Historical Society and Museum to fund the operations of that society and museum.

History: 1971 c. 125; 1977 c. 26, 29; 1979 c. 34; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 27, 395, 399; 1989 a. 31; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 39, 226, 269; 1993 a. 437, 471; 1995 a. 3, 27; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2007 a. 20.

Cross Reference: See also ch. HS 3, Wis. adm. code.

44.03 Affiliated societies. (1) County or local historical societies without capital stock may be incorporated as affiliates of the historical society, to gather and preserve the books, documents and artifacts relating to the history of their region or locality. No fees shall be charged by any register of deeds for recording nor by the department of financial institutions for filing the articles of organization or its amendments, or for a certificate of incorporation of any such society, but the department of financial institutions shall not accept articles of incorporation under this section

unless they are approved by the board of curators of the historical society.

(2) Statewide, county or other patriotic or historical organizations, or chapters in this state may be incorporated as affiliates of the historical society under sub. (1) if their purposes and programs are similar to and consonant with those of the historical society and its affiliates, or if already incorporated, the organizations or chapters may apply to the board of curators for affiliation with the historical society. Upon incorporation under this section or acceptance of affiliation by the board of curators the applying organization shall as an affiliate accept the provisions and shall be entitled to all the benefits of this section. Any affiliated society shall be a member and entitled to one vote in any general meeting of the historical society. The board of curators may terminate the affiliation as an affiliate of the historical society under this section of any such organization by formal resolution, a copy of which shall be deposited with the department of financial institutions.

(3) Every affiliated society shall make a report of its work annually to the historical society that contains the information specified in s. 181.1622 (1) (a) to (e), which, in its entirety or in part, may be included in the publications of the historical society, and upon application of any affiliated society the historical society may accept, in behalf of the state, custody of or title to the property, records and collections of the affiliated society or may assist in the disposal thereof. If any affiliated society becomes, in the opinion of the board of curators of the historical society, inactive or defunct, title to such property, records and collections not otherwise provided for in the grants of donors or in the articles of incorporation of the inactive and defunct society, shall vest in the historical society which shall take appropriate action in the public interest for the protection or disposal of such property, records and collections. Preference in disposition shall be given to historical or related organizations in the area or to whatever county or local governmental unit that has aided such affiliate financially.

(4) The historical society, for the purpose of establishing uniformity in organization and methods of work, may prepare and furnish uniform articles of organization and bylaws to any affiliated society, but the affiliate may adopt additional bylaws.

(5) The historical society may provide for annual or other meetings of officers or representatives of affiliated societies at times and places to be fixed by its director, or by such officers or representatives, and the proceedings of such meetings, or portions its director selects, may be included in its published reports. Each affiliated society shall receive a copy of each of the publications of the state society on the same terms as those granted to life members of the state society.

(6) Custody of public records of county, village, town, school district or other governmental units may be accepted by any affiliated society which has been designated a regional depository under s. 44.10, but title to these records shall remain with the historical society. In the event of the dissolution or incapacity of any affiliated society, it shall be obligatory on the last group of officers and members to notify the director of the historical society that the affiliated society can no longer retain custody of these records and to deliver them to a depository designated by the historical society.

History: 1991 a. 39; 1993 a. 213; 1995 a. 27; 1997 a. 79.

44.04 School services. (1) The historical society, as part of its program as an educational institution, shall offer to the schools and teachers in this state all of the following:

(a) Materials as the society shall prepare or make available to facilitate instruction in the history and civil government of Wisconsin, including curricula, lesson plans, classroom projects, facsimiles of historical materials and other instructional materials for the teaching of state and local history.

(b) Seminars for teachers, including continuing education programs, in-service training and programs at teacher conventions.

(2) To accomplish its duties under sub. (1), the historical society shall do all of the following:

(a) Prepare, publish, issue, loan or circulate such magazines, books, aids, guides and other publications, such visual aids, special exhibits, and other teaching materials and aids as it, in consultation with the department of public instruction, deems advisable.

(b) Provide information to schools and teachers regarding the materials and services available from the historical society to assist in the teaching of history.

(c) Promote cooperation between schools and historical organizations.

(3) It may make such charges as its board of curators shall establish as just and proper to defray in part the costs of this program.

History: 1983 a. 412; 1991 a. 161; 1995 a. 27 s. 9145 (1); 1997 a. 27.

44.05 American history research center. (1) The historical society, in order to promote the wider understanding of the significance of the American heritage, shall encourage research in American history in general, and in the history of Wisconsin and the west particularly, through its American history research center and the other divisions of this agency, and interpret to the public the nature of the said heritage, and the role of state and local history in elucidating and facilitating the understanding of the American democracy, social, political, cultural and economic.

(2) The society, in pursuit of these goals, may be the beneficiary of bequests in any form, may undertake research projects, make grants-in-aid to students of particular topics germane to the purposes of the center, publicize the American story or parts thereof through publications of various types, exhibits, photographic or microphotographic reproductions, radio, pageantry and such other media as may best lend themselves to its work.

44.06 Depository of public documents. (1) In this section, “state document” has the meaning given in s. 35.81 (3).

(2) The director of the historical society shall file with the department of administration, and may revise, lists of state, county, municipal, federal, or other agencies to which state documents shall be distributed in accordance with interstate or international comity, with or without exchange, as provided in s. 35.86, in order to maintain or enlarge the reference collections of the society and the state. The department of administration shall obtain the state documents so specified from the agencies publishing them, at the expense of the agencies, and shall ship the state documents to the addressees provided by the director. The department of administration shall prepay carriage charges and shall collect the charges from the agencies publishing the state documents being shipped.

(3) The historical society shall keep available to other state agencies and to citizens of Wisconsin and other states its public document collections under such proper and reasonable regulations as may be deemed advisable.

(4) The historical society may loan public documents, except those of rare nature, to other state agencies for official use or on interlibrary loan to other reference libraries under such rules and regulations and for such period as may appear desirable.

(5) The historical society shall prepare a periodic checklist of state documents and shall publish the list in such form and with such notes as to show the scope and purpose of such documents as the society considers advisable.

History: 1991 a. 285.

44.07 Museum extension service. (1) The historical society, in conjunction with its museum program and in order to make its collections and the teaching values of museum materials available on a statewide basis and to stimulate more effective local museum techniques, may operate a museum extension service with or without the cooperation of other museums or its auxiliary societies.

(2) The said society may for such purpose lend to other museums, public libraries, art galleries, colleges, schools or other

44.07 HISTORICAL SOCIETIES AND ARTS BOARD

responsible institutions or organizations, under such rules and safeguards and for such period as it deems desirable, such items and objects from its collections as are not irreplaceable.

(3) The society may participate in cooperative or joint exhibits with other museums or auxiliary societies in this program, and may out of the appropriation in s. 20.245 (1) extend financial assistance not to exceed \$1,000 in the aggregate in any year to other museums or auxiliaries where and only where such aid is found necessary to enable such other museums or auxiliaries to participate in this program.

(4) Transportation charges and other minor costs of such extension exhibits may be charged the exhibitor.

History: 1993 a. 213.

44.09 District attorney, county, local and court records. (1) Except as provided in sub. (2), the proper officer of any county, city, village, town, school district or other local governmental unit or a district attorney may offer, and the historical society may accept for preservation, title to such noncurrent records as in the historical society's judgment are of permanent historical value and that are no longer needed for administrative purposes by the local governmental unit or district attorney. The proper officer of any court may offer, and the historical society may accept for preservation, on order of the judge of the court, title to such records as have been photographed or microphotographed in accordance with SCR chapter 72, or that have been retained for the period of time provided in SCR chapter 72, and that are deemed by the historical society to be of permanent historical value.

(2) Subsection (1) does not apply to patient health care records, as defined in s. 146.81 (4), that are in the custody or control of a local health department, as defined in s. 250.01 (4).

History: Sup. Ct. Order, 136 Wis. 2d xi (1987); 1991 a. 39, 185, 226, 315; 1993 a. 27; 1997 a. 252.

44.10 Regional depositories for records. (1) The historical society, through its board of curators, in its corporate capacity and as trustee of the state may enter into agreements with the University of Wisconsin System or such other public or quasi-public institutions, agencies or corporations as the board of curators of the society shall designate to serve as the regional records depository for a given area. Said agreements shall specify the area to be served by the depository, and the methods of accessioning, cataloging, care, housing, preservation and servicing of these and such other material as may be placed by the historical society or in the name of the historical society in such regional depositories under such agreements, it being the intent of this section to provide an orderly, uniform statewide system for the retention and preservation of important court, county and local public records on a manageable basis and under proper professional care in the region of origin. Only where such arrangements cannot be accomplished may the said society transfer such records to the state archives. Said society shall compile and maintain for reference purposes as soon as may be convenient a union list of the records of county, city, village, town, school district, or other local governmental unit, or court, title to which is transferred to it under s. 44.09 (1).

(2) The board of curators may establish county records depositories within the regions served by the regional depositories established in sub. (1). The board may enter into agreements with these county depositories similar to those provided above for regional depositories, and records may be loaned temporarily from regional depository to a county depository, title in all cases remaining in the state society. The union list of records of county, city, village, town, school district or other local governmental units, or court, provided in sub. (1) shall indicate such transfers or loans of records between depositories so as to show at all times the present location of each group of records.

History: 1977 c. 26; 1991 a. 226; 1993 a. 213.

44.11 Central depository library. The board of curators of the historical society shall have the same authority to participate

in the formation and maintenance of a nonprofit-sharing corporation for the purpose of providing and operating a central library depository as is conferred upon the board of regents of the University of Wisconsin System under s. 36.11 (12). Section 36.11 (12) shall, so far as applicable, apply to the board of curators of the historical society and for the purposes of this section whenever the words "board of regents" appear in s. 36.11 (12) they shall be deemed to mean "board of curators of the historical society".

History: 1971 c. 100 s. 23; 1973 c. 335 s. 13.

44.12 Educational facilities at Nelson Dewey state park. (1) The state farm and craft museum, located at Nelson Dewey state park, may be developed by cooperation of the department of natural resources, the society, and such other agencies as may be interested therein in accordance with such arrangements as the department of natural resources and society agree upon.

(2) The purpose of this museum as an educational facility shall be to portray graphically the farm and craft practices of bygone days, so that the difficulties of pioneer farming, the great changes in the productivity of farm labor and the rise in rural income and standards of living over the years may be made vivid to this and future generations.

(3) In operating this museum, the society may charge a resident an admission fee and shall charge a nonresident an admission fee to defray in part the costs of operation in accordance with s. 44.02 (5), and may loan objects or materials from this central collection for special occasions and for such special exhibits as it may desire to develop at its main building, at other historic sites within the state, with other historical societies or with other state agencies.

History: 1981 c. 93; 1983 a. 27; 1997 a. 27.

44.13 Educational facilities at Old Wade House state park. (1) The state carriage museum, to be known as the Wesley W. Jung Carriage Museum, located at Old Wade House state park, shall be developed by the society.

(2) The purpose of this museum as an educational facility is to portray graphically the hand and horse-drawn vehicle development in bygone days, so that the great and dramatic changes in land transportation may be made vivid to this and future generations. Selected examples of these vehicles illustrating the ingenuity, inventiveness and artistic skills of the pioneer craftsman may be preserved and exhibited in a dignified, appropriate and effective manner.

(3) In operating this museum, the society may charge a resident an admission fee and shall charge a nonresident an admission fee to defray in part the costs of operation in accordance with s. 44.02 (5).

History: 1993 a. 184; 1995 a. 27; 1997 a. 27.

44.14 Central depository loan collection, federal documents. (1) It is the purpose of this section to establish a more economical system of handling federal documents in this state in such a way as to effect savings of staff and space to the participating libraries, both state and local; to make such documents more available to more of the people, colleges and libraries of the state, in accordance with the purposes of the federal depository act of 1895 and the needs of the citizens of the state; and to make possible substantial economies in the publication costs of such documents at the federal level as well. To this end the state documents depository established by s. 44.06 may acquire and establish a central state depository and loan collection of federal documents for the benefit of the University of Wisconsin System, the state law library, the depository libraries and such other college and public libraries in this state as may desire to share in the benefits of this loan collection.

(2) The University of Wisconsin System and the public and other participating libraries, federal regulations permitting, may transfer outright or may loan indefinitely to this central depository any or all federal documents now in their possession which in their opinion are so little used for ready reference purposes as to make

their retention unnecessary if copies are available on loan from the central depository loan collection.

(3) Documents so transferred may be used by the society to furnish participating libraries with items needed for their permanent reference collections, for the central loan collection, or for exchange, trade or sale in order to make more complete and useful the central loan collection established by this section.

(4) The board of curators may promulgate such rules governing the loan of books from the central depository loan collection and may make such charges to cover shipping costs as may be deemed necessary and advisable.

History: 1977 c. 26; 1985 s. 332 s. 251 (3).

44.15 Historical markers program. (2) CREATION. It is declared to be in the public interest to stimulate interest in and knowledge of the state by marking sites of special historical, architectural, cultural, archaeological, ethnic, geological or legendary significance, and maintaining and developing such sites approximately so as to preserve their individual characteristics. The historical markers program is created to call attention to the state's historical, cultural and natural heritage through a system of markers and plaques and to supplement, wherever possible, information contained in the state register of historic places. It is the purpose of the program to significantly increase the number of historical, cultural and natural heritage sites that are marked in this state.

(3) **MARKERS AND PLAQUES.** (a) The historical society shall do all of the following:

1. Plan, develop and publicize a uniform system of marking for state and local sites of historical, architectural, cultural, archaeological, ethnic, geological and legendary significance. The marking system shall constitute large markers of standard design, in one or more sizes, with narrative text describing the associated site.

2. Plan, develop and publicize a system of plaques for the districts, sites, buildings, structures and objects listed on the state register of historic places and a system of plaques for marking state and local sites of special historical, architectural, cultural, archaeological, ethnic, geological or legendary significance. The system of plaques shall constitute small plaques of various types, each with a standard design, intended to identify the district, site, building, structure or object, and generally without narrative text. Any narrative text included on a plaque shall be standardized for a specific type of plaque. The historical society shall consider and respond to reasonable requests to establish new types of plaques.

3. Establish criteria for the selection of appropriate sites for markers and plaques under this subsection. The historical society shall accept applications for approval of the placement of markers and plaques, and for any narrative text for markers. The historical society shall approve those applications that meet the criteria established by the historical society.

4. Prepare the text for a book listing the locations and text of all markers in this state.

(b) The markers and plaques approved by the historical society under this subsection may not be used to mark sites other than those approved by the historical society and shall be used subject to any conditions established by the historical society. No marker or plaque may include the name of the current owner of the property. Without the approval of the historical society, no person may erect or use a marker or plaque that is identical to or misleadingly resembles the markers and plaques approved under this subsection. The historical society may require the removal of any marker or plaque that does not meet the requirements of this subsection.

(4) **STATE-FUNDED MARKERS.** The historical society may identify and authorize construction of individual markers or plaques, or any series of markers or plaques, to be funded from the appropriation under s. 20.245 (1) (a). No matching funds are required for a marker or plaque that is constructed under this subsection. Funds under this subsection may be used for the purchase

of plaques to be installed on historical properties and for the construction of markers or plaques in other states or countries.

(5) **MAINTENANCE.** Any approval issued for a marker or plaque by the historical society under this section shall include a requirement that the applicant maintain the marker or plaque, and shall also include authorization permitting the historical society, if necessary, to enter the property and maintain the marker or plaque. The historical society may issue orders to maintain markers and plaques, and may maintain markers or plaques.

(6) **STATE-OWNED PROPERTY.** Each board, commission, committee, department or officer in state government shall cooperate with the historical society in the placement of markers or plaques on state-owned property, and shall place and maintain such markers or plaques, as supplied by the historical society, at locations identified by the historical society.

(7) **DONATIONS; ASSISTANCE.** (a) The historical society may accept gifts, appropriations and bequests made to it for the purposes of this section and use them as far as practicable in accordance with the wishes of the donor.

(b) The historical society may accept the aid, support and cooperation of county, city, village or town agencies, or private agencies or persons in executing its projects.

(8) **COOPERATION OF STATE AGENCIES.** All state departments, independent agencies and institutions are directed to cooperate with the historical society in the performance of its duties under this section. Applicable laws shall be liberally construed in favor of such cooperation.

(9) **RULES.** The historical society shall promulgate rules to implement and administer the program. The rules shall include all of the following:

(a) Policies and procedures for the uniform systems of markers and plaques under sub. (3) (a) 1. and 2.

(b) Criteria for the selection of appropriate sites for markers and plaques under sub. (3) (a) 3.

History: 1991 a. 269; 1993 a. 471; 1997 a. 27; 2001 a. 16.

Cross Reference: See also ch. HS 4, Wis. adm. code.

44.16 Circus World Museum Foundation. (1) The historical society may enter into a lease agreement with the Circus World Museum Foundation, Inc., for the purpose of operating Circus World Museum, located in Baraboo, Wisconsin. The lease agreement shall not include any provision for the payment of a percentage of gross admissions income at Circus World Museum to the historical society.

(2) Upon request of the board of directors of the Circus World Museum Foundation, Inc., the governor may nominate, and with the advice and consent of the senate appoint, one member of the board of directors to serve at the pleasure of the governor.

History: 1985 a. 29; 1999 a. 9.

44.20 Historic sites. (1) The historical society shall operate and maintain the historic sites known as Stonefield Village, Pendarvis, Villa Louis, Old Wade House, Madeline Island, Old World Wisconsin, H.H. Bennett Studios and, if the First Capitol state park has been transferred to the historical society under 1993 Wisconsin Act 16, section 9142 (1e), First Capitol.

(2) No historic site may be closed without specific authorization to do so from the legislature and the governor.

(3) (a) For each historic site under sub. (1), the historical society may organize and maintain a nonstock, nonprofit corporation under ch. 181 for the purposes of soliciting and accepting contributions, gifts, grants, and bequests for the historic site for which the corporation is organized and maintained, providing goods or services relating to that historic site, and providing support for the operation, management, and development of that historic site. Any corporation organized under this paragraph shall be organized so that contributions to the corporation will be deductible from gross income under section 170 of the Internal Revenue Code, as defined in s. 71.01 (6), and so that the corporation will

44.20 HISTORICAL SOCIETIES AND ARTS BOARD

be exempt from taxation under section 501 of the Internal Revenue code, as defined in s. 71.22 (4), and s. 71.26 (1) (a).

(b) The historical society may enter into a contract with a corporation organized for the purposes of soliciting and accepting contributions, gifts, grants, and bequests for a historic site under sub. (1), providing goods or services relating to that historic site, and providing support for the operation, management, and development of that historic site setting forth the methods by which the historical society and the corporation will cooperate to accomplish those purposes. The contract shall provide that any contribution, gift, grant, or bequest accepted by the corporation that is not retained by the corporation shall be deposited in the history preservation partnership trust fund, credited to the appropriation account under s. 20.245 (1) (r), and, in accordance with the wishes of the donor, used exclusively for the operation, management, and development of the historic site for which the corporation was organized and that any moneys received by the corporation for any goods or services provided by the corporation that are not retained by the corporation shall be deposited in the history preservation partnership trust fund, credited to the appropriation account under s. 20.245 (1) (r), and used exclusively for the operation, management, and development of the historic site for which the corporation was organized.

(c) The historical society may sell memberships in a corporation specified in par. (b). All moneys received from the sale of those memberships shall be deposited in the general fund, credited to the appropriation account under s. 20.245 (1) (h), and transferred to the corporation for which the membership was sold.

(4) (a) Subject to authorization under s. 16.505, the historical society may employ outside the classified service sales and development professionals to engage in activities intended to generate admissions, sales, and other receipts for the historic sites under sub. (1) and to solicit contributions, gifts, grants, and bequests in support of those historic sites. The historical society may provide a compensation plan for those professionals under which those professionals are compensated, in whole or in part, through commissions and bonuses.

(b) Notwithstanding s. 230.08 (2) (cd), if a position in the classified service at the historical society is transferred outside the classified service under par. (a) and if the employee holding that position has achieved permanent status in class before the date of that transfer, that employee shall retain, while serving in the unclassified service at the historical society, those protections afforded employees in the classified service under ss. 230.34 (1) (a) and 230.44 (1) (c) relating to demotion, suspension, discharge, layoff, or reduction in base pay. Such an employee shall also be eligible for transfer under s. 230.29 and shall have reinstatement privileges to the classified service under s. 230.33 (1m). If a position in the classified service at the historical society is transferred outside the classified service under par. (a) and if the employee holding that position has not achieved permanent status in class on the date of that transfer, that employee is eligible to receive the protections, privileges, and rights preserved under this paragraph if the employee successfully completes service equivalent to the probationary period required in the classified service for the position that the employee holds on that date.

(4m) The historical society and the department of tourism may enter into a memorandum of understanding setting forth the responsibilities of the department of tourism relating to promoting and marketing the historic sites under sub. (1) and the methods that the historical society and the department of tourism will use to cooperate in promoting and marketing those historic sites.

(5) The director of the historical society shall include in the biennial report under s. 15.04 (1) (d) information regarding revenues and expenditures for each historic site under sub. (1) and the condition of the historic sites.

History: 1983 a. 27, 1982; 1987 a. 27; 1989 a. 31; 1991 a. 39; 1993 a. 16, 437; 1995 a. 3; 1999 a. 9; 2003 a. 91.

44.21 Historical society parking regulations. The board of curators may promulgate rules to govern parking of motor vehicles on property under the control of the historical society. Whoever violates such a rule shall forfeit to the state not more than \$25.

History: 1971 c. 170; 1985 a. 332 s. 251 (3).

SUBCHAPTER II

HISTORIC PRESERVATION PROGRAM

44.30 Public policy. The legislature finds that the historic, architectural, archaeological and cultural heritage of the state is among the most important assets of the state and furthermore that the social, economic and physical development of contemporary society threatens to destroy the remaining vestiges of this heritage. It is therefore declared to be the public policy and in the public interest of this state to engage in a comprehensive program of historic preservation to promote the use and conservation of such property representative of both the rural and urban heritage of the state for education, inspiration, pleasure and enrichment of the citizens of this state.

History: 1987 a. 395 s. 24.

44.31 Definitions. In this subchapter:

(1) “Adverse effect” means any of the following:

(a) Physical destruction, damage or alteration of any part of a property which would adversely affect the historic significance of that property.

(b) Isolation of a property from or alteration of the character of the property’s setting when that character contributes to the property’s qualification as a listed property.

(c) Introduction of visual, audible or atmospheric elements that are out of character with a property or alter its setting.

(d) Neglect of a property resulting in its deterioration or destruction.

(1m) “Director” means the director of the historical society.

(2) “Historic preservation” means the research, protection, restoration and rehabilitation of historic properties.

(3) “Historic property” means any building, structure, object, district, area or site, whether on or beneath the surface of land or water, that is significant in the history, prehistory, architecture, archaeology or culture of this state, its rural and urban communities or the nation.

(4) “Listed property” means property which is listed on the national register of historic places in Wisconsin or the state register of historic places, or both.

(5) “National register of historic places in Wisconsin” means those places in Wisconsin which are listed on the national register of historic places maintained by the U.S. department of the interior.

(6) “Political subdivision” means a city, village, town or county.

(7) “Officer” means the state historic preservation officer.

(8) “Owned or leased” includes:

(a) An ownership interest involving the holding of title.

(b) A leasehold interest.

(c) Ownership of a beneficial interest.

(d) Any beneficial use not involving the holding of title.

(10) “State agency” means any office, department, independent agency, or attached board or commission within the executive branch of state government, or any special purpose authority created by statute.

(11) “State review board” means the historic preservation review board.

(12) “Wisconsin inventory of historic places” or “the inventory” means the listing of places that have been identified by the officer as being of some historic significance.

History: 1987 a. 395 ss. 25 to 27, 35; 1989 a. 31.

44.32 Officer. The director or his or her designee shall serve as the state historic preservation officer.

History: 1987 a. 395 s. 28.

44.33 Duties of the state review board. The state review board shall:

(1) Approve, upon the recommendation of the officer, nominations to the national register of historic places in Wisconsin and the state register of historic places.

(2) Review the state surveys and inventories of historic properties undertaken under s. 44.34.

(3) Review and approve the content of the state preservation plan developed under s. 44.34.

(4) Review and approve the distribution of federal grants—in-aid for preservation.

(5) Recommend the removal of properties from the national register of historic places in Wisconsin or the state register of historic places.

(6) Act in an advisory capacity to the state historical society.

(7) Notify planning departments of affected political subdivisions, local landmarks commissions and local historical societies regarding properties being considered for nomination to the national register of historic places in Wisconsin or the state register of historic places that are within their jurisdictions, and request them to forward comments regarding nominations from affected neighborhood groups, public bodies and interested citizens.

History: 1987 a. 395 s. 29.

44.34 Duties of the state historical society. The state historical society shall:

(1) Conduct an ongoing statewide survey to identify and document historic properties, including all those owned by the state, its instrumentalities and political subdivisions.

(2) Prepare, update and maintain the Wisconsin inventory of historic places.

(3) Maintain, publish and disseminate the national and state registers of historic places in Wisconsin and lists or descriptions of properties in the national and state registers of historic places in Wisconsin which may be of interest to the general public.

(4) Serve as the state’s principal agency for administration of historic preservation activities and programs of the federal government and maintain the state’s eligibility to participate in the programs.

(5) Prepare the state preservation plan and annually review it.

(6) Undertake a program of technical assistance to localities and private parties in furtherance of local and private historic preservation programs.

(7) Administer and distribute grants—in-aid using federal funds in furtherance of preservation and restoration of historic properties in accordance with federal law and regulations of the federal government.

(8) Cooperate with federal, state, and local government agencies in the planning and conduct of specific undertakings affecting historic properties and preservation objectives, and in overall land use planning.

(9) Cooperate with local landmarks commissions and historical societies in coordinating their activities with the state plan and programs for historic preservation.

(10) Review and comment upon those actions of any state agency or political subdivision which may have an adverse effect upon historic properties and ameliorate the adverse effects, if any, in the manner specified in ss. 44.39 to 44.42.

(11) Certify historic preservation ordinances.

(12) Prepare and distribute to all cities, villages and counties, no later than January 1, 1992, a model historic preservation ordinance.

History: 1987 a. 395 s. 30; 1989 a. 290; 1991 a. 39; 1999 a. 9; 2001 a. 16.

44.36 State register of historic places. (1) STATE REGISTER. The state historical society shall maintain, publish and disseminate the state register of historic places.

(2) **CRITERIA OF SIGNIFICANCE.** (a) The state register of historic places shall include districts, sites, buildings, structures and objects which are significant in national, state or local history, architecture, archaeology, engineering and culture. The quality of significance is present in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association and that satisfy any of the following conditions:

1. Association with events that have made a significant contribution to the broad patterns of history.

2. Association with the lives of persons significant in the past.

3. Embodiment of the distinctive characteristics of a type, period or method of construction or that represent the work of a master or that possess high artistic values.

4. Representation of a significant and distinguishable entity whose components may lack individual distinction.

5. Yielding, or likely to yield, information important in pre-history or history.

(b) No cemetery, birthplace or grave of a historical figure, property owned by a religious institution or used for religious purposes, reconstructed historic building, property primarily commemorative in nature or property that has achieved significance within the past 50 years may be considered eligible for the state register of historic places unless it is an integral part of a district that meets the criteria of significance under par. (a) or unless it falls within at least one of the following categories:

1. A religious property deriving primary significance from architectural or artistic distinction or historical importance.

2. A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his or her productive life in the vicinity of that birthplace or grave.

3. A cemetery which derives its primary significance from the grave of a person of transcendent importance, age, distinctive design features or association with historic events.

4. A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan and when no other building or structure with the same association has survived.

5. A property primarily commemorative in intent if design, age, tradition or symbolic value has invested it with its own exceptional significance.

6. A property achieving significance within the past 50 years if it is of exceptional importance.

(3) **PROCEDURES.** The state historical society shall promulgate by rule procedures for nominations to and removals from the state register of historic places. The procedures shall be consistent with and, to the extent possible, shall be coordinated with the procedures for nominations to and removals from the national register of historic places maintained by the U.S. department of the interior. The rules shall include standards for documenting nominations to the state register.

(4) **NOMINATIONS.** (a) Any person may nominate a district, site, building, structure or object to the state register of historic places.

(b) The state historical society may reject any nomination which is not adequately documented.

(c) A nomination to the state register of historic places does not constitute a nomination to the national register of historic places.

44.36 HISTORICAL SOCIETIES AND ARTS BOARD

(5) STATE REGISTER OF HISTORIC PLACES. (a) The state historical society shall include in the state register of historic places:

1. Any property listed in the national register of historic places in Wisconsin on January 1, 1989.

2. Any property nominated and approved under this section.

3. Any property nominated under this section if the nomination is accompanied by a request for interim listing and the officer determines, based on evidence submitted with the nomination, that the state review board is reasonably likely to approve the nomination under s. 44.33 (1). An interim listing under this subdivision expires on the first day of the 12th month after it is first included in the state register of historic places and is not renewable.

(b) The list of properties in the state register of historic places is not a rule under s. 227.01 (13). The state historical society shall publish the list of properties on the state register of historic places in the Wisconsin administrative code as an appendix to the rules promulgated under this section.

History: 1987 a. 395.

44.39 State agency cooperation. **(1) LEAD AGENCY.** The state historical society shall serve as the central unit of state government to coordinate the activities of all state agencies in connection with historic properties, to serve as the repository of information concerning historic properties owned or leased by the state, to collect and disseminate to state agencies information concerning appropriate means for managing and improving historic properties and to take any other action necessary to implement this section and ss. 44.40 and 44.41.

(2) IDENTIFICATION OF AFFECTED STATE AGENCIES. The state historical society shall identify every state agency which has any power or duty under s. 44.40 or 44.41 and shall notify each identified state agency of its powers and duties.

(3) APPOINTMENT OF STATE AGENCY HISTORIC PRESERVATION OFFICER; DUTIES. Every state agency notified under sub. (2) shall appoint one of its employees or officers, who has authority in the agency to affect the management of that agency's resources and to directly influence that agency's decision making, to serve as that agency's historic preservation officer. That state agency historic preservation officer shall coordinate all functions of that state agency related to historic properties and shall serve as the liaison between that state agency and the state historical society.

(4) COOPERATION. All state agencies shall cooperate with each other and with the state historical society to achieve the objectives of ss. 44.39 to 44.41.

(5) WAIVER OF COMPLIANCE. (a) If the department of health services or the department of corrections determines that public safety may be jeopardized by compliance with any requirement of this section or s. 44.40 or 44.41, the department may request a waiver of compliance from the building commission. The building commission may grant the waiver of compliance.

NOTE: Par. (a) is shown as amended eff. 7-1-08 by 2007 Wis. Act 20, section 9121 (6) (a). Prior to 7-1-08 it reads:

(a) If the department of health and family services or the department of corrections determines that public safety may be jeopardized by compliance with any requirement of this section or s. 44.40 or 44.41, the department may request a waiver of compliance from the building commission. The building commission may grant the waiver of compliance.

(b) If a waiver of compliance is granted by the building commission under par. (a), the applicable agency shall notify the officer of any proposed action to be taken under the waiver that may affect a historic property. The officer shall be notified at least 30 days before the proposed action is taken and, during the period before the proposed action is taken, the applicable agency shall allow the historical society to document the condition of the historic property.

History: 1987 a. 395; 1989 a. 31; 1995 a. 27 ss. 1993j, 9126 (19); 2007 a. 20 s. 9121 (6) (a).

44.40 State agency decisions; negotiation. **(1)** Each state agency shall consider whether any proposed action of the state agency will affect any historic property that is a listed prop-

erty, on the inventory or on the list of locally designated historic places under s. 44.45. If the state agency determines that its proposed action will affect any historic property, it shall notify the officer.

(1m) The historical society and a state agency notified under s. 44.39 (2) jointly shall identify actions of the state agency that may cause or permit an adverse effect on historic property including, but not limited to, any state agency action that involves the exercise of state agency authority in the issuance of a permit, license, authorization, variance or exception or in any grant of financial assistance and any state agency action related to property owned by the state agency or related to its long-range planning and facilities development.

(2) (a) Upon receipt of a notice under sub. (1) the officer shall determine whether the proposed action will have an adverse effect upon a historic property that is any of the following:

1. A listed property.

2. On the inventory.

3. On the list of locally designated historic places under s. 44.45.

(b) The officer shall make the determination under par. (a) within 30 days of receipt of the notice under sub. (1) or notify the state agency that an extension of time, not to exceed 30 days, is necessary to make the determination. If the officer notifies the state agency of an extension, he or she shall include in the notice the reasons for the extension.

(3) If the officer determines under sub. (2) that the proposed action will have an adverse effect on the historic property, the officer may require negotiations with the state agency to reduce such effects. If the negotiations result in an agreement as to the means of reducing such effects, the agreement shall be incorporated into the state agency's proposed action. The officer shall prepare a written report on the effects and the status of all negotiations. The officer shall submit the report to the governor and to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3).

(4) A state agency may deny or impose conditions on a permit, license, authorization, variance, exception or award of financial assistance identified under sub. (1m) in order to reduce any adverse effect on historic property.

(5) This section does not apply to any state agency action which is subject to 16 USC 461 to 470mm.

History: 1989 a. 31.

44.41 Protection and use of state agency property.

(1) LONG-RANGE PLANS. Each state agency which owns listed property shall develop a long-range plan for the management, preservation and improvement of that property. The state agency shall develop the long-range plan as part of the long-range public building program under s. 13.48. The long-range plan shall, to the greatest possible extent, result in preservation of that property.

(2) USE OF LISTED PROPERTY. Before purchasing or constructing a building which is not a listed property, each state agency shall consider using a building which is listed property. A state agency shall use such a building to the maximum extent feasible if the building is appropriate for or can be adapted to meet the needs of the state agency, can be acquired and occupied at a cost which is within the budget of the state agency, is at an appropriate location and meets other requirements of the state agency.

(3) PROTECTION OF LISTED PROPERTY. If a state agency transfers or sells any listed property, it shall reserve a conservation easement under s. 700.40, to be transferred to and held by the state historical society, which secures the right of the historical society to preserve and maintain that property. The state historical society shall establish a form for that conservation easement and provide copies of that form to every state agency.

History: 1987 a. 395; 1989 a. 56.

44.42 Negotiations with political subdivisions and school boards. **(1)** Upon receipt of a notice from a political

subdivision under s. 66.1111 (4) or a school board under s. 120.12 (21) concerning a proposed action affecting a historic property, the officer shall determine whether the action would have an adverse effect upon a historic property which is:

- (a) A listed property.
- (b) On the list of locally designated historic places under s. 44.45.

(2) The officer shall, within 30 days of receipt of the notice under s. 66.1111 (4) or 120.12 (21), reach a determination under sub. (1) or notify the political subdivision or school board in writing that an extension of time, not to exceed 30 additional days, will be required to make adequate determinations and the reasons for requiring the extension. If the officer determines that the proposed action which is the subject of that notice will have an adverse effect on the property which would be subject to that action, the officer may require negotiations with the political subdivision or school board proposing such action in an attempt to reduce such effects. If the negotiations result in an agreement as to the means of reducing such effects, that agreement shall be incorporated into the proposed action of the political subdivision or school board. The officer shall prepare a written report on the effects and the status of all negotiations. The officer shall submit the report to the governor and to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3).

History: 1987 a. 395; 1989 a. 31; 1991 a. 39; 1999 a. 150 s. 672.

44.44 Certification of historic preservation ordinances. **(1)** The state historical society shall certify a historic preservation ordinance if the ordinance does all of the following:

- (a) Contains criteria for the designation, on the register of a political subdivision, of historic structures and historic districts which are substantially similar to the criteria for inclusion in the national register of historic places in Wisconsin.
 - (b) Provides a procedure for the designation of historic structures or historic districts which includes, at a minimum, a nomination process, public notice of nominations and an opportunity for written and oral public comment on nominations.
 - (c) Provides for the exercise of control by a political subdivision by ordinance, to achieve the purpose of preserving and rehabilitating historic structures and historic districts.
 - (d) Creates a historic preservation commission in the political subdivision.
- (2)** The owner of a building designated as a historic building on the register of historic property of a political subdivision shall provide any information or materials regarding the ordinance which are requested by the state historical society in determining whether to certify the ordinance.

History: 1987 a. 395 s. 32.

44.45 List of locally designated historic places. **(1)** DEFINITION. In this section, “list” means the list of locally designated historic places under sub. (2).

(2) PUBLICATION OF LIST. The state historical society shall maintain, publish and disseminate a list of locally designated historic places. The list may include any listed property.

(3) CONTENTS OF LIST. If a political subdivision has a historic preservation ordinance which is certified under s. 44.44, that political subdivision may submit to the state historical society information on any historic place which it has designated. If the process for designating that place complies with that ordinance, the state historical society shall include that place on the list.

(4) PROMULGATION OF LIST. (a) The state historical society shall establish the form on which a political subdivision submits information under sub. (3).

(b) The list is not a rule under s. 227.13. The state historical society shall publish the list as an appendix to the rules promulgated under s. 44.36.

(c) The state historical society shall update the list as necessary to add additional locally designated historic places to the list or to delete designations which do not meet the requirements of this section.

History: 1987 a. 395.

44.47 Field archaeology. This state reserves to itself the exclusive right and privilege of field archaeology on state sites, and establishes regulations for field archaeology on sites owned by political subdivisions, in order to protect and preserve archaeological and scientific information, matter and objects. It is a declaration of legislative intent that persons practicing field archaeology on privately owned land are encouraged to pursue their field archaeology in accordance with this section, and that the looting of all archaeological remains be strongly discouraged. Persons having knowledge of the location of archaeological sites are encouraged to communicate such information to the state archaeologist. This section is not intended to burden persons who wish to use state public property for recreational and other lawful purposes or to unnecessarily restrict the use of state public property.

(1) DEFINITIONS. As used in this section:

(a) “Archaeological methods” means scientific procedures used in field archaeology by recognized professional authorities on archaeology.

(b) “Archaeological site” means any land or the bed of any stream or lake where there are objects or other evidence of archaeological interest, aboriginal mounds and earthworks, ancient burial grounds, prehistoric and historical ruins, Indian mounds, historic and prehistoric watercraft and associated objects, aircraft and other archaeological and historical features.

(c) “Data” means field notes, photographs, maps and other records relating to field archaeology.

(d) “Field archaeology” means the study of the traces of human culture by means of surveying, digging, sampling, excavating or removing objects.

(e) “Local site” or “local archaeological site” means an archaeological site owned by a political subdivision.

(f) “Object” means an article, implement or other item of archaeological interest. “Object” does not include human remains, as defined in s. 157.70 (1) (f), or a sunken log, as defined in s. 170.12 (1) (b).

(g) “Scientific institutions” means museums, historical societies, foundations for archaeological study, state agencies and scholarly groups with professional standing and physical facilities for the display, study and preservation of objects of archaeological interest.

(h) “State site” or “state archaeological site” means an archaeological site owned by this state.

(i) “Submerged cultural resource” means an archaeological site or historic property that is located beneath the surface of a lake or stream.

(2) UNLICENSED FIELD ARCHAEOLOGY PROHIBITED. No person other than the state archaeologist and individuals licensed by the director may engage in any field archaeology on any state site or site owned by a political subdivision.

(3) STATE ARCHAEOLOGIST. (a) *Appointment.* The state archaeologist shall be a qualified archaeologist residing in this state and shall be appointed by the director.

(b) *Duties and powers of state archaeologist.* The state archaeologist shall:

1. Sponsor, engage in and direct fundamental research into the archaeology of this state and encourage and coordinate archaeological research and investigation undertaken within the state.

2. Cooperate with other state agencies and political subdivisions which have authority in areas where archaeological sites are located, or which have the responsibility for marking sites or arranging for their being viewed by the public.

44.47 HISTORICAL SOCIETIES AND ARTS BOARD

3. Encourage the preservation of archaeological sites located on privately owned property.

4. Protect objects of archaeological significance discovered by field archaeology at state sites or discovered during the course of any public construction or demolition work on state sites, and encourage the protection of such objects discovered during the course of any other construction or demolition work.

5. Cooperate with the historical society, public and private institutions of higher education in this state, and other custodians to preserve objects of archaeological significance, together with the data relating thereto.

6. Encourage the dissemination of archaeological facts through the publication of reports of archaeological research conducted within the state.

7. Approve permits for qualified persons to engage in field archaeology as provided in sub. (4) and to otherwise carry out and enforce this section.

8. Administer the state archaeology program under s. 44.48 (2).

(4) PERMITS. (a) The director, acting as an agent of this state, may issue upon such terms and conditions, including restriction to a specific state site on land, as he or she designates, to a qualified natural person approved by the state archaeologist, a permit to engage in field archaeology on state sites and sites owned by political subdivisions. If a state site or the area described in an application is under the jurisdiction of any other state agency or if the field archaeology to be licensed interferes with a project of any other state agency, the director shall first obtain the approval of that state agency. The director may not issue a permit for field archaeology on a site owned by a political subdivision without the written approval of the political subdivision which owns the site. No state agency or political subdivision may withhold that approval without good cause. The director by rule may establish fees for processing applications, for permits or for renewal of permits.

(b) If a site is located on privately owned land, any person wishing to dig or excavate at such a site is strongly encouraged to secure a permit under this section. The applicant for a permit must submit the written consent of the owner.

(c) The director may waive sub. (3) (b) 7. in an emergency in which objects of archaeological interest are found in the course of construction or demolition work, or in other situations in which time is of the essence to save objects or gather data.

(d) The director, upon the recommendation of the state archaeologist, the state agency administering the state site or the political subdivision which owns the site, may revoke or suspend a permit because of the improper conduct of the permittee, the use of improper or substandard archaeological methods or for other good cause.

(5) OWNERSHIP, CUSTODY AND USE OF OBJECTS AND DATA. Except as provided in sub. (5r) and s. 170.12, the state reserves to itself the title to all objects found and data gathered in field archaeology on state sites. Although a permit may name a custodian other than the historical society, title to the objects and data discovered at state sites is reserved to the historical society as trustee for the state. Physical possession of such objects shall revert to the state if such custodian ceases to exist, or if the director, on the recommendation of the state archaeologist, finds that the custodian is not properly caring for them or keeping them conveniently available for study by students of archaeology.

(5m) SUBMERGED CULTURAL RESOURCES. (a) There is established, to be administered by the historical society and department of natural resources, a program for submerged cultural resources of this state.

(b) The historical society, in consultation with the department of natural resources, shall coordinate the activities of the state relating to the preservation, management and public use of submerged cultural resources. The historical society may enter into agreements with federal and state agencies, political subdivisions and nonprofit organizations regarding the preservation, manage-

ment and use of submerged cultural resources and the management of bottomland preserves. On or before February 1 of each odd-numbered year, the historical society shall submit a report to the governor and to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), on submerged cultural resources activities and implementation of this subsection.

(c) The historical society and department of natural resources may by rule designate areas of the bed of any stream or lake as bottomland preserves, for the purpose of enhancing preservation, management and public use of any submerged cultural resources within the bottomland preserve. A bottomland preserve may encompass more than one object or archaeological site.

(d) Before designation of an area as a bottomland preserve, the historical society shall consider all of the following:

1. If the preserve will provide preservation, management and public use of submerged cultural resources.

2. The extent to which an inventory of submerged cultural resources has been conducted for the area within the proposed bottomland preserve.

3. Whether a plan has been prepared for the management of submerged cultural resources within the proposed bottomland preserve and for the recreational management and development of the proposed bottomland preserve.

4. The existence of an entity that will assume responsibility for the management of the bottomland preserve.

5. The availability of existing or planned facilities necessary for recreational uses of the bottomland preserve, including roads, boat landings, marinas, boat and diving charter services, hotels, medical decompression facilities and rescue agencies.

(e) The historical society and department of natural resources may promulgate rules relating to the access, use, stewardship, management, protection and recreational development of bottomland preserves, and the preservation, conservation, curation and display of submerged cultural resources and objects removed from underwater archaeological sites.

(5r) SUNKEN LOGS. When reviewing an application to raise and remove sunken logs under s. 170.12, all of the following apply:

(a) If the director determines that a permit is necessary to preserve or protect an identified archaeological site, the director may require that a permit under this section be secured.

(b) In all other cases, the director shall waive the requirement for a permit under this section, but may recommend requirements relating to the gathering of data regarding any activity done pursuant to a permit issued under s. 170.12, which requirements shall be communicated to the board of commissioners of public lands and may be incorporated by that board into the s. 170.12 permit.

(6) COOPERATION OF STATE AGENCIES AND POLITICAL SUBDIVISIONS. All state agencies and political subdivisions whose activities may be affected under this section shall cooperate with the historical society and the state archaeologist to carry out this section.

(7) PENALTIES. (a) 1. Whoever violates sub. (2) or any rules promulgated under sub. (5m) (e) shall forfeit not less than \$100 nor more than \$500.

2. Whoever intentionally defaces, injures, destroys, displaces or removes any archaeological object or data belonging to the state, or intentionally interferes with evidence or work on any state site or site owned by a political subdivision for which a permit has been issued under this section or intentionally violates any other provision of this section or any rules promulgated under sub. (5m) (e) shall be fined not less than \$1,000 nor more than \$5,000.

3. Whoever removes any archaeological object from a state site or site owned by a political subdivision for commercial gain in violation of this section or any rules promulgated under sub. (5m) (e) shall forfeit an amount not to exceed 2 times the gross value gained or the gross loss caused by the disturbance, which-

ever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

(b) The director may refuse to issue or renew or may suspend or revoke the permit of any person who has violated this section or any rules promulgated under sub. (5m) (e). The director may refuse to name a school or scientific institution as the custodian of objects or data under any permit or agreement, if that school or scientific institution has failed in its duty to care for and preserve objects or data belonging to the state or has failed to make such objects or data conveniently available to the public.

(8) **REVIEW BOARD.** Appeals from decisions of the director shall be made to a review board composed of 3 persons: a member of the Wisconsin archaeological society, a member of the Wisconsin archaeological survey, and a member of the board of curators of the historical society. Each board member shall be chosen by the organization which the board member represents and shall serve without compensation. The review board shall submit its recommendations on all appeals to the board of curators of the historical society for final decision.

(9) **HUMAN BURIAL SITES.** If a permit is required for field archaeology activities at a human burial site under s. 157.70, this section applies to any objects not related to the burial except that a permit is not required under this section.

History: 1975 c. 365; 1985 a. 316; 1987 a. 395 ss. 12 to 16, 39; Stats. 1987 s. 44.47; 1991 a. 39, 206, 269, 315, 316; 1997 a. 27.

This section applies to vessels and their contents, located on state sites, if the vessels or contents have archaeological interest, except when federal admiralty law takes precedence or when the vessel or object is properly claimed by the owner as specified in s. 20.909 or ss. 170.07 to 170.10, 59 Atty. Gen. 18.

Wisconsin Shipwrecks: Finders Keepers? Whipple & Whipple. Wis. Law. Sept. 2001.

44.48 Archaeological resources. (1) MAPPING. (a) The state historical society shall prepare maps of the archaeological resources of this state.

(b) Using the best methods practicable with the funds available for that purpose, the state historical society shall prepare:

1. Initial archaeological resources maps based on currently available information.
2. Updated archaeological resources maps based on any additional information that is available, including onsite surveys.

(c) The director may keep any specific information regarding archaeological resources closed to the public if the director determines that disclosure of the information would be likely to result in disturbance of the archaeological resources.

(2) **STATE ARCHAEOLOGY PROGRAM.** The state historical society shall establish and administer a state archaeology program. The state historical society may designate qualified archaeologists or institutions to undertake on behalf of the historical society specified archaeological surveys, studies, excavations or other activities. The state historical society may designate regions of the state within which the designated archaeologists or institutions may work.

History: 1987 a. 395.

SUBCHAPTER III

ARTS BOARD

44.51 Definitions. In this subchapter, unless the context requires otherwise:

(1) “Board” means the arts board.

(1m) “Operational grant” means a grant awarded by the board to support those administrative costs of an organization which are not directly related to the development of an artistic performance or product.

(2) “State building” means any permanent structure, which is normally occupied by state employees, wholly or partially enclosed and used for performing or facilitating the performance of the functions of a state agency as defined in s. 20.001 (1),

together with all grounds and appurtenant structures and facilities; and

(3) “Work of art” means any original creation of visual art. “Work of art” does not include:

(a) Any reproduction of an original work of art unless directly controlled by the artist as part of a limited edition;

(b) Any decorative, ornamental, functional or landscape element of a state building, unless an artist is specifically commissioned under this subchapter to create unique decorative, ornamental, functional or landscape elements for a particular state building;

(c) Any “art object” which is mass-produced or of standard design; or

(d) Any elements peripheral to the work of art itself, including but not limited to site preparation, or any services necessary for activation of the work of art including but not limited to electricity, water, lighting, security, maintenance and publicity.

History: 1973 c. 90; 1979 c. 221; 1981 c. 20.

44.53 Powers and duties. (1) The board shall:

(a) Continually study the artistic and cultural activities within the state.

(b) Assist arts activities in the state.

(c) Assist communities in creating and developing their own arts programs.

(d) Encourage and assist freedom of artistic expression.

(e) Promulgate rules, pursuant to ch. 227, for the implementation and operations of this subchapter.

(f) Plan and implement, when funds are available in the appropriations under s. 20.215 (1) (b) and (o), a program of contracts with or grants-in-aid to groups or, in appropriate cases, individuals of exceptional talent engaged in or concerned with the arts. No grantee may receive any funds distributed as grants-in-aid under this paragraph unless the grantee provides at least 50% of the estimated total cost of the project, either in the form of moneys or in-kind contributions of equivalent value, to be funded under this paragraph.

(fm) Conduct a program identical to that described in par. (f), but only for American Indian individuals and groups. The program shall be funded from the appropriation under s. 20.215 (1) (km).

(g) Arrange and schedule the portrait of the governor or any former governor. Costs incurred under this paragraph shall be charged to the appropriation under s. 20.215 (1) (c) up to a limit of \$10,000 per portrait. Costs in excess of \$10,000 per portrait may be charged to the appropriation under s. 20.215 (1) (c) only with the prior approval of the joint committee on finance.

(h) Annually, award an amount equal to at least 5% of all state and federal funds received by the board in that year for grants to artists and arts organizations to artists who are minority group members and arts groups composed principally of minority group members. In this paragraph, “minority group member” has the meaning specified in s. 560.036 (1) (f).

(i) Administer challenge grant programs for the purpose of encouraging the fund-raising efforts of arts organizations.

(j) Annually pay to the Milwaukee Foundation, Inc., for deposit in the High Point fund, the amount appropriated under s. 20.215 (1) (e).

(2) The board may:

(a) Enter into contracts with individuals, organizations, units of government and institutions for services furthering the development of the arts and humanities.

(am) Enter into contracts with American Indian individuals, organizations and institutions and American Indian tribal governments for services furthering the development of the arts and humanities.

(b) Accept all gifts and grants and expend them for the purposes intended.

44.53 HISTORICAL SOCIETIES AND ARTS BOARD

(c) Award an operational grant to an organization if the sum of all operational grants awarded in the current year does not exceed 50% of the sum of all grants awarded to organizations from the appropriations under s. 20.215 (1) (b) and (o) in the current year.

History: 1973 c. 90; 1981 c. 20; 1983 a. 27 s. 933; 1985 a. 29; 1985 a. 332 s. 251 (1); 1987 a. 27; 1989 a. 31; 1991 a. 39; 1993 a. 16; 1999 a. 9; 2003 a. 33; 2005 a. 25.

Cross Reference: See also AB, Wis. adm. code.

44.55 Executive secretary. The board shall appoint an executive secretary outside the classified service to serve at its pleasure.

History: 1973 c. 90.

44.56 Public service requirement. (1) The board shall by rule define “public service” for the purpose of this section.

(2) Every recipient of a grant awarded by the board under the board’s general grants program or community arts program from the appropriation under s. 20.215 (1) (b) shall perform a public service which shall be mutually agreed upon by the board and the grant recipient at the time the grant is awarded.

History: 1981 c. 20.

44.565 Arts challenge initiative grants. (1) In this section, “local arts agency” means an organization that represents local arts organizations.

(2) (a) From the appropriation under s. 20.215 (1) (d), the board shall award arts challenge initiative grants to arts organizations and local arts agencies.

(b) The board shall award grants from the appropriation under s. 20.215 (1) (d) to match up to 25% of an arts organization’s or a local arts agency’s income from contributions for the fiscal year in which a grant may be awarded which exceeds the amount of income from contributions in the previous fiscal year and income from earned income which exceeds the amount of earned income from the previous fiscal year in that fiscal year subject to the following requirements:

1. An arts organization or a local arts agency must earn income which exceeds the amount of earned income from the previous fiscal year in each fiscal year for which the organization or local arts agency applies for a grant to meet the requirements of this paragraph. The receipt of a grant by an arts organization or local arts agency in a previous fiscal year does not exempt an arts organization or a local arts agency from the requirements under this paragraph.

2. A grant awarded under par. (a) shall match only cash funds.

(c) The board shall set aside at least 10% of the funds for grants under par. (a) for grants to minority arts organizations.

(d) The board shall set aside at least 20% of the funds for grants under par. (a) for grants to arts organizations and local arts agencies that have operating budgets of less than \$100,000.

(e) Notwithstanding par. (b), a grant under par. (c) or (d) may match up to 100% of the sum of the arts organization’s or local arts agency’s income from contributions and earned income for the previous fiscal year, except that a grant under par. (d) shall be not less than \$3,000 and not more than \$10,000.

(3) If the amount in the appropriation under s. 20.215 (1) (d) in any fiscal year is insufficient to fund all grants under this section, the board shall award grants, including the minimum and maximum grants under sub. (2) (e), on a prorated basis.

(4) The board shall promulgate rules to implement and administer this section.

History: 1987 a. 27, 399; 1989 a. 31.

44.57 Fine arts in state buildings. (1) APPLICABILITY. This section does not apply to:

(a) Any contract for the construction, reconstruction, renovation or remodeling of or addition to any state building if the total construction cost of the project is \$250,000 or less.

(b) Sheds, warehouses, highways or streets, or other buildings or spaces which are not open for entry by the general public in the normal use of the building or space.

(c) Game farms, fish hatcheries, nurseries and other production facilities operated by the department of natural resources.

(2) MINIMUM EXPENDITURE REQUIRED. (a) Except as provided in par. (b), at least two-tenths of one percent of the appropriation for the construction, reconstruction, renovation or remodeling of or addition to a state building, including but not limited to amounts appropriated for design and supervision, site preparation, equipment and administrative and personnel costs, shall be utilized to acquire one or more works of art to be incorporated into the structure for which the appropriation was made, or displayed inside or on the grounds of that structure and to fund all administrative costs that the board incurs in acquiring one or more works of art.

(b) If the state building to which this section applies is located contiguous to other state buildings, the advisory committee acting under sub. (3) may apply the funds set aside under par. (a) to the acquisition, including all associated administrative costs, of one or more works of art to be incorporated into one of the other contiguous buildings or to be displayed on the grounds of one or more of the contiguous state buildings.

(3) ADVISORY COMMITTEE. (a) After selection of the architect for any project subject to this section, the board shall convene an advisory committee for the purpose of reviewing and recommending works of art to be incorporated into the structure.

(b) The advisory committee shall consist of at least 5 members appointed by the board, including:

1. One member of the board.

2. At least 2 persons who are artists, art educators, art administrators, museum directors or curators, art critics or art collectors.

3. At least 2 persons who are project managers, architects, users of the building or members of the building commission.

(4) CONTRACTS WITH ARTISTS. (a) After review of the recommendations of the advisory committee convened under sub. (3), the board shall make the final selection of the artist and the work of art to be incorporated into the project. The board shall ensure that the aggregate of works of art selected under this section represent a wide variety of art forms executed by the broadest feasible diversity of artists, except that the board shall give preference to artists who are residents of this state.

(b) 1. The board shall enter into one or more contracts to procure the work of art selected for the project. Except as provided in subd. 2., the contracts shall provide for sole ownership of the works of art acquired under this section in the state of Wisconsin.

2. If the work of art to be acquired is an existing work of art and is no longer subject to the control of the artist originating the work of art, the contract shall provide sole ownership in the state of Wisconsin, subject to the existing obligations, if any, of the owner to the originating artist. If the work of art selected is a work of art which is owned by the artist originating the work of art or if the work of art has not been executed on the date of the contract, the contract shall provide for sole ownership in the state of Wisconsin, subject to the following rights retained by the artist unless limited by written agreement between the board and the artist:

a. The right to claim authorship of the work of art.

b. The right to reproduce the work of art, including all rights secured to the artist under federal copyrights laws.

(5) BOARD RESPONSIBILITIES. After acquisition of the work of art under sub. (4), the board shall:

(a) Ensure proper execution of the work of art, if the work of art is a new work of art.

(b) Ensure that the work of art acquired under this section is properly installed within the public view.

(c) Cooperate with the bureau of facilities management and consult with the artist or the artist’s representative to ensure that each work of art acquired under this section is properly maintained and is not artistically altered without the consent of the artist or the artist’s representative.

(d) Ensure that any work of art acquired under this section is maintained and displayed on the grounds of the state building for

at least 25 years, unless the board finds that earlier removal is in the public interest. When the board, in consultation with the agency making principal use of the building to which the work of art is appurtenant, determines that the work of art should be removed, the board shall loan the work of art to an accredited museum in the state or to an educational or other appropriate public institution capable of maintaining and exhibiting the work of art.

History: 1979 c. 221; 1981 c. 20; 1985 a. 29; 1987 a. 27; 1989 a. 17.

Cross Reference: See also s. AB 4.02, Wis. adm. code.

44.60 Arts incubator grants and loans. (1) In this section:

(a) “Arts incubator” means a facility that provides nonprofit arts organizations or individual professional artists with shared support services and with office, storage, studio, gallery, performance or other work or living space at a lower rent than the market rate in the community.

(b) “Nonprofit arts organization” means a corporation organized under ch. 181, that is a nonprofit corporation as defined in s. 181.0103 (17), for the purpose of furthering the arts.

(c) “Nonprofit business development organization” means a housing and community development authority created under s. 66.1335 (1), redevelopment corporation, as defined in s. 66.1301 (3) (s), redevelopment authority created under s. 66.1333 (3), community development corporation, as defined in s. 234.94 (2), or any nonprofit organization whose primary purpose is to promote the economic development of a particular area or region in the state.

(2) The board may award a grant not exceeding \$5,000 to a nonprofit business development organization or a nonprofit arts organization to fund a feasibility study of the need for and the initial design of an arts incubator in a particular region of this state.

(3) The board may award a grant or loan not exceeding \$50,000 to a nonprofit business development organization or nonprofit arts organization to fund the initial development and opera-

tion of a proposed arts incubator, including equipment purchases, building acquisition and rehabilitation and staff costs, after considering all of the following:

(a) The qualifications of the proposed arts incubator’s management and staff.

(b) The availability and cost of office, storage, studio, gallery, performance or other work or living space in the community.

(c) The support and involvement of local businesses, the local financial community, local governmental units and the local arts community.

(d) The cost–effectiveness of the arts incubator.

(e) The effect of the arts incubator on the local economy and the community in which it is located.

(f) The financial viability of the proposed arts incubator.

(4) At the request of the board, the department of tourism shall assist the board in evaluating proposed projects under this section.

History: 1989 a. 31; 1995 a. 27, 225; 1997 a. 79; 1999 a. 150 s. 672; 2001 a. 30 s. 108.

44.62 Wisconsin regrating program. (1) In this section:

(a) “Local arts agency” has the meaning given in s. 44.565 (1).

(b) “Municipality” means any city, village, town, county or federally recognized American Indian tribe or band in this state.

(2) Subject to sub. (3), the board shall award grants under the Wisconsin regrating program to local arts agencies and municipalities. Grants shall be awarded from the appropriations under s. 20.215 (1) (f) and (j).

(3) No grant may be distributed under sub. (2) unless the local arts agency or municipality makes a matching fund contribution that is equal to the amount of the grant awarded under this section. Private funds and in-kind contributions may be applied to meet the requirement of this subsection.

(4) The board shall promulgate rules to implement and administer this section.

History: 1995 a. 27; 2001 a. 16.

CHAPTER 157

DISPOSITION OF HUMAN REMAINS

	SUBCHAPTER I		
	CORPSES		
157.01	Rules for preparation, transportation and disposition.	157.111	Opening and closing of burial places.
157.02	Disposal of unclaimed corpses.	157.112	Reburial of human remains by a cemetery authority.
157.03	Restrictions on use of bodies for anatomical purposes; embalming such bodies; delivery of bodies to relatives.	157.114	Duty to provide for burials.
157.04	Penalty.	157.115	Abandonment of cemeteries and cemetery lots.
157.05	Autopsy.	157.12	Mausoleums and crematoriums.
157.055	Disposal of human remains during state of emergency relating to public health.	157.125	Trustees for the care of cemeteries or cemetery lots.
157.06	Anatomical gifts.	157.128	Minimum acreage requirement for cemetery established on or after November 1, 1991.
	SUBCHAPTER II	157.129	Minimum acreage of cemeteries; local ordinance.
	CEMETERIES	157.19	Deposit and investment of care funds and preneed trust funds.
157.061	Definitions.	157.50	Municipal cemeteries.
157.062	Cemetery associations; creation; powers and duties.	157.60	Public easement in cemetery.
157.064	Cemetery associations and religious associations; holding property; change of ownership.	157.62	Reporting; record keeping; audits.
157.065	Location and ownership of cemeteries.	157.625	Reporting exemption for certain cemeteries.
157.067	Connection with funeral establishment prohibited.	157.63	Reporting and auditing exemptions; certification of compliance of cemetery affiliated with religious society.
157.07	Platting.	157.635	Regulations of cemetery affiliated with religious society.
157.08	Conveyances.	157.637	Veteran burials.
157.10	Alienation and use of cemetery lots.	157.64	Penalties.
157.11	Improvement and care of cemetery lots and grounds.	157.65	Enforcement.
			SUBCHAPTER III
			BURIAL SITES PRESERVATION
		157.70	Burial sites preservation.

Cross Reference: See s. 69.18 for 1) registration of deaths; 2) medical certification; 3) disposition of corpse or stillbirth; and 4) disinterment and reinterment.

SUBCHAPTER I
CORPSES

157.01 Rules for preparation, transportation and disposition. The department of health services shall make, and delegate to the funeral directors examining board the enforcement of, rules not inconsistent with ch. 445 covering the control of communicable diseases and sanitary and health regulations in the preparation, transportation and disposition of dead human bodies.

Note: Section 157.01 is shown as amended eff. 7–1–08 by 2007 Wis. Act 20, section 9121 (6) (a). Prior to 7–1–08 it reads:

157.01 Rules for preparation, transportation and disposition. The department of health and family services shall make, and delegate to the funeral directors examining board the enforcement of, rules not inconsistent with ch. 445 covering the control of communicable diseases and sanitary and health regulations in the preparation, transportation and disposition of dead human bodies.

History: 1975 c. 39; 1979 c. 175 s. 53; 1979 c. 221 ss. 658, 2202 (45); 1983 a. 485; 1985 a. 315; 1985 a. 316 s. 14; Stats. 1985 s. 157.01; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a).

Cross Reference: See also chs. HFS 135 and 136, Wis. adm. code.

157.02 Disposal of unclaimed corpses. (1) NOTICE TO RELATIVES. When an inmate of any state, county or municipal institution dies, the superintendent or other person in charge of the institution shall immediately notify a relative of the decedent. A public officer having the possession or the disposition of a corpse shall immediately notify a relative of the decedent. If no relative is known, or discoverable by use of ordinary diligence, notice may be dispensed with. In addition, if the deceased had been an inmate of a state correctional institution, the department of corrections shall provide written notification to the relative informing him or her that the department of corrections, upon request, will provide a copy of any autopsy report or other report or information pertaining to the death. The department of corrections shall describe how the request may be made and shall promptly comply with any such request.

(2) TIME ALLOWED RELATIVE TO ACT. If a relative or friend fails to arrange for taking charge of the corpse within a reasonable time after death, the superintendent or other officer may proceed as

provided in this section, but relatives or friends may claim the corpse at any time before it has been delivered pursuant to sub. (3).

(3) NOTICE TO UNIVERSITY OR SCHOOL. If the corpse is in the Mendota Mental Health Institute district, the University of Wisconsin shall be notified that it may have the corpse. If the corpse is in the Winnebago Mental Health Institute district, the Medical College of Wisconsin, Inc., or any accredited school of mortuary science at Milwaukee shall be notified that it may have the corpse. The university or school so notified shall immediately inform the superintendent or public officer whether it desires to have the corpse. If it does, the corpse shall be delivered accordingly, properly encased, to the most available facility for transportation to the consignee, the consignee to pay the cost of transportation.

(4) STANDING APPLICATIONS. If there are advance applications for such bodies, by the Medical College of Wisconsin, Inc., or any accredited school of mortuary science, the superintendent or public officer shall make an equitable distribution between them.

(5) OTHER DISPOSITION. If the corpse is not disposed of under subs. (1) to (4), the superintendent or public officer shall properly bury it.

History: 1971 c. 211; 1973 c. 90 s. 560 (3); 1985 a. 316 s. 14; Stats. 1985 s. 157.02; 1987 a. 27; 1989 a. 31; 2001 a. 103.

157.03 Restrictions on use of bodies for anatomical purposes; embalming such bodies; delivery of bodies to relatives. (1) The corpse of a person who died with smallpox, diphtheria or scarlet fever, or who in his or her last sickness shall request to be buried or cremated, and of a stranger or traveler who suddenly died, shall not be disposed of under s. 157.02 (3), and no person having charge of a corpse authorized to be so disposed of shall sell or deliver it to be used outside the state.

(2) Upon receipt of the corpse by a university or school pursuant to s. 157.02 (3) it shall be properly embalmed and retained for 3 months before being used or dismembered and shall be delivered to any relative claiming it upon satisfactory proof of relationship.

History: 1985 a. 316 ss. 14, 25; Stats. 1985 s. 157.03; 1993 a. 482.

157.04 Penalty. Any officer or person having a corpse in charge, and refusing to report and deliver it, when required by this subchapter, or violating the provisions forbidding sale or delivery

157.04 DISPOSITION OF HUMAN REMAINS

thereof, to be used outside the state, shall be liable to the person, university or medical school aggrieved, in the sum of \$50.

History: 1985 a. 316 s. 14; Stats. 1985 s. 157.04.

157.05 Autopsy. Consent for a licensed physician to conduct an autopsy on the body of a deceased person shall be deemed sufficient when given by whichever one of the following assumes custody of the body for purposes of burial: Father, mother, husband, wife, child, guardian, next of kin, or in the absence of any of the foregoing, a friend, or a person charged by law with the responsibility for burial. If 2 or more such persons assume custody of the body, the consent of one of them shall be deemed sufficient.

History: 1979 c. 110; 1985 a. 316 s. 14; Stats. 1985 s. 157.05.

157.055 Disposal of human remains during state of emergency relating to public health. (1) In this section:

(a) “Funeral establishment” has the meaning given in s. 445.01 (6).

(b) “Public health authority” has the meaning given in s. 250.01 (6g).

(2) Notwithstanding ss. 69.18 (4), 445.04 (2), 445.14, 979.01 (3), (3m), and (4), 979.02, and 979.10, and subch. VI of ch. 440, during a period of a state of emergency related to public health declared by the governor under s. 166.03 (1) (b) 1., a public health authority may do all of the following:

(a) Issue and enforce orders that are reasonable and necessary to provide for the safe disposal of human remains, including by embalming, burial, cremation, interment, disinterment, transportation, and other disposal.

(b) Take possession and control of any human remains.

(c) Order the disposal, through burial or cremation, of any human remains of an individual who has died of a communicable disease, within 24 hours after the individual’s death and consider, to the extent feasible, the religious, cultural, or individual beliefs of the deceased individual or his or her family in disposing of the remains.

(d) If reasonable and necessary for emergency response, require a funeral establishment, as a condition of its permit under s. 445.105 (1), to accept human remains or provide the use of its business or facility, including by transferring the management and supervision of the funeral establishment to the public health authority, for a period of time not to exceed the period of the state of emergency.

(e) Require the labeling of all human remains before disposal with all available identifying information and information concerning the circumstances of death and, in addition, require that the human remains of an individual with a communicable disease be clearly tagged to indicate that remains contain a communicable disease and, if known, the specific communicable disease.

(f) Maintain or require the maintenance of a written or electronic record of all human remains that are disposed of, including all available identifying information and information concerning the circumstances of death and disposal. If it is impossible to identify human remains prior to disposal, the public health authority may require that a qualified person obtain any fingerprints, photographs, or identifying dental information, and collect a specimen of deoxyribonucleic acid from the human remains and transmit this information to the public health authority.

(g) Notwithstanding s. 59.34 (1) or 59.35 (1), authorize a county medical examiner or a county coroner to appoint emergency assistant medical examiners or emergency deputy coroners, whichever is applicable, if necessary to perform the duties of the office of medical examiner or coroner, and to prescribe the duties of the emergency assistant medical examiners or emergency deputy coroners. The term of any emergency appointment authorized under this paragraph may not exceed the period of the state emergency. A county medical examiner or county coroner may terminate an emergency appointment before the end of the period of the

state emergency, if termination of the appointment will not impede the performance of the duties of his or her office.

History: 2001 a. 109; 2005 a. 31.

157.06 Anatomical gifts. (1) DEFINITIONS. In this section:

(a) “Anatomical gift” means a donation of all or part of a human body to take effect upon or after death of the donor, as determined in accordance with s. 146.71.

(b) “Decedent” means a deceased individual.

(c) “Document of gift” means a card, a statement attached to or imprinted on a license under s. 343.175 (2) or on an identification card under s. 343.50 (3), a will, or another writing, including a writing under sub. (3) (c) 2., that is used to make an anatomical gift.

(d) “Donor” means an individual who makes an anatomical gift of all or part of the individual’s body.

(e) “Enucleator” means an individual who meets the requirements of sub. (8) (c) for authorization to remove donated eyes or parts of eyes.

(f) “Hospital” means a facility approved as a hospital under s. 50.35 or a facility operated as a hospital by the federal government, a state or a subdivision of a state.

(fm) “Organ procurement organization” means an organization that meets the requirements specified for a qualified organ procurement organization under 42 USC 273.

(g) “Part” means an organ, tissue, eye, bone, artery, blood, fluid or other body portion.

(h) “Physician” means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.

(j) “Technician” means an individual who is trained or approved by the American Red Cross Tissue Services or the American Association of Tissue Banks to remove or process tissue or bone while under the direction or supervision of a physician.

(k) “Tissue” includes all of the following:

1. Skin.
2. Connective tissue, including tendons and ligaments.
3. Cardiovascular tissue, including valves, blood vessels and pericardium, that is not suitable for use for cardiovascular organ transplantation.

(km) “Tissue bank” means a corporation that recovers, processes, or distributes tissue for transplantation into humans.

(L) “Vascularized organ” means a heart, lung, liver, pancreas, kidney, intestine or other organ that requires the continuous circulation of blood to remain useful for purposes of transplantation.

(2) MAKING, AMENDING, REVOKING AND REFUSING TO MAKE ANATOMICAL GIFTS BY THE DONOR. (a) An individual who is at least 18 years of age may do any of the following:

1. Make an anatomical gift for any of the purposes stated in sub. (6) (a).
2. Limit an anatomical gift to one or more of the purposes stated in sub. (6) (a).
3. Refuse to make an anatomical gift.

(b) An anatomical gift under par. (a) may be made only by a document of gift signed by the donor. If the donor cannot sign, the document of gift shall be signed by another individual and by 2 witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and the document of gift shall state that it has been so signed.

(c) 1. Before January 1, 1991, if a document of gift is attached to or imprinted on the donor’s license to operate a motor vehicle or identification card issued by the department of transportation, the document of gift shall comply with par. (b) and s. 343.17 or 343.50. Revocation, suspension, expiration or cancellation of the license or identification card does not invalidate the anatomical gift.

3 Updated 05–06 Wis. Stats. Database
Not certified under s. 35.18 (2), stats.

DISPOSITION OF HUMAN REMAINS 157.06

2. After December 31, 1990, if a document of gift is attached to or imprinted on the donor's license under s. 343.175 (2) or identification card under s. 343.50 (3) issued by the department of transportation, the document of gift shall comply with par. (b) and s. 343.175 or 343.50. Revocation, suspension, expiration or cancellation of the license or identification card does not invalidate the anatomical gift.

(d) A document of gift may designate a particular physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, technician or enucleator to carry out the appropriate procedures.

(e) An anatomical gift under the circumstances in which the document of gift is by will takes effect upon death of the testator, whether or not the will is probated. If after the death of the testator the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(f) A donor may amend or revoke an anatomical gift or a refusal to make an anatomical gift under par. (i) by doing any of the following:

1. Signing a statement of amendment or revocation.
 - 1m. Signing a new document of gift. Signing a new document of gift revokes any previously signed document of gift.
 2. Verbally amending or revoking in the presence of 2 individuals.
 3. During the donor's terminal illness or injury making, by any form of communication that is addressed to a physician, an amendment or revocation.
 4. Delivering a signed statement of amendment or revocation to a specified donee to whom a document of gift had been delivered.
 5. Crossing out or amending the donor authorization or refusal in the space provided on his or her license as prescribed in s. 343.175 (2) or identification card as prescribed in s. 343.50 (3).
 6. Revoking the provision of a power of attorney for health care instrument that makes an anatomical gift or revoking that power of attorney for health care instrument.
- (g) In addition to the means specified in par. (f), an anatomical gift made by will may be amended or revoked in the manner provided for amendment or revocation of wills.
- (h) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.
- (i) An individual may refuse to make an anatomical gift of the individual's body or part of his or her body by doing any of the following:
1. Making a writing of refusal that is signed in the same manner as is required for a document of gift.
 2. Attaching a statement of refusal to or imprinting a statement of refusal on his or her license under s. 343.175 (2) or identification card under s. 343.50 (3).
 3. Making any other writing that is used to identify the individual as refusing to make an anatomical gift. During the individual's terminal illness or injury, he or she may make the refusal by an oral statement or other form of communication to another.
- (j) In the absence of contrary indications by the donor, an anatomical gift of a part of a human body is neither a refusal to give other parts of the body nor a limitation on an anatomical gift under sub. (3) or on a removal or release of other parts of the body under sub. (4), (4m), or (4r).
- (k) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal under par. (i).

(3) MAKING, REVOKING AND OBJECTING TO ANATOMICAL GIFTS, BY PERSONS OTHER THAN THE DONOR. (a) Any member of the fol-

lowing classes of individuals, in the order of priority listed, may make an anatomical gift of all or a part of a decedent's body for a purpose specified in sub. (6) (a), unless the decedent, at the time of death, has made an unrevoked refusal to make that anatomical gift:

1. The spouse of the decedent.
2. An adult son or daughter of the decedent.
3. Either parent of the decedent.
4. An adult brother or sister of the decedent.
5. A grandparent of the decedent.
6. A guardian of the person of the decedent at the time of death.
7. A health care agent, as defined in s. 155.01 (4), for the decedent at the time of death.

(b) An anatomical gift may not be made by an individual listed in par. (a) if any of the following applies:

1. An individual in a prior class is available at the time of death to make an anatomical gift and that individual objects to the making of an anatomical gift.
2. The individual proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent.
3. The individual proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the individual's class or a prior class.

(c) An individual authorized under par. (a) shall make an anatomical gift of all or a part of the decedent's body by doing one of the following:

1. Subject to sub. (6m), if applicable, executing a document of gift that is signed by the individual.
2. Subject to sub. (6m), if applicable, making a recorded telephonic or other recorded message, or other form of communication, to another that is reduced to writing and signed by the recipient at the time it is received. In the instance of a recorded message in which a hospital, organ procurement organization, tissue bank, coroner, or medical examiner is requesting an anatomical gift, the hospital, organ procurement organization, tissue bank, coroner, or medical examiner shall do all of the following:
 - a. Inform the individual that the conversation is recorded and that a recorded copy of the conversation is available upon request and, if requested, provide such a copy.
 - b. Read aloud to the individual the sentences required under sub. (6m) (a).
 - c. Note on the request form that the individual has been read the sentences required under sub. (6m) (a) and note any limitations that the individual imposes on the use of the bones or tissues or the types of organizations that recover, process, or distribute the donation. If the procedure under this subdivision is followed, the individual's signature or initials, as specified in sub. (6m) (b), are not required.

(d) Any member of the same class as or a prior class to an individual authorized under par. (a) who has made an anatomical gift under par. (a) may revoke the gift if, before procedures have begun for the removal of a part from the body of the decedent, the member so informs the physician or enucleator who will remove the part of the revocation.

(e) A failure to make an anatomical gift under par. (a) is not an objection to the making of an anatomical gift unless the failure is accompanied by an objection to the making of an anatomical gift.

(4) AUTHORIZATION BY CORONER OR MEDICAL EXAMINER; NO EVIDENCE OF ANATOMICAL GIFT. (ag) If a decedent is within the custody of a coroner or medical examiner and if there is no evidence that the decedent has made or refused to make an anatomical gift, the coroner or medical examiner shall contact by telephone the organ procurement organization designated for the region in which the death occurs. The coroner or medical examiner shall provide the organ procurement organization with information, if known to the coroner or medical examiner, con-

157.06 DISPOSITION OF HUMAN REMAINS

cerning the decedent's age, the cause of the decedent's death and, if available, the decedent's medical history.

(am) The coroner or medical examiner may release and permit the removal of a part from, a decedent specified in par. (ag) within that official's custody, for transplantation or therapy, including to a tissue bank under the requirements of sub. (4r), if all of the following apply:

1. The official has received a request for the part of the body from a hospital, physician or organ procurement organization.
2. The official has made a reasonable effort, taking into account the useful life of the part of the body, to locate and examine the decedent's medical records and, subject to sub. (6m), inform individuals listed in sub. (3) (a) of their option to make, or object to making, an anatomical gift.
3. The official does not know of a refusal or contrary indication by the decedent or of an objection by an individual having priority to act as listed in sub. (3) (a).
4. The removal will be by a physician, except for the following:
 - a. In the case of eyes, the removal may be by a physician or by an enucleator.
 - b. In the case of tissue or bone, the removal may be by a physician or by a technician.
5. The removal will not interfere with any autopsy or investigation.
6. The removal will be in accordance with accepted medical standards.
7. Cosmetic restoration will be done to the decedent's body, if appropriate.

(b) A coroner or medical examiner who releases, and permits the removal of a part of, a human body under this subsection shall maintain a permanent record of the name of the decedent, the name of the person making the request, the date and purpose of the request, the part of the body requested, and the name of the person to whom it was released.

(4m) AUTHORIZATION BY CORONER OR MEDICAL EXAMINER; POTENTIAL DONATIONS OF ORGANS AND TISSUE. (a) Subject to par. (b), for a decedent who meets the criteria for a determination of death under s. 146.71, who is a donor or of whom an anatomical gift has been made under sub. (3), and who is within the jurisdiction of a coroner or medical examiner under ch. 979, any vascularized organ that is an anatomical gift may be removed by a physician, within a time period compatible with preservation of the organ for purposes of transplantation, if all of the following take place:

1. Immediately after the hospital in which the donor, potential decedent, or decedent is located contacts the organ procurement organization designated for the region of which the hospital is a part concerning the potential donation, the organ procurement organization shall, by oral conversation, provide notice to the coroner or medical examiner or his or her designee of the referral of the donor, potential decedent, or decedent and shall provide notice of the referral to the district attorney or his or her designee.
2. The coroner or medical examiner or his or her designee has the opportunity to be present during the scheduled removal of the vascularized organ if, in the judgment of the coroner, medical examiner, or designee, the organ may be necessary in determining the cause of death.

(b) If, in the judgment of the coroner, medical examiner, or designee specified in par. (a) the vascularized organ may be necessary in determining the cause of death, the coroner, medical examiner, or designee may order a biopsy of the vascularized organ or, if the coroner, medical examiner, or designee is present during the scheduled removal, he or she may deny removal of the vascularized organ. If denial of removal is a possibility, the organ procurement organization shall make a good-faith effort to consult with a forensic pathologist designated by the coroner, medical examiner, or designee as to the pathologist's opinion concerning

the necessity of the vascularized organ in determining the cause of death. If the biopsy is ordered or the removal is denied, the coroner, medical examiner, or designee shall specify, in writing as part of any death report required under ch. 979, any reasons for determining that the vascularized organ may be involved in the cause of death.

(c) For a decedent specified under par. (a), as authorized under the requirements of this section by the coroner, medical examiner, or designee with jurisdiction over the decedent, any part other than a vascularized organ that is an anatomical gift may be removed by a physician and any part that is tissue or bone may be removed by a technician or tissue bank employee, within a time period compatible with preservation of the part for purposes of transplantation.

(d) A physician, technician, or tissue bank employee who removes cardiovascular tissue from a decedent under this subsection shall, upon request of the coroner or medical examiner, file with the coroner or medical examiner with jurisdiction over the decedent a report detailing the condition of the cardiovascular tissue and its relationship to the cause of death. The report may include a biopsy or medically approved sample, if available, from the part.

(e) 1. A physician who removes an organ from a decedent under this subsection shall complete a form, as specified in sub. (9m) (a).

2. A physician, technician, or tissue bank employee who removes tissue, other than cardiovascular tissue, from a decedent under this subsection shall complete a form, as specified in sub. (9m) (b).

3. After completing a form under this paragraph, the physician, technician, or tissue bank employee shall transmit the form to the coroner or medical examiner with jurisdiction over the decedent.

Cross Reference: See also ch. HFS 137, Wis. adm. code.

(4r) AUTHORIZATION BY CORONER OR MEDICAL EXAMINER; TISSUE BANKS. (a) 1. If a decedent is within the custody of a coroner or medical examiner, and the death occurred in a hospital, any release of the decedent for potential donation of tissue shall be to the tissue bank with which the hospital has an agreement under 42 CFR 482.45 (a) (2). However, if such a tissue bank is unwilling to receive the tissue donation, the tissue bank shall so notify the coroner or medical examiner.

2. Upon receipt of a notification under subd. 1., the coroner or medical examiner may notify any other tissue bank with which the coroner or medical examiner has an agreement under par. (b) of the availability of the decedent as a potential tissue donor.

3. Upon receipt of a notification under subd. 2., the tissue bank so notified, if willing to receive the tissue donation, shall contact an available individual, under the priority established in sub. (3) (a), to request that the individual make an anatomical gift of all or a part of the decedent's tissue.

4. If the coroner or medical examiner informs the hospital that subds. 2. and 3. apply and that consent has been given for an anatomical gift, the hospital shall transfer the decedent to the coroner or medical examiner.

(b) When a decedent is within the custody of a coroner or medical examiner, the death occurred outside a hospital or the decedent was transferred to the coroner or medical examiner under par. (a) 4., and the coroner or medical examiner refers the decedent as a potential tissue donor, any such referral shall be made under the following conditions:

1. Subject to subds. 2., 3., and 4., the coroner or medical examiner, after considering a tissue bank's history, services, traditional referral patterns, geographic service area, and tissue distribution record and any other criteria required for consideration by the corporation counsel of the applicable county, enters into a written, general referral agreement with one or more tissue banks to which the coroner or medical examiner shall refer decedents for potential donation of tissue.

2. Any agreement under subd. 1. is subject to review and approval by all of the following:

- a. The corporation counsel of the applicable county.
- b. The county board of the applicable county. Within 60 days after approval by the corporation counsel and transmittal of the agreement to the county board, the county board may approve or disapprove the agreement. If the county board takes no action, the agreement is approved.

3. A tissue bank under this paragraph is accredited by the American Association of Tissue Banks or audited at least once every 2 years by an organization that is accredited by the American Association of Tissue Banks.

4. All of the following applies to an agreement by a coroner or medical examiner with one or more tissue banks to which the coroner or medical examiner refers decedents for potential donation of tissue:

- a. Any such agreement that is entered into after April 13, 2006, shall conform to the requirements of subds. 1. to 3.
- b. Any such agreement that exists on April 13, 2006, shall conform to the requirements of subds. 1. to 3. by October 1, 2007, unless the agreement expires before that date and is not renegotiated or renewed under subd. 4. a.

(5) POLICIES; ORGAN PROCUREMENT ORGANIZATION NOTIFICATION; REQUIRED REQUEST; SEARCH AND NOTIFICATION. (a) Each hospital shall develop and adopt written policies for providing information to individuals on how to become part donors and shall make available to individuals informational brochures that discuss donation of parts.

(b) 1. If at or near the time of death of a patient there is no medical record or evidence obtained under par. (c) that the patient has made, revoked or refused to make an anatomical gift, the hospital administrator or a representative designated by the administrator shall discuss with an available individual, under the priority established in sub. (3) (a), the option to make or refuse to make an anatomical gift and request, subject to sub. (6m), that the individual make an anatomical gift of all or a part of the decedent's body. Alternatively, the administrator shall contact by telephone the organ procurement organization designated for the region of which the hospital is a part. If the administrator or representative contacts the organ procurement organization, he or she shall provide the organ procurement organization with the identifier number of the patient, the patient's age, the actual or potential cause of the patient's death and, if available, the patient's medical history.

2. If the organ procurement organization is contacted under subd. 1., the organ procurement organization shall, in consultation with the attending physician of the patient under subd. 1., determine if an anatomical gift is suitable, based upon accepted medical standards, for a purpose specified in sub. (6) (a). If the organ procurement organization and the patient's attending physician determine that an anatomical gift is not so suitable, hospital personnel shall make a notation to this effect in the patient's medical record. If the organ procurement organization and the patient's attending physician determine that an anatomical gift is so suitable, an organ procurement organization representative or a requester designated by the organ procurement organization shall discuss with an available individual, under the priority established in sub. (3) (a), the option to make or refuse to make an anatomical gift and request, subject to sub. (6m), that the individual make an anatomical gift of all or a part of the decedent's body.

3. The hospital administrator or representative or the organ procurement organization representative or designated requester shall make the request with reasonable discretion and sensitivity to the circumstances of the family. A request need not be made if the gift is not suitable, based upon accepted medical standards, for a purpose specified in sub. (6) (a) or if the requester knows that the patient, or the member of the class of individuals to whom the request would be directed under sub. (3) (a), has a cultural or religious objection or any other objection to the making of an ana-

tomical gift. An entry shall be made in the medical record of the patient, in accordance with the rules promulgated under par. (f), stating the name and affiliation of the individual making the request and the name, response and relationship to the patient of the individual to whom the request was made.

(bm) If at or near the time of death of a patient a hospital knows that an anatomical gift of all or a part of the patient's body has been made under sub. (3) (a), that a release and removal of a part of the patient's body has been permitted under sub. (4) or (4m) or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital. If a donee is neither named nor known to the hospital, the hospital shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part of the body of the patient or individual.

(c) All of the following persons, under the following circumstances, shall make a reasonable search for a document of gift or other information identifying the individual as a donor or as an individual who has revoked or refused to make an anatomical gift:

1. A law enforcement officer, fire fighter, emergency medical technician – paramedic, ambulance service provider or emergency medical technician – basic who finds an individual whom the person believes is dead or near death.

2. A hospital, upon the admission of an individual who is at or near the time of death, if there is not immediately available any other source of that information.

(d) If a document of gift, revocation of a document of gift or evidence of refusal to make an anatomical gift is located by the search required by par. (c) 1. and the individual or decedent to whom it relates is taken to a hospital, the hospital shall be notified of the contents and the person locating the document, revocation or other evidence shall send it to the hospital.

(f) The department of health services shall promulgate rules that do all of the following:

Note: Par. (f) (intro.) is shown as amended eff. 7-1-08 by 2007 Wis. Act 20, section 9121 (6) (a). Prior to 7-1-08 it reads:

(f) The department of health and family services shall promulgate rules that do all of the following:

1. Set forth policies and procedures to be followed for discussing the anatomical gift donation process with members of the patient's family in situations under par. (b) 2. and 3. in which there is or is not a document of gift.

2. Prescribe the manner in which information obtained under par. (b) 2. and 3. regarding anatomical gift donations, revocations and refusals shall be placed in the patient's medical record so that it is readily accessible to hospital and other medical personnel in the event of the death of the patient.

(6) DONEES; PURPOSES OF ANATOMICAL GIFTS. (a) Any of the following persons may become donees of anatomical gifts for the purposes stated:

1. A hospital, physician or organ procurement organization, for transplantation, therapy, medical or dental education, research, or advancement of medical or dental science.

2. An accredited medical or dental school, college or university for education, research or advancement of medical or dental science.

3. A designated individual for transplantation or therapy needed by that individual.

(b) A donor may make an anatomical gift to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, any hospital may accept the anatomical gift.

(c) If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under sub. (3) (a), the donee may not accept the anatomical gift.

157.06 DISPOSITION OF HUMAN REMAINS

(6m) CONSENT FOR OR LIMITATION ON CERTAIN USES OF BONES OR TISSUE; REQUIREMENTS. (a) A hospital, organ procurement organization, tissue bank, coroner, or medical examiner that provides a document of gift to a potential donor or to an individual under sub. (3) (a) shall include in the document of gift the following sentences: "I understand that donated bones or tissues, including skin, may have numerous uses, including for reconstructive and cosmetic purposes, and that multiple organizations, including nonprofit and for-profit organizations, may recover, process, or distribute the donations. I further understand that I may, by this document, limit the use of the bones or tissues, including skin, that are donated or types of organizations that recover, process, or distribute the donation."

(b) The document of gift under par. (a) shall include, following the 2nd sentence required in par. (a), all of the following:

1. A line or space for the donor or individual under sub. (3) (a) to sign or initial to acknowledge that he or she has read the sentences specified in par. (a) or that the sentences have been read aloud to him or her. Except as provided in sub. (3) (c) 2. c., failure of the donor or individual to place his or her initials or signature in the line or space is a refusal to make an anatomical gift of bones or tissues.

2. A line or space for the donor or individual under sub. (3) (a) to sign or initial and specify a limitation, if any, on the use of bones or tissues or on the types of organizations that recover, process, or distribute the donation.

(c) If a potential donor or individual makes an anatomical gift under this subsection, the hospital, organ procurement organization, tissue bank, coroner, or medical examiner that provides to the donor or individual a document of gift under par. (a) shall also provide the donor or individual with the telephone number and address of the agency or organization that recovers the anatomical gift.

(d) The requester under par. (a) shall provide the donor or the individual under sub. (3) (a), as applicable, with a copy of any document of gift executed under the requirements of this subsection.

(7) DELIVERY OF DOCUMENT OF GIFT. (a) Delivery of a document of gift during the donor's lifetime to another is not required for the validity of an anatomical gift.

(b) If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after the donor's death. The document of gift, or a copy, may be deposited in any hospital, organ procurement organization or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of an interested person, upon or after the donor's death, the person in possession shall allow the interested person to examine or copy the document of gift.

(8) RIGHTS AND DUTIES AT DEATH. (a) Rights of a donee created by an anatomical gift are superior to rights of others except for autopsies under sub. (10) (b). A donee may accept or reject an anatomical gift. If a donee accepts an anatomical gift of an entire body for a purpose other than transplantation or therapy, the body may not be delivered to the donee or the donee's agent if the surviving spouse or other person who assumes custody of the body requests a funeral service or other last rites for the deceased. If such a request is made, the body may not be delivered until after the funeral or rites have been conducted. If the entire body is given for transplantation or therapeutic purposes or if the gift is of a part of a body, the donee, upon the death of the donor and before embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part of the body, custody of the remainder of the body vests in the person under obligation to dispose of the body.

(b) The time of death shall be determined by a physician who attends the donor at death or, if none, the physician who certifies the death. Neither the physician who attends the donor at death nor the physician who determines the time of death may participate in the procedures for removing or transplanting a part of the

donor's body unless the document of gift designates a particular physician under sub. (2) (d).

(c) If there has been an anatomical gift, a physician may remove any donated parts of the body, a technician may remove any donated tissue or bone and an enucleator may remove any donated eyes or parts of eyes, after determination of death by a physician. Any individual acting under the direction of a physician and any funeral director licensed under ch. 445 may perform the functions of an enucleator under this section if he or she has completed a course in eye enucleation and holds a valid certification of competence from a medical college approved by the medical examining board under s. 448.05 (2). A certificate of competence shall be valid for 3 years.

(9) PROCUREMENT AND USE. (a) Each hospital in this state, after consultation with other hospitals and with the organ procurement organization in whose designated service area the hospital is located, shall establish agreements or affiliations for coordination of procurement and use of human bodies and parts.

(b) A vascularized organ that is obtained by an organ procurement organization for which the designated service area primarily includes area in this state shall be used within that designated service area unless par. (c) applies.

(c) If no suitable potential recipient for the vascularized organ is specified on a waiting list of a hospital that is within the designated service area of the organ procurement organization specified in par. (b), that organ procurement organization shall offer the vascularized organ for use by any other organ procurement organization for which the designated service area primarily includes area in this state.

(d) If no suitable potential recipient for the vascularized organ is specified on a waiting list of a hospital that is within the designated service area of the organ procurement organization to which the vascularized organ is offered under par. (c), the organ procurement organization specified in par. (b) shall do one of the following:

1. If the organ procurement organization has found that it is in the best interests of persons on waiting lists in this state in need of transplanted vascularized organs and will increase the number of people receiving transplants to enter into a reciprocal sharing agreement with an organ procurement organization for which the designated service area primarily is outside this state, and has entered into such an agreement, offer the vascularized organ for use by the organ procurement organization under the agreement.

2. Offer the vascularized organ for use by an entity that distributes vascularized organs on a regional or national basis under a contract with the federal department of health and human services or a subcontract with a contractor with the federal department of health and human services.

(9m) FORMS FOR REMOVAL OF ORGANS AND CERTAIN TISSUES; RULES. The department of health services shall promulgate rules prescribing all of the following:

Note: Sub. (9m) (intro.) is shown as amended eff. 7-1-08 by 2007 Wis. Act 20, section 9121 (6) (a). Prior to 7-1-08 it reads:

(9m) FORMS FOR REMOVAL OF ORGANS AND CERTAIN TISSUES; RULES. The department of health and family services shall promulgate rules prescribing all of the following:

(a) A form for removal of organs for use under sub. (4m) (e) 1. and 3.

(b) A form for removal of tissue, other than cardiovascular tissue, for use under sub. (4m) (e) 2. and 3.

Cross Reference: See also ch. HFS 137, Wis. adm. code.

(10) EXAMINATION, AUTOPSY, LIABILITY. (a) An anatomical gift authorizes any reasonable examination necessary to assure medical acceptability of the gift for the purposes intended.

(b) This section is subject to the laws of this state prescribing powers and duties of the coroner, medical examiner and other physicians licensed to perform autopsies, with respect to autopsies and the reporting of certain deaths under ch. 979.

(c) A hospital, physician, coroner, medical examiner, enucleator or other person, who acts in accordance with this section or

with the applicable anatomical gift law of another state or a foreign country or attempts in good faith to do so, is not liable for that act in a civil action or criminal proceeding.

(d) A person who makes an anatomical gift under sub. (2) or (3) and the person's estate are not liable for any injury or damage that may result from the making or the use of the anatomical gift.

(e) A person who fails to discharge the duties imposed by sub. (5) (c) and (d) is not liable for that act or inaction in a civil action or criminal proceeding.

(10m) PENALTY. Whoever fails to comply with the requirement to provide sentences under sub. (3) (c) 2. b. or sub. (6m) (a) may be subject to a forfeiture of not less than \$500 nor more than \$1,000 for each violation.

(11m) EFFECT OF PRIOR DOCUMENT OF GIFT. Notwithstanding the requirements of this section, a document of gift that was made under the requirements of s. 157.06, 1987 stats., is deemed to comply with the requirements of this section.

History: 1971 c. 40 s. 93; 1971 c. 213 s. 5; 1977 c. 46, 124; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1981 c. 20, 290; 1983 a. 485; 1985 a. 286, 315; 1985 a. 316 s. 14; Stats. 1985 s. 157.06; 1989 a. 105; 1989 a. 298 ss. 3, 10m, 11m; 1991 a. 32; 1995 a. 27 s. 9126 (19); 1997 a. 52, 206, 305; 1999 a. 83; 2001 a. 103; 2005 a. 229, 230; 2007 a. 20 s. 9121 (6) (a).

Chapters 69 and 157 are not alternatives to the requirement in s. 979.10 that anyone cremating a corpse must first obtain a cremation permit from the coroner. University medical schools or anyone else qualified to receive a corpse can receive a corpse for research without first obtaining a permit. 77 Atty. Gen. 218.

SUBCHAPTER II CEMETERIES

157.061 Definitions. Except as otherwise provided, in this subchapter:

(1) "Burial" means entombment, inurnment or interment.

(1g) "Business day" has the meaning given in s. 421.301 (6).

(1m) "Care fund" means one or more accounts or other investments established for the care of a cemetery.

(1r) "Cemetery association" means an association formed under s. 157.062.

(2) "Cemetery authority" means any person who owns or operates a cemetery specified in s. 157.065 (1).

(2g) "Cemetery board" means the board created in s. 15.405 (3m).

(2m) "Cemetery lot" means a grave or 2 or more contiguous graves and, when used in reference to the sale, purchase or ownership of a cemetery lot, includes the right to bury human remains in that cemetery lot.

(3) "Cemetery merchandise" means goods associated with the burial of human remains, including monuments, markers, nameplates, vases and urns, and any services that are associated with supplying or delivering those goods or with the burial of human remains and that may be lawfully provided by a cemetery authority. The term does not include caskets or outer burial containers.

(4) "Dedicated" means platted for use exclusively as a cemetery and qualified for the exemption from general property taxes under s. 70.11 (13).

(5) "Department" means the department of regulation and licensing.

(7) "Family member" means a spouse or an individual related by blood, marriage or adoption within the 3rd degree of kinship as computed under s. 990.001 (16).

(7m) "Grave" means a piece of land that is used or intended to be used for an underground burial of human remains, other than a burial in an underground mausoleum space.

(8) "Human remains" means the body of a deceased individual that is in any stage of decomposition or has been cremated.

(9) "Mausoleum" means a building, structure or part of a building or structure that is used or intended to be used for the burial of human remains.

(10) "Mausoleum space" means a niche, crypt or specific place in a mausoleum that contains or is intended to contain human remains.

(11) "Municipality" means town, village or city.

(11g) "Outer burial container" means any container that is placed or intended to be placed into the burial excavation of a grave and into which a casket is placed or intended to be placed at the time of burial.

(11r) "Payment of principal" means the portion of a payment for the purchase of a cemetery lot, cemetery merchandise or a mausoleum space that represents the principal amount owed by the purchaser for the cemetery lot, cemetery merchandise or mausoleum space, and does not include any portion of the payment that represents any taxes, finance or interest charges or insurance premiums.

(12) "Preneed sales contract" means an agreement for the sale of cemetery merchandise that is to be delivered after the date of the initial payment for the merchandise, or for the sale of an undeveloped space.

(13) "Preneed trust fund" means an account or other investment in which a portion of the proceeds received under a preneed sales contract is deposited.

(14) "Public mausoleum" means a mausoleum that holds or is intended to hold more than 10 human remains or a mausoleum in which at least one mausoleum space is offered for sale to the general public.

(15) "Religious association" means any church, synagogue or mosque or any religious society organized under ch. 187.

(16) "Sale" means a transfer for consideration of any interest in ownership, title or right to use.

(17) "Undeveloped space" means a mausoleum space that is not ready for the burial of human remains on the date of the sale of the mausoleum space.

History: 1983 a. 189; 1985 a. 316 s. 18; Stats. 1985 s. 157.061; 1989 a. 307; 1991 a. 269; 1997 a. 188; 1999 a. 32; 2005 a. 25.

157.062 Cemetery associations; creation; powers and duties.

(1) ORGANIZATION. Seven or more residents of the same county may form a cemetery association. They shall meet, select a chairperson and secretary, choose a name, fix the annual meeting date, and elect by ballot not less than 3 nor more than 9 trustees whom the chairperson and secretary shall immediately divide by lot into 3 classes, who shall hold their offices for 1, 2 and 3 years, respectively. Within 3 days, the chairperson and secretary shall certify the corporate name, the names, home addresses and business addresses of the organizers and of the trustees, and their classification, and the annual meeting date acknowledged by them, and, except as provided in sub. (9), deliver the certification to the department of financial institutions. The association then has the powers of a corporation.

(2) AMENDMENTS. The association may change its name, the number of trustees or the annual meeting date by resolution at an annual meeting, or special meeting called for such purpose, by a majority vote of the members present, and, except as provided in sub. (9), by delivering to the department of financial institutions a copy of the resolution, with the date of adoption, certified by the president and secretary or corresponding officers.

(3) VALIDATION. When there shall have been a bona fide attempt to organize a cemetery association, but a failure to record a properly drawn and executed certificate of organization, and it has in good faith bought and platted grounds and conveyed cemetery lots and carried on business for over 25 years, the same shall be a body corporate from the date of conveyance to it of real estate, and its transfers and other transactions are validated.

(4) MEETINGS; ELECTIONS. (a) An annual election shall be held during the annual meeting. The annual meeting, and any special meeting described in sub. (2), shall be held at a place in the county chosen by the trustees upon public notice as required by the bylaws. Trustees chosen after the first election shall be proprietors

157.062 DISPOSITION OF HUMAN REMAINS

of cemetery lots in the cemetery, residents of the state, and hold office for 3 years. Election shall be by ballot and a plurality shall elect. Each owner of one or more cemetery lots is entitled to one vote, and one of several owners of a cemetery lot, designated by the majority of them, shall cast the vote.

(b) If the annual election is not held on the day fixed for the annual meeting, the trustees may appoint another day, not more than 60 days after the annual meeting, and give public notice of time and place, and if an election is not so held 5 members may apply to the judge of a court of record in the county for an order granting power to hold an election, by publishing in the county a class 2 notice, under ch. 985, of the application and the judge shall grant the application, and election shall then be held upon like notice. The terms of trustees expire on the date of the annual meeting in the year in which they are scheduled to expire, except that if no election is held at the annual meeting the terms expire on the date of the next election held under this paragraph.

(5) **TRUSTEES; DUTIES; REPORT.** The trustees may fill vacancies for the unexpired term. One shall be chosen president, and they shall appoint a secretary and treasurer, and may require security of the treasurer. The trustees shall manage the affairs and property of the association and control and beautify the cemetery, and may establish regulations for those purposes. The trustees shall make and file written reports as required in s. 157.62 (1) and (2).

(6) **DISSOLUTION; REORGANIZATION.** (a) The association is dissolved by failure to hold an annual election for 3 successive years.

(b) If an association that has been dissolved under par. (a), or any group that was never properly organized as a cemetery association, has cemetery grounds and human remains are buried in the cemetery grounds, 5 or more members, or persons interested as determined by order of the circuit judge under par. (c), may publish a class 3 notice, under ch. 985, in the municipality in which the cemetery is located, of the time, place and object of the meeting, assemble and reorganize by the election of trustees and divide them into classes as provided in sub. (1), the commencement of the terms to be computed from the next annual meeting date. The secretary shall enter the proceedings of the meeting on the records. The association is reorganized upon delivery of a copy of the proceedings to the department of financial institutions, except as provided in sub. (9). Upon reorganization, the title to the cemetery grounds, trust funds and all other property of the association or group vests in the reorganized association, under the control of the trustees. The reorganized association may continue the name of the dissolved association or may adopt a new name.

(c) If an association is dissolved under par. (a) or any group has never been properly organized as cemetery association, and there are fewer than 5 members living or residing in the county where the cemetery is located, the circuit judge for the county shall upon the petition of any person interested, make an order determining who are persons interested in the cemetery. Any adult person who owns an interest in any cemetery lot in the cemetery, who is related to any person buried in the cemetery, or who is a descendant, brother, sister, nephew, niece or surviving spouse of a member of the dissolved association, is an interested person. The circuit judge may make the order upon evidence he or she deems sufficient, with or without hearing. The order need not contain the names of all persons interested, but shall contain the names of at least 5 such persons.

(6m) **FORMS.** The department of financial institutions may prescribe and furnish forms for providing the information required under subs. (1) to (6).

(7) **TAX FOR MAINTENANCE.** When a cemetery association having control of a cemetery in a town, village or city of the third or fourth class has insufficient maintenance funds it may certify in writing to the clerk of such town, city or village the amount deemed necessary during the next ensuing year, the amount the association has therefor, and the deficiency, and the governing body of such town, city or village may levy and collect a tax therefor and pay the same to the association. If the cemetery is in more

than one such municipality the deficiency shall be equitably distributed. If a cemetery located wholly within a town, village or city of the third or fourth class has also buried therein decedents from an adjoining municipality, the association having insufficient funds, the association may certify in writing to its municipal clerk and to the clerk of such other municipality, the amount deemed necessary for the ensuing year, the amount the association has therefor, the amount of the deficiency and the equitable amount that each municipality should contribute; whereupon the governing body of each such municipality may levy and collect a tax therefor and pay the same to the association.

(8) **LIMITED LIABILITY OF TRUSTEES AND OFFICERS.** (a) Except as provided in pars. (b) to (d), a trustee or officer of a cemetery association organized under this section is not liable to the association, its members or creditors, or any person asserting rights on behalf of the association, its members or creditors, or any other person, for damages, settlements, fees, fines, penalties or other monetary liabilities arising from a breach of, or failure to perform, any duty resulting solely from his or her status as a trustee or officer, unless the person asserting liability proves that the breach or failure to perform constitutes any of the following:

1. A willful failure to deal fairly with the association or its members in connection with a matter in which the trustee or officer has a material conflict of interest.

2. A violation of criminal law, unless the trustee or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

3. A transaction from which the trustee or officer derived an improper personal profit.

4. Willful misconduct.

(b) Except as provided in par. (c), this subsection does not apply to any of the following:

1. A civil or criminal proceeding brought by or on behalf of any governmental unit, authority or agency.

2. A proceeding brought by any person for a violation of state or federal law where the proceeding is brought pursuant to an express private right of action created by state or federal statute.

3. The liability of a trustee or officer arising from a breach of, or failure to perform, any duty relating to the receipt, handling, investment or other use of care funds or any other funds made in trust.

4. The liability of a trustee or officer for violating s. 157.12.

(c) Paragraph (b) 1. and 2. does not apply to a proceeding brought by a governmental unit, authority or agency in its capacity as a private party or contractor.

(d) This subsection does not apply to a cemetery association organized under this section if any part of the association's income is distributable among its members, trustees or officers.

(9) **EXEMPTIONS FOR CERTAIN NONPROFIT CEMETERIES.** In lieu of delivering a certification, resolution or copy of proceedings to the department of financial institutions under sub. (1), (2) or (6) (b), a cemetery association that is not required to be registered under s. 440.91 (1) and that is not organized or conducted for pecuniary profit shall deliver the certification, resolution or copy of proceedings to the office of the register of deeds of the county in which the cemetery is located.

History: 1977 c. 449 ss. 233, 497; 1983 a. 192; 1985 a. 316 s. 18; Stats. 1985 s. 157.062; 1989 a. 31, 307; 1991 a. 269; 1995 a. 27; 1997 a. 254.

Under sub. (4), cemetery association voters must be lot owners. Heirs of deceased lot owners are entitled to vote in cemetery association elections. 69 Atty. Gen. 132.

157.064 Cemetery associations and religious associations; holding property; change of ownership. (1) A cemetery or religious association authorized to hold lands for cemetery purposes may take and hold not more than 80 acres of land, to be used exclusively for burial of the dead, and personal property not exceeding \$250,000 in value, to promote the objects of the association; and if the cemetery is near to or within a 3rd class city the association may so take and hold not more than 160

9 Updated 05–06 Wis. Stats. Database
Not certified under s. 35.18 (2), stats.

acres of land; and if near to or within a 1st or 2nd class city, not more than 240 acres.

(2) A cemetery or religious association incorporated in this state and having a cemetery in or near a 1st or 2nd class city and any cemetery described under s. 157.065 (3m) (d) may acquire by gift or purchase up to 30 acres of adjoining lands for cemetery purposes, and may pay for it wholly or partly from its cemetery lot sales.

(3) When it is necessary to enlarge a cemetery owned by a cemetery or religious association, and adjoining lands cannot be acquired or can be acquired only at an exorbitant price, application may be made in writing to the circuit judge by 12 or more resident freeholders of the municipality in which the cemetery is located describing the land and setting forth the facts and the price asked, whereupon the judge shall appoint 3 resident freeholders of the county, but not of the municipality, to appraise the damages of each owner, not to exceed the price asked, but, except in cities or incorporated villages, no lands may be taken within 330 feet of a residence owned by the occupant without the occupant's written consent. The appraisers shall hear all parties upon 10 days' notice and file a report in writing with the judge within 10 days after determination. Upon payment into court of the amount appraised, the lands shall be taken. Either party may appeal as provided in s. 32.06 (10). The commissioners shall be paid, by the party seeking to take the land, \$3 for each day actually employed and 6 cents for each mile necessarily traveled.

(5) Whenever a cemetery association votes to convey cemetery property and all trust funds pertaining to the cemetery property to a city, village or town, the trustees of the association shall have the power to transfer the property upon the acceptance of the transfer by resolution of the governing body of the city, village or town. A conveyance under this subsection is subject to s. 157.08 (2).

(6) Whenever the majority of the members of a cemetery association, or of a religious association authorized to hold lands for cemetery purposes, present at an annual meeting or special meeting called for such purpose vote to convey all of the cemetery association's or religious association's cemetery property, trust funds and other property used for cemetery purposes to another cemetery association or religious association, the trustees of the association shall transfer the property upon the acceptance of the transfer by the other association by affirmative vote of a majority of its members present at an annual meeting or special meeting called for that purpose. Upon such acceptance, the title to the cemetery property, trust funds and other property of the transferring association vests in the accepting association under the control of the trustees of the accepting association. A conveyance under this subsection is subject to s. 157.08 (2). This subsection does not apply to a religious society organized under ch. 187.

(7) Not more than 30 days after a transfer under sub. (6), the transferring association shall notify the department of financial institutions in writing of the transfer, including the name and address of the accepting association or its treasurer. The department of financial institutions may prescribe and furnish forms for providing the information required under this subsection.

History: 1977 c. 449 s. 497; 1985 a. 316 s. 18; Stats. 1985 s. 157.064; 1987 a. 190; 1989 a. 307 ss. 19, 21 to 24; 1995 a. 27.

157.065 Location and ownership of cemeteries.

(1) No cemetery may be used for burials except any of the following:

- (a) A cemetery in use on April 4, 1864.
- (b) A cemetery organized and operated by any of the following:
 1. A municipality.
 2. A religious association.
 3. A fraternal or benevolent society.
 4. An incorporated college of a religious order.
 5. A cemetery association created under s. 157.062.

DISPOSITION OF HUMAN REMAINS 157.067

6. A corporation organized under ch. 180 or 181.

7. A limited liability company organized under ch. 183.

(2) (a) Except as provided in sub. (3), no cemetery may be established:

1. Within a recorded plat or recorded addition to a plat of any city or village, if the cemetery is within one mile of a building in the plat;

2. Outside a recorded plat or recorded addition to a plat of any city or village if the cemetery is within 3,300 feet of an inhabited dwelling that is located within a recorded plat or addition, unless the city or village consents;

3. Within 250 feet of any habitable dwelling, publicly owned building or school, unless the cemetery is establishing an extension on property it has owned continually since June 18, 1929; or

4. Within 3,300 feet of any of the following state facilities, without the consent of the state:

a. Any institution for the deaf or the blind;

b. Any mental health institute, as defined in s. 51.01;

c. A Type 1 juvenile correctional facility, as defined in s. 938.02 (19);

d. Any center for the developmentally disabled; or

e. Any state reformatory.

(b) Paragraph (a) does not apply to enlargements under sub. (3m) or s. 157.064 (2) or (3).

(3) (a) Any incorporated college of a religious order in a 4th class city may establish a private cemetery within the city on land the college owns to bury members of the religious order, if the common council consents and if each person owning a private building within 825 feet of the proposed cemetery consents.

(b) Any private military academy that provides an educational program for grades 7 to 12 in a 4th class city may establish a private cemetery within the city on land that the military academy owns, if the common council consents. No mausoleum within a cemetery established under this paragraph may exceed 3,500 square feet in area.

(3m) Any of the following cemeteries may enlarge only in the following manner:

(a) Any cemetery in a village may enlarge with the consent of the village board and of the owners of each building within 250 feet of the addition.

(b) Any cemetery in a 3rd or 4th class city may enlarge with the consent of the common council.

(c) Notwithstanding pars. (a) and (d), any cemetery established before April 30, 1887, in a village and located within 100 feet of the village limits may extend to the village limits with the consent of the village board.

(d) Notwithstanding pars. (a) to (c), any cemetery established before April 30, 1887, may expand as provided in s. 157.064.

(5) Any violation of this section is a public nuisance.

History: 1975 c. 39, 106; 1975 c. 189 s. 99 (2); 1975 c. 200, 422, 430; 1977 c. 83; 1977 c. 449 s. 497; 1979 c. 221; 1981 c. 20; 1985 a. 316 ss. 18, 25; Stats. 1985 s. 157.065; 1987 a. 190; 1989 a. 43, 307; 1993 a. 98, 112; 1995 a. 77; 1999 a. 9; 2001 a. 103, 107; 2005 a. 344.

157.067 Connection with funeral establishment prohibited. (1) In this section, "funeral establishment" has the meaning given in s. 445.01 (6), except that "funeral establishment" does not include a building or part of a building that is erected under s. 157.11 (1) for holding or conducting funeral services if dead human bodies are not embalmed, cared for, or prepared for burial or transportation, in the building.

(2) No cemetery authority may permit a funeral establishment to be located in the cemetery. No cemetery authority may have or permit an employee or agent of the cemetery to have any ownership, operation or other financial interest in a funeral establishment. Except as provided in sub. (2m), no cemetery authority or employee or agent of a cemetery may, directly or indirectly, receive or accept any commission, fee, remuneration or benefit of

157.067 DISPOSITION OF HUMAN REMAINS

any kind from a funeral establishment or from an owner, employee or agent of a funeral establishment.

(2m) A cemetery authority may accept a fee or remuneration from a funeral establishment or from an owner, employee or agent of a funeral establishment if all of the following requirements are satisfied:

(a) The fee or remuneration is a payment to the cemetery authority for a burial in the cemetery authority's cemetery.

(b) The fee or remuneration payment is made on behalf of the person who is responsible for paying for the funeral establishment's services.

(c) The funeral establishment will be reimbursed for the fee or remuneration by charging the person who is responsible for paying the funeral expenses an amount that is identical to the amount of the fee or remuneration paid by the funeral establishment to the cemetery authority.

History: 1993 a. 100, 386; 2005 a. 266.

If subsidiary corporations have prohibited financial connections, their corporate structure will not save them from the prohibitions of ss. 157.067 (2) and 445.12 (6). Those statutes are not unconstitutionally vague. *Cemetery Services, Inc. v. Department of Regulation and Licensing*, 221 Wis. 2d 817, 586 N.W.2d 191 (Ct. App. 1998), 97–2115.

157.07 Platting. **(1)** A cemetery authority shall cause to be surveyed and platted by a land surveyor registered in this state those portions of the lands that are from time to time required for burial, into cemetery lots, drives and walks, and record a plat or map of the land in the office of the register of deeds. The plat or map may not be recorded unless laid out and platted to the satisfaction of the county board of the county, and the town board of the town in which the land is situated, or, if the land is situated within a 1st class city, then only by the common council of that city.

(2) The plat or map shall show the exact location of the tract being subdivided with reference to a corner or corners established in the United States public land survey by bearings and distances, and shall show a small scale drawing of the section or government subdivision of the section in which the cemetery plat is situated, with the cemetery plat indicated. The plat or map shall include the certificate of the surveyor containing the name of the cemetery authority, the date of the survey, the surveyor's stamp or seal and signature and the surveyor's statement that the survey is true to the surveyor's best knowledge and belief.

(3) The plat or map shall be made on a durable white media that is 22 inches wide by 30 inches long with a permanent nonfading black image. Seals or signatures that are reproduced on images that comply with this subsection have the force and effect of original seals and signatures. When more than one sheet is used for any one plat or map, they shall be numbered consecutively and each sheet shall contain a notation showing the whole number of sheets in the plat, and its relation to the other sheets. The sheets may be provided by the county through the register of deeds on terms determined by the county board. The surveyor shall leave a binding margin of 1.5 inches on the left side of the 30-inch length and a one-inch margin on all other sides.

(4) The cemetery authority shall cause the plat or map to be recorded within 30 days of the date of its approval, together with the evidence of the town and county board's or common council's approval, which shall be a copy of the resolution adopted by the county board and by the town board, or by the common council, certified by the county clerk and the town clerk, respectively, or city clerk, and affixed to the map or plat. For failure to do so, the plat shall be void.

(5) The cemetery authority may vacate or replat any portion of its cemetery upon the filing of a petition with the circuit court describing the portion and setting forth the facts and reasons therefor. The court shall fix a time for hearing and direct publication of a class 3 notice, under ch. 985, and the court shall order a copy of the notice to be mailed to at least one interested person, as to each separate parcel involved, whose post-office address is known or can be ascertained with reasonable diligence, at least 20

days before such hearing. If the court finds that the proposed vacating or replatting is for the best interest of the cemetery authority and that the rights of none to whom cemetery lots have been conveyed will be injured, it shall enter an order reciting the jurisdictional facts and its findings and authorizing the vacating or replatting of the lands of the cemetery. The order shall be effective when recorded by the register of deeds.

(6) This section does not apply to a religious society organized under ch. 187.

History: 1983 a. 473; 1989 a. 307 ss. 29, 30, 34; 1993 a. 490; 1995 a. 110; 2005 a. 41.

157.08 Conveyances. **(1)** After the plat or map is recorded under s. 157.07, the cemetery authority may sell and convey cemetery lots. Conveyances shall be signed by the chief officer of the cemetery authority, and by the secretary or clerk of the cemetery authority, if any. Before delivering the conveyance to the grantee, the cemetery authority shall enter on records kept for that purpose, the date and consideration and the name and residence of the grantee. The conveyances may be recorded with the register of deeds.

(2) (a) If a cemetery lot or mausoleum space is sold by a cemetery authority and used or intended to be used for the burial of the human remains of the purchaser or the purchaser's family members, the purchaser's interests in the ownership of, title to or right to use the cemetery lot or mausoleum space are not affected or limited by any claims or liens of other persons against the cemetery authority.

(b) Before a cemetery authority sells or encumbers any cemetery land, except for a sale described in par. (a), the cemetery authority shall notify the cemetery board in writing of the proposed sale or encumbrance. If within 60 days after the cemetery board is notified of the proposed sale or encumbrance the cemetery board notifies the cemetery authority in writing that the cemetery board objects to the sale or encumbrance the cemetery authority may not sell or encumber the cemetery land unless the cemetery board subsequently notifies the cemetery authority in writing that the objection is withdrawn. The cemetery board may object to a sale or encumbrance only if it determines that the cemetery authority will not be financially solvent or that the rights and interests of owners of cemetery lots and mausoleum spaces will not be adequately protected if the sale or encumbrance occurs. The cemetery board may, before the expiration of the 60-day period, notify the cemetery authority in writing that the cemetery board approves of the sale or encumbrance. Upon receipt of the cemetery board's written approval, the cemetery authority may sell or encumber the cemetery land and is released of any liability under this paragraph. The cemetery board shall make every effort to make determinations under this paragraph in an expeditious manner.

(c) A preneed sales contract is enforceable against the successor in interest of the cemetery authority that made the sale.

(3) A cemetery authority may sell its personal property at its discretion.

(5) Subsections (1) and (2) (b) do not apply to a religious society organized under ch. 187, and sub. (2) (b) does not apply to a cemetery authority that is not required to be licensed under s. 440.91 (1) and that is not organized or conducted for pecuniary profit.

History: 1977 c. 449 s. 497; 1989 a. 307; 1991 a. 269; 2005 a. 25.

157.10 Alienation and use of cemetery lots. While any person is buried in a cemetery lot, the cemetery lot shall be inalienable, without the consent of the cemetery authority, and on the death of the owner, ownership of the cemetery lot shall descend to the owner's heirs; but any one or more of such heirs may convey to any other heir his or her interest in the cemetery lot. No human remains may be buried in a cemetery lot except the human remains of one having an interest in the cemetery lot, or a relative, or the

husband or wife of such person, or his or her relative, except by the consent of all persons having an interest in the cemetery lot.

History: 1989 a. 307.

157.11 Improvement and care of cemetery lots and grounds. (1) FENCE; FUNERAL BUILDING. A cemetery authority may enclose the grounds of its cemetery with a suitable fence, and may erect thereon a building for funeral services.

(2) REGULATIONS. The cemetery authority may make regulations for management and care of the cemetery. No person may plant, in the cemetery, trees or shrubs, nor erect wooden fences or structures or offensive or dangerous structures or monuments, nor maintain them if planted or erected in violation of the regulations. The cemetery authority may require any person owning or controlling a cemetery lot to do anything necessary to comply with the regulations by giving reasonable personal notice in writing if the person is a resident of the state, otherwise by publishing a class 3 notice, under ch. 985, in the county. If the person fails to comply within 20 days thereafter, the cemetery authority may cause it to be done and recover from the person the expense. The cemetery authority may also impose a forfeiture not exceeding \$10 for violation of the regulations posted in 3 conspicuous places in the cemetery, recoverable under ch. 778. Each employee and agent of the cemetery authority shall have constable powers in enforcing the regulations.

(3) CONTRACTS. The cemetery authority may contract with persons who own or are interested in a cemetery lot for its care. The contract shall be in writing, may provide that the cemetery lot shall be forever exempt from taxes, assessments or charges for its care and the care and preservation of the grounds, shall express the duty of the cemetery authority, be recorded in a book kept for that purpose, and be effective when the consideration is paid or secured.

(4) ASSOCIATIONS OF RELATIVES. Persons owning a cemetery lot or having relatives buried in a cemetery may incorporate an association to hold and occupy a previously constituted cemetery, and to preserve and care for the same. Section 157.062 shall apply to the association. Nothing in this subsection shall give rights of burial. A municipality may lease a municipal cemetery to a cemetery association for preservation and may contract to permit the association to use cemetery funds therefor. Such leases and contracts may be revoked at will by the municipal board.

(5) SUM REQUIRED. The cemetery authority shall annually fix the sum necessary for the care of cemetery lots and care and improvement of the cemetery, or to produce a sufficient income for those purposes.

(7) ASSESSMENTS. (a) The cemetery authority may annually assess upon the cemetery lots amounts not to exceed the amounts reasonably required for actual and necessary costs for cleaning and care of cemetery lots and care and improvement of the cemetery. Notice of the assessment, along with a copy of this section, shall be mailed to each owner or person having charge of a cemetery lot, at the owner's or person's last-known post-office address, directing payment to the cemetery authority within 30 days and specifying that such assessments are a personal liability of the owner or person.

(b) The cemetery authority may fix and determine the sum reasonably necessary for the care of the grave or cemetery lot in reasonable and uniform amounts, which amounts shall be subject to the approval of the court, and may collect those amounts as part of the funeral expenses.

(c) Before ordering distribution of the estate of a deceased person, the court shall order paid any assessment under this section, or the sum so fixed for the care of the cemetery lot or grave of the deceased.

(d) When uniform care of a cemetery lot has been given for 2 consecutive years or more, for which assessments are unpaid, after notice as provided in sub. (2), right to burial is forfeited until delinquent assessments are paid. When uniform care has been

given for 5 consecutive years or more and the assessments are unpaid, upon like notice, title to all unoccupied parts of the cemetery lot shall pass to the cemetery authority and may be sold, the payment of principal to be deposited into the care fund. Before depositing the payment of principal into the care fund, the cemetery authority may retain an amount necessary to cover the cemetery authority's administrative and other expenses related to the sale, but the amount retained may not exceed 50% of the proceeds.

(8) GIFTS. The cemetery authority shall take, hold and use any gifts, or the income and proceeds of any gifts, as may be made in trust or otherwise, for the improvement, maintenance, repair, preservation or ornamentation of any cemetery lot or structure in the cemetery, according to the terms of the gift and regulations by the cemetery authority.

(9) HANDLING OF PROPERTY RECEIVED AS GIFT. (a) Before a cemetery authority receives a gift, the surety bonds of the cemetery authority shall be increased to cover such amount if it does not then do so. If the bonds are not filed, or the cemetery authority fails to do anything required by this subsection, the judge may appoint a trustee, and all property and money so given and evidences of title and securities shall be delivered to the trustee.

(9g) CARE FUND FOR CEMETERY LOTS. (a) 1. Except as provided in ss. 66.0603 (1m) (c) and 157.19 (5) (b), funds that are received by a cemetery authority for the care of a cemetery lot shall be invested in one or more of the following manners:

a. Deposited and invested as provided in s. 157.19.

b. Deposited with the treasurer of the county or city in which the cemetery is located if the governing body of the county or city accepts such deposits.

c. If not invested as provided in subd. 1. a. or b., otherwise deposited by the cemetery authority in an investment approved by the department if the care funds are segregated and invested separately from all other moneys held by the cemetery authority.

2. The manner in which the care funds are invested may not permit the cemetery authority to withdraw the care fund's principal amount. The income from the investment of a care fund for the care of cemetery lots may be used only to maintain the cemetery lots and grounds, except that if the amount of income exceeds the amount necessary to maintain the cemetery lots or grounds properly, the excess amount may be used to maintain any other portion of the cemetery, including mausoleums. If the care funds are deposited with a city or county, or previously deposited with a village, there shall be paid to the cemetery authority annually interest on funds so deposited of not less than 2% per year. The governing body of any city or county, or any village or town in the case of previous deposits, may determine to return all or a part of any funds deposited by a cemetery authority, and that cemetery authority shall accept the returned funds within 30 days after receiving written notice of that action. If the cemetery authority is dissolved or becomes inoperative, the county or city shall use the interest on the funds for the care and upkeep of the cemetery. Deposit shall be made and the income paid over from time to time, not less frequently than once each year, and receipts in triplicate shall be given, one filed with the county clerk, one with the cemetery authority and one given to the person making the deposit. Deposits shall be in the amount of \$5 or a multiple thereof. Records and receipts shall specify the cemetery lot for the care of which the deposit is made. Reports of money received for care and of money and property received as gifts shall be made annually as provided in s. 157.62 (2).

(b) Anyone having in custody or control any cemetery care trust fund received other than by testament shall, upon demand, deliver it to the cemetery authority to be handled as provided in this subsection.

(c) Except as provided in sub. (11), any cemetery authority that sells a cemetery lot on or after November 1, 1991, shall deposit 15% of each payment of principal into a care fund under par. (a) within 30 days after the last day of the month in which the payment is received, except as provided in sub. (7) (d) and s. 157.115 (2)

157.11 DISPOSITION OF HUMAN REMAINS

(f). The total amount deposited must equal 15% of the total amount of all payments of principal that have been received, but not less than \$25.

(9m) ACTION BY DISTRICT ATTORNEY. If any money or property is not turned over when required by this section, or default occurs under a bond, the district attorney, upon the request of the department of regulation and licensing, shall bring action to recover.

(9r) TAX AND OTHER EXEMPTIONS. Gifts and trusts under this section shall be exempt from taxation and the law against perpetuities, accumulations and mortmain.

(10) EXEMPTION FOR RELIGIOUS SOCIETIES. Subsections (1) to (9), (9g) (a) and (b), (9m) and (9r) do not apply, but sub. (9g) (c) does apply, to a religious society organized under ch. 187.

(11) EXEMPTION FOR CERTAIN NONPROFIT CEMETERIES. Subsection (9g) does not apply to a cemetery authority that is not required to be licensed under s. 440.91 (1) and that is not organized or conducted for pecuniary profit.

History: 1971 c. 41 s. 12; 1977 c. 449 ss. 234, 497; 1979 c. 32 s. 92 (8); 1979 c. 110 s. 60 (13); 1985 a. 200; 1985 a. 316 s. 25; 1987 a. 190; 1989 a. 307; 1991 a. 269; 1999 a. 150 s. 672; 2001 a. 30; 2005 a. 25.

Cross Reference: See s. 863.09 (2) for court order concerning care of graves.

Cross Reference: See s. 701.11 (3) for authorization to distribute small trusts to cemeteries.

Cross Reference: See also chs. RL 53 and 54, Wis. adm. code.

Sub. (9) (e) [now sub. (9g) (b)] neither requires nor authorizes payment to entities other than ch. 157 cemetery associations. *Krawczyk v. Bank of Sun Prairie*, 161 Wis. 2d 792, 468 N.W.2d 773 (Ct. App. 1991).

157.111 Opening and closing of burial places. If a grave, mausoleum space or other place used or intended to be used for the burial of human remains is located in a cemetery owned or operated by a cemetery authority, only the cemetery authority or a person designated by the cemetery authority may open or close the grave, mausoleum space or other place used or intended to be used for the burial of human remains.

History: 1993 a. 386.

157.112 Reburial of human remains by a cemetery authority. (1) In this section, “rebury” means to disintomb, disinter or disinter human remains that are buried in a cemetery and reentomb, reinurn or reinter the human remains in another grave, mausoleum space or other place used or intended to be used for the burial of human remains that is located in the same cemetery.

(2) A cemetery authority may rebury human remains that are buried in a cemetery owned or operated by the cemetery authority for the purpose of correcting an error made by the cemetery authority in the burial of those human remains.

(3) A cemetery authority may rebury human remains under sub. (2) without first obtaining an authorization under s. 69.18 (4), but the cemetery authority shall do all of the following:

(a) No later than 30 days after reburying human remains under sub. (2), provide written notice of the reburial to the coroner or medical examiner of the county in which the reburial occurs.

(b) Notify one of the following by registered mail of the reburial:

1. The decedent’s spouse.
2. If the person specified in subd. 1. is not available, an adult son or daughter of the decedent.
3. If the persons specified in subds. 1. and 2. are not available, either parent of the decedent.
4. If the persons specified in subds. 1., 2. and 3. are not available, an adult brother or sister of the decedent.

(3m) If none of the persons specified in sub. (3) (b) 1. to 4. are available for notification under sub. (3) (b), the cemetery authority shall maintain a record of its attempt to provide notification under sub. (3) (b) for not less than 10 years from the date of the reburial of the human remains under sub. (2).

(4) (a) A cemetery authority is immune from civil liability for an error that is corrected by a reburial of human remains under sub. (2).

(b) The immunity under par. (a) does not apply if the error was the result of recklessness, wanton or intentional misconduct.

History: 1995 a. 357.

157.114 Duty to provide for burials. (1) In this section, “cemetery authority” does not include a municipality that takes control of a cemetery under s. 157.115 (1) (b).

(2) A cemetery authority shall, insofar as practicable, provide for burials during each season, including winter. Nothing in this subsection may be construed to prohibit a cemetery authority from charging a reasonable fee to recover the costs related to providing for a burial during difficult weather conditions.

History: 2001 a. 16.

157.115 Abandonment of cemeteries and cemetery lots. (1) ABANDONMENT OF CEMETERIES. (a) If any cemetery located on property not subject to condemnation under ch. 32 is abandoned, the circuit court for the county in which the cemetery is located may authorize the removal of bodies from the cemetery to another cemetery upon the petition of 6 or more residents of the municipality in which the cemetery is located. Prior to authorizing the removal, the court shall publish a notice to all interested parties as provided in s. 879.05 (4). The court may not authorize the removal unless suitable arrangements have been made to reinter the bodies.

(b) 1. When a cemetery authority fails to care for the cemetery for a period of one or more years, the municipality in which the cemetery is located may take control of the cemetery, manage and care for the cemetery and collect and manage all trust funds connected with the cemetery other than trust funds received by a will.

2. When a cemetery authority abandons or fails to manage or care for the cemetery for a period of 5 or more years, the municipality in which the cemetery is located shall take control of the cemetery, manage and care for the cemetery and collect and manage all trust funds connected with the cemetery other than trust funds received by a will.

(c) Whenever any cemetery in a town is falling into disuse, or is abandoned or neglected, and by reason of the removal or death of the persons interested in its upkeep there exists no association or group with authority to transfer ownership and operation of the cemetery to the town, the town board, at the expense of the town, shall take charge of the cemetery and manage and care for it, and if the town board fails to take charge of the cemetery, the circuit judge may upon petition by 6 or more persons interested in the upkeep of the cemetery order its transfer to the town, including the transfer of all assets. Cemeteries so transferred shall be managed as provided for other town cemeteries.

(2) ABANDONMENT OF CEMETERY LOTS. (a) In this subsection:

1. “Abandoned lot” means one or more graves of a cemetery lot that is not owned by the cemetery authority of the cemetery in which the cemetery lot is located if those graves have not been used for the burial of human remains and if, according to the records of the cemetery authority, all of the following apply during the 50–year period immediately preceding the date on which the notice requirement under par. (c) is satisfied:
 - a. No owner has transferred any ownership interest in the cemetery lot to any other person.
 - b. No owner has purchased or sold another cemetery lot or a mausoleum space in the cemetery.
 - c. No other grave in that cemetery lot or adjoining cemetery lot or adjoining mausoleum space that is owned or partially owned by an owner has been used for the burial of human remains.
 - d. No grave marker, monument or other memorial has been installed on the cemetery lot.
 - e. No grave marker, monument or other memorial has been installed on any other cemetery lot, in the same cemetery, that is owned or partially owned by an owner.
 - f. No nameplate, monument or other memorial has been installed to identify the human remains that are buried within a

mausoleum space, in the same cemetery, that is owned or partially owned by an owner.

g. The cemetery authority has not been contacted by an owner or assignee or received any other notice or evidence to suggest that an owner or assignee intends to use the cemetery lot for a future burial of human remains.

2. “Assignee” means a person who has been assigned in the deceased owner’s will or in any other legally binding written agreement, or who is entitled to receive under ch. 852, an ownership interest in the abandoned cemetery lot.

3. “Owner” means a person who, according to the records of the cemetery authority of the cemetery in which an abandoned cemetery lot is located, owns or partially owns the abandoned cemetery lot.

(b) No cemetery authority may resell an abandoned cemetery lot unless the cemetery authority complies with the requirements in this subsection.

(c) The cemetery authority shall mail to each owner, at each owner’s last-known address, a notice of the cemetery authority’s intent to resell the abandoned cemetery lot as provided in this subsection. If an owner is buried in the cemetery in which the abandoned cemetery lot is located or if the cemetery authority has any other evidence that reasonably supports a determination by the cemetery authority that the owner is deceased, no notice is required under this paragraph.

(d) If no notice is required under par. (c) or if, within 60 days after notice is mailed under par. (c), no owner or assignee contacts the cemetery authority to express an intent to use the abandoned cemetery lot for a future burial of human remains, the cemetery authority shall publish in a newspaper of general circulation in the county in which the abandoned lot is located, a class 3 notice under ch. 985 that includes all of the following:

1. The location of the abandoned lot.
2. The name and last-known address of each owner.
3. A statement that, unless an owner or assignee contacts the cemetery authority within the period specified in par. (e), the cemetery authority intends to resell the abandoned lot as provided in this subsection.

(e) If within 60 days after notice is published under par. (c) no owner or assignee contacts the cemetery authority to express an intent to use the abandoned lot for a future burial of human remains, the cemetery authority shall bring an action in the circuit court of the county in which the abandoned lot is located for a judgment that the cemetery lot is an abandoned lot and an order transferring ownership of the abandoned lot to the cemetery authority.

(f) If within one year after the circuit court enters a judgment and order under par. (e) no owner or assignee contacts the cemetery authority to express an intent to use the abandoned lot for a future burial of human remains, the cemetery authority may resell the abandoned lot, except as provided in par. (g). The payment of principal shall be deposited into the care fund. Before depositing the payment of principal into the care fund, the cemetery authority may retain an amount necessary to cover the cemetery authority’s administrative and other expenses related to the sale, but the amount retained may not exceed 50% of the proceeds.

(g) If at any time before an abandoned lot is resold under par. (f) an owner or assignee contacts the cemetery authority to express an intent to use the abandoned lot for a future burial of human remains, the authority may not resell the abandoned lot, and ownership of the abandoned lot shall be transferred to the owner or assignee. The cemetery authority shall pay all costs of transferring ownership under this paragraph.

(h) Nothing in this subsection prohibits a cemetery authority from seeking the authority to resell more than one abandoned lot by publishing a single class 3 notice under par. (d) or bringing a single action under par. (e) that applies to all of the abandoned lots for which such authority is sought.

History: 1989 a. 307 ss. 18m, 20, 28, 45.

157.12 Mausoleums and crematoriums. (1) DEFINITION. Notwithstanding s. 157.061 (5), in this section, “department” means the department of commerce.

(2) CONSTRUCTION OF MAUSOLEUMS. (a) Any person who constructs a mausoleum or converts a building or other structure to a mausoleum shall comply with the rules of the department and shall receive department approval in writing of the plans and specifications prior to construction or conversion. No person may modify plans or specifications which have been approved under this paragraph without approval in writing from the department, unless such modifications are cosmetic in nature. The department shall promulgate rules providing reasonable requirements governing the location, material and construction of a mausoleum, in accordance with the requirements in par. (d). Any municipality may enact ordinances governing mausoleums at least as stringent as this section.

(b) The department shall supervise construction of any public mausoleum and conversion of any building to a public mausoleum. Within 30 days after receiving written notice from the cemetery authority that the construction or conversion has been completed, the department shall inspect the public mausoleum and provide the cemetery authority with a written certification as to whether the construction or conversion complies with approved plans. If the department determines that, except for certain minor defects, the construction or conversion complies with the approved plans, the department may provide the cemetery authority with a written temporary certification of compliance that is contingent on the correction of those minor defects. A temporary certification is valid for a period designated by the department, not to exceed 6 months. No person may sell a mausoleum space, except an undeveloped space that is sold in accordance with s. 440.92, or bury human remains in a public mausoleum unless a care fund has been established for the mausoleum under sub. (3) and the department has provided the cemetery authority with a certification or a temporary certification under this paragraph. If a cemetery authority that has been provided with a temporary certification notifies the department in writing before the date on which the temporary certification expires that the defects in the construction or conversion of the public mausoleum have been corrected, the department shall, within 30 days after receiving the notice, reinspect the public mausoleum and provide the cemetery authority with a written certification as to whether the construction or conversion complies with the approved plans. If a cemetery authority that has been provided with a temporary certification does not receive a written certification from the department before the date on which the temporary certification expires that the construction or conversion complies with the approved plans, then, beginning on the date on which the certification expires, no person may sell a mausoleum space, except an undeveloped space that is sold in accordance with s. 440.92, or bury human remains in the public mausoleum until the defects are corrected and the department subsequently inspects the public mausoleum and provides the cemetery authority with a certification that the construction or conversion complies with the approved plans. The department may charge a reasonable fee to the cemetery authority for each inspection and certification provided under this paragraph if the inspection and certification are provided within the applicable 30-day period prescribed under this paragraph.

(bm) If a municipality in which a mausoleum is located requires the owner or operator of the mausoleum to obtain from the municipality a permit for the use or occupancy of the mausoleum, the municipality shall issue that permit to the owner or operator if the owner or operator has been provided with a certification or temporary certification for the mausoleum under par. (b). The permit shall be valid for a period equal to or longer than the period for which the certification or temporary certification under par. (b) is valid.

(c) 1. Except as provided in subd. 2., no person may establish or use a public mausoleum unless the mausoleum is located inside

157.12 DISPOSITION OF HUMAN REMAINS

a cemetery of 20 acres or more that has been in existence for 10 years or more.

2. A person may establish or use a public mausoleum in a cemetery consisting of less than 20 acres in a municipality that has enacted an ordinance under s. 157.129 (2) if the cemetery meets the minimum acreage requirement specified in that ordinance.

(d) A mausoleum shall be constructed to last as long as possible, taking into consideration the technology and economics applicable to mausoleum construction at the time of construction.

(3) CARE FUND FOR MAUSOLEUMS. (a) Any person who operates a public mausoleum shall establish a care fund as follows:

1. If the mausoleum has been in existence since June 15, 1933, and is covered by the care fund of the cemetery in which the mausoleum is located, the cemetery shall deposit at least 15% of each payment of principal received from the sale of a mausoleum space into the care fund, until the care fund equals 10% of the cost of constructing the mausoleum.

2. Except as provided in subd. 1., the operator of the mausoleum shall deposit at least 25% of each payment of principal received from the sale of a mausoleum space into the care fund, until the care fund equals 25% of the cost of constructing the mausoleum.

3. The operator shall make deposits required under subds. 1. and 2. within 30 days after the last day of the month in which the payment is received. The municipality in which the mausoleum is located may, by ordinance, require a larger fund, but only if the department notifies the municipality in writing that the department approves of the requirement. The department may promulgate rules establishing uniform standards for approvals under this subdivision.

(b) The cemetery's treasurer is the custodian of the fund. The treasurer shall file with the cemetery, at the cemetery's expense, a bond with sureties approved by the department of regulation and licensing to indemnify the cemetery against loss if the treasurer fails to maintain the fund. No indemnity is required if the terms of sale of a mausoleum space require the purchaser to pay directly to a trust company in the state, designated by the cemetery as custodian of the fund. The fund shall be invested as provided in s. 157.19. Income from investment may be used only to maintain the mausoleum, except that if the amount of income exceeds the amount necessary to properly maintain the mausoleum the excess amount may be used to maintain any portion of the cemetery.

(4) CONSTRUCTION OF CREMATORIUMS. (a) Any person who constructs a crematorium or converts a building or other structure to a crematorium shall comply with the rules of the department and shall receive department approval in writing of the plans and specifications prior to construction or conversion. The department may promulgate rules governing the location, material and construction of any crematorium. Any municipality may enact ordinances governing crematoriums at least as stringent as this subsection.

(b) The department shall supervise construction of any crematorium and conversion of any building or other structure to a crematorium. No person may modify departmental construction or conversion requirements without written approval of the department. No person may operate a crematorium unless the department certifies in writing that construction or conversion complied with approved plans.

History: 1971 c. 41 s. 12; 1971 c. 164; 1977 c. 449; 1979 c. 221; 1981 c. 20; 1989 a. 307; 1991 a. 269; 1995 a. 27 ss. 4402, 9116 (5); 1999 a. 150 s. 672.

157.125 Trustees for the care of cemeteries or cemetery lots. (1) If a trust is created for the care of a burial place or grave but no trustee is named in the will to administer the trust, the circuit court having jurisdiction may name the county treasurer of the county in which the burial place or grave is situated as trustee, except as provided in sub. (2). If not contrary to the terms of the trust, the county treasurer may contract with the person in charge of the burial place or grave for its care and pay to that person the

income from the trust property or the part of the income that may be necessary for that purpose, and if there is no person in charge of the burial place or grave then the income shall be paid to the city, village or town, in which the burial place or grave is situated, and for the purposes of this subsection the governing body of that municipality has the duty of caring for the burial place or grave to the extent of money received for that purpose. The county treasurer shall annually render an account to the circuit court as provided in ch. 701 and the person or municipality receiving money for such care shall also render an annual accounting to the circuit court and the department as provided in s. 157.62 (2) (b) 3. to 7.

(2) If the burial place or grave is located in a cemetery owned and operated by a religious society organized under ch. 187, the court shall name the religious society as the trustee unless the religious society petitions the court to name the county treasurer as the trustee.

History: 1971 c. 41 s. 11; 1979 c. 175 s. 50; 1989 a. 307.

157.128 Minimum acreage requirement for cemetery established on or after November 1, 1991. (1) Except as provided in subs. (2) and (3), no cemetery may be dedicated on or after November 1, 1991, unless the cemetery consists of at least 20 contiguous acres.

(2) A cemetery consisting of less than 20 contiguous acres may be dedicated on or after November 1, 1991, if all of the following apply:

(a) The cemetery is owned by a religious association.

(b) The religious association is responsible for all liabilities of the cemetery.

(c) The total acreage of all other cemeteries owned by the religious association exceeds 20 acres.

(3) (a) A cemetery consisting of less than 20 contiguous acres may be dedicated in a municipality that has enacted an ordinance under s. 157.129 if the cemetery meets the minimum acreage requirement specified in that ordinance.

(b) A cemetery consisting of less than 20 contiguous acres may be dedicated by a cemetery authority that is not required to be licensed under s. 440.91 (1) and that is not organized or conducted for pecuniary profit.

History: 1989 a. 307; 1991 a. 269; 1999 a. 150 s. 672; 2005 a. 25.

157.129 Minimum acreage of cemeteries; local ordinance. A city, village or town may enact and enforce an ordinance that does any of the following:

(1) Allows a cemetery consisting of less than the minimum acreage specified in s. 157.128 (1) to be dedicated, as defined in s. 157.061 (4), in that city, village or town.

(2) Allows a person to establish and use a public mausoleum in a cemetery consisting of less than the minimum acreage specified in s. 157.12 (2) (c).

History: 1991 a. 269; 1999 a. 150 s. 157; Stats. s. 157.129.

157.19 Deposit and investment of care funds and preneed trust funds. (1) In this section, "financial institution" has the meaning given in s. 705.01 (3).

(2) (a) Except as provided in sub. (5) and the rules promulgated under sub. (4), the cemetery authority may deposit care funds under s. 157.11 (9g), and shall deposit care funds under s. 157.12 (3) and preneed trust funds under s. 440.92, with a financial institution located in this state. The financial institution shall be the trustee of the care funds and preneed trust funds. A bank need not comply with s. 221.0316 (1) or (2) or ch. 223 to accept or disburse deposits under this section. The trustee shall invest the care funds and preneed trust funds as provided under s. 881.01, except as provided in sub. (5) and the rules promulgated under sub. (4).

(b) The cemetery authority may not change the trustee of a care fund under s. 157.11 (9g) that is deposited under this section or of a care fund under s. 157.12 (3), and the financial institution may

not release any portion of the principal amount of the care fund, without the department's written approval.

(c) Upon request of the financial institution, the preneed seller, as defined in s. 440.90 (8), shall furnish the financial institution with a copy of the preneed sales contract. Except as provided in s. 440.92 (2) (c), (f) and (j) and (5), preneed trust funds, and any interest or dividends that have accumulated on the preneed trust funds, may not be withdrawn until all obligations under the preneed sales contract have been fulfilled. The financial institution is not responsible for the fulfillment of any part of the preneed sales contract, except that the financial institution shall release the preneed trust funds, and any interest or dividends that have accumulated on the preneed trust funds, as provided by the terms of the preneed sales contract. The trustee of a preneed trust fund may not be changed without the department's written approval. If the trustee or account number of a preneed trust fund is changed, the cemetery authority shall notify the department in writing within 30 days after the change.

(d) The department shall promulgate rules establishing reasonable requirements and standards for the approval of changes under pars. (b) and (c). For approval of changes under par. (b), the rules shall require the cemetery authority to submit evidence that the rights and interests of the beneficiary of the care fund will be adequately protected if the change is approved. For approval of changes under par. (c), the rules shall require the trustee to submit evidence that the rights and interests of the purchaser under the preneed sales contract will be adequately protected if the change is approved.

(4) The department may promulgate rules allowing funds invested under this section to be deposited with a financial institution located outside this state.

(5) (a) This section does not apply to care funds under s. 157.11 (9g) that are deposited with a city or county as provided under s. 157.11 (9g) (a), to care funds of a cemetery for which a certification under s. 157.63 is effective, to preneed trust funds of a cemetery for which a certification under s. 440.92 (9) is effective, or to care funds or preneed trust funds of a cemetery authority that is not required to be licensed under s. 440.91 (1) and that is not organized or conducted for pecuniary profit.

(b) If the department determines that care funds under s. 157.11 (9g) that have not been deposited with a city or county as provided in s. 157.11 (9g) (a) are not being properly segregated from other moneys held by the cemetery authority or that those care funds are not being properly invested as required in s. 157.11 (9g) (a), the department may require the cemetery authority to deposit those care funds with a financial institution for investment under this section.

(6) Nothing in this section prevents a cemetery authority from combining its care funds and preneed trust funds for investment under this section if the cemetery authority maintains separate accountings for each fund.

(7) Except as provided in sub. (5) (a), this section applies to every care fund and every preneed trust fund of a cemetery authority, regardless of when the care fund or preneed trust fund was established.

History: 1989 a. 307; 1991 a. 74, 269; 1995 a. 336; 2005 a. 25.

Cross Reference: See also ch. RL 53, Wis. adm. code.

157.50 Municipal cemeteries. (1) Municipalities may acquire by gift, purchase or condemnation land for cemeteries within or without their boundaries. In the case of towns acquisition and price must be authorized by the town meeting.

(2) The governing body of every municipality acquiring a cemetery shall by ordinance determine the system of management and operation. Any municipality may proceed under s. 157.07, 157.08 or 157.11 (7), or otherwise as provided by ordinance.

(3) Upon organization of a cemetery association to take over a municipal cemetery, the municipality may convey real property

and all funds and other personal property to the association. In towns the conveyance must be authorized by the town meeting.

(4) When a town cemetery becomes embraced within a city or village, it shall be managed as though acquired thereby.

(5) The town meeting may authorize the town board to appropriate up to \$500 in any year for the improvement of the town cemetery, under supervision of the town board.

(6) Any municipality that creates a care fund shall invest the money received for care as provided by ch. 881. The municipality may terminate the care fund, transferring the money to its general fund, if the municipality owns the cemetery and provides all maintenance expenses in perpetuity for those graves in the cemetery at the time of termination.

History: 1971 c. 41 s. 12; 1979 c. 254; 1983 a. 532; 1989 a. 307.

157.60 Public easement in cemetery. Any person who shall open or make any highway, town way or private way or shall construct any railroad, turnpike or canal or anything in the nature of a public easement over, through, in or upon such part of any enclosure, being the property of any town, city, village or religious society or of private proprietors, as may be used for the burial of the dead, unless an authority for that purpose shall be specially granted by law or unless the consent of such town, city, village, religious society or private proprietors, respectively, shall be first obtained, shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding \$300.

157.62 Reporting; record keeping; audits. (1) CEMETERY ASSOCIATIONS. (a) Except as provided in par. (b) and s. 157.625, every cemetery association shall file an annual report with the department of financial institutions. The report shall be made on a calendar-year basis unless the department of financial institutions, by rule, provides for other reporting periods. The report is due on the 60th day after the last day of the reporting period. The annual report shall include all of the following:

1. The name of the cemetery association and the address of its principal office.

2. The name, residence address and business address of each officer, director and trustee of the cemetery association.

3. The name, residence address and business address of each shareholder who beneficially owns, holds or has the power to vote 5% or more of any class of securities issued by the cemetery association.

4. The dates and places of all meetings and elections.

5. A statement of whether the cemetery association engaged in the operation of a cemetery during the previous calendar year.

(b) Paragraph (a) does not apply to any person required to file a report under s. 180.1622 or 181.1622.

(c) The department of financial institutions may prescribe and furnish forms for reports required under this subsection. If the department of financial institutions prescribes forms under this paragraph, the department of financial institutions shall mail the forms to cemetery associations required to file under par. (a) no later than 60 days before the reports are due.

(2) **CEMETERY AUTHORITIES.** (a) Except as provided in ss. 157.625 and 157.63 (1), every cemetery authority shall file an annual report with the department. The report shall be made on a form prescribed and furnished by the department. The report shall be made on a calendar-year basis unless the department, by rule, provides for other reporting periods. The report is due on the 60th day after the last day of the reporting period.

(b) The cemetery authority shall include all of the following in the annual report required under par. (a):

1. A copy of any report required under sub. (1) (a) or s. 180.1622 or 181.1622.

157.62 DISPOSITION OF HUMAN REMAINS

2. If the cemetery authority is required to file a report under s. 180.1622 or 181.1622, the information specified in sub. (1) (a) 3.

3. An accounting of amounts deposited in, amounts withdrawn from, income accruing to and the balance at the close of the reporting period of any preneed trust funds of the cemetery.

4. An accounting of amounts deposited in, amounts withdrawn from, other income accruing to and the balance at the end of the reporting period of care funds of the cemetery, including the funds in ss. 157.11 (9g) (a), 157.12 (3) and 157.125.

5. An accounting of all gifts received, income from gifts deposited in accounts not accounted for under subd. 4., amounts expended from those accounts and the balance of those accounts at the end of the reporting period.

6. The name and address of each trustee for the funds under subds. 3. to 5. and of the financial institution holding those accounts at the close of the reporting period.

7. The information specified in sub. (1) (a), to the extent applicable, if the cemetery is not required to file a report under sub. (1) (a) or s. 180.1622 or 181.1622.

(c) All records relating to accountings of trust funds described under par. (b) 3. to 7. and maintained by the department are confidential and are not available for inspection or copying under s. 19.35 (1).

(d) The department shall review each report filed under par. (a) to determine whether the cemetery authority is complying with this subchapter.

(3) RECORDS; INSPECTION. (a) Every cemetery authority shall keep a copy of the report required under sub. (2) (a) at its principal place of business and, except for those records relating to accountings of trust funds described under sub. (2) (b) 3. to 7., shall make the report available for inspection, upon reasonable notice, by any person with an interest in a cemetery lot or a mausoleum space in a cemetery owned or operated by the cemetery authority.

(b) Every cemetery authority shall maintain all of the following:

1. The records needed to prepare the reports required under sub. (2) (a).

2. Records that show, for each deposit in a trust fund or account specified in sub. (2) (b) 3. or 4., the name of the purchaser or beneficiary of the contract relating to the deposit and the item purchased.

3. A copy of each contract for the sale of a cemetery lot, mausoleum space or cemetery merchandise.

(4) RECORDS MAINTENANCE. The records under sub. (3) (b) 1. shall be permanently maintained by the cemetery authority or licensee. Each record under sub. (3) (b) 2. shall be maintained for not less than 3 years after the date of the deposit. Each copy of a contract under sub. (3) (b) 3. shall be maintained for not less than 3 years after all of the obligations of the contract have been fulfilled. The department may promulgate rules to establish longer time periods for maintaining records under sub. (3) (b) 2. and 3.

(5) RULES; RECORDS. The department may promulgate rules requiring cemetery authorities and licensees to maintain other records and establishing minimum time periods for the maintenance of those records.

(6) AUDIT. Except as provided in ss. 157.625, 157.63 (5) and 440.92 (9) (e), the department may audit, at reasonable times and frequency, the records, trust funds and accounts of any cemetery authority, including records, trust funds and accounts pertaining to services provided by a cemetery authority which are not otherwise subject to the requirements under this chapter. The department may conduct audits under this subsection on a random basis, and shall conduct all audits under this subsection without providing prior notice to the cemetery authority.

(7) RULES; FILING FEE. The department may promulgate rules establishing a filing fee to accompany the report required under

sub. (2) (a). The filing fee shall be based on the approximate cost of regulating cemetery authorities.

History: 1989 a. 307; 1991 a. 16, 32, 269; 1995 a. 27; 1997 a. 79.

Cross Reference: See also ch. RL 51, Wis. adm. code.

157.625 Reporting exemption for certain cemeteries.

(1) A cemetery authority that is not required under this chapter or under s. 440.92 to maintain any care funds or preneed trust funds is not required to file an annual report under s. 157.62 (2).

(2) A cemetery authority whose annual operating budget for the cemetery is \$2,500 or less is not required to file an annual report under s. 157.62 (2).

(3) Section 157.62 does not apply to a cemetery authority that is not required to be licensed under s. 440.91 (1) and that is not organized or conducted for pecuniary profit.

History: 1991 a. 269; 2005 a. 25.

157.63 Reporting and auditing exemptions; certification of compliance of cemetery affiliated with religious society. (1)

In lieu of filing an annual report under s. 157.62 (2), a cemetery authority of a cemetery that is affiliated with a religious society organized under ch. 187 or that religious society may file an annual certification with the department as provided in this section.

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

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

(b) A notarized statement of a person who is legally authorized to act on behalf of the religious society 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) 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 department 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.

Cross Reference: See also ch. RL 51, Wis. adm. code.

157.635 Regulations of cemetery affiliated with religious society.

Nothing in this subchapter prohibits a cemetery authority of a cemetery that is affiliated with a religious society organized under ch. 187 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 society from being buried in the cemetery.

History: 1989 a. 307.

157.637 Veteran burials. A cemetery authority of a cemetery, other than a cemetery that is affiliated with a religious society organized under ch. 187, may not prohibit the burial, as defined

in s. 157.061 (1), 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.

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.

(2) Any person who intentionally does any of the following may be fined not more than \$1,000 or imprisoned for not more than 90 days or both:

(a) Violates s. 157.08 (2) (b), 157.11 (9g) or 157.12 (2) (b), (c) or (d) or (4) (b).

(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.

157.65 Enforcement. (1) (a) If the department of regulation and licensing 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 department of regulation and licensing may investigate.

(b) If the department of commerce 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 department of commerce 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 board described in s. 15.405 (3m) or the department of commerce 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.

SUBCHAPTER III

BURIAL SITES PRESERVATION

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

(a) “Board” means the burial site 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).

(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.

(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.

(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) Under a special inspection warrant as required under s. 66.0119, identify and record in a catalog burial sites in this state and, for burial sites which are not dedicated, sufficient contiguous land necessary to protect the burial site from disturbance, and notify in writing every owner of a burial site or of such land so recorded 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). The notice shall include information about the permit required under sub. (5) and the toll free number the owner may call for more information. In this paragraph, “sufficient contiguous land” means land that is within at least 5 feet from any part of a burial site.

(b) Identify and record in a catalog burial sites likely to be of archaeological interest or areas likely to contain burial sites. Any information in the catalog related to the location of any burial site likely to be of archaeological interest or of any area likely to contain a burial site, the disclosure of which would be likely to result in the disturbance of the burial site or the cataloged land contiguous to a cataloged burial site, is not subject to s. 19.35 (1).

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

157.70 DISPOSITION OF HUMAN REMAINS

(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 cataloged burial site or class of cataloged 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).

(f) Assist owners in identifying persons to be notified under sub. (5) (b) 2.

(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).

(2m) BOARD DUTIES. The board shall:

(a) Meet at least every 3 months.

(b) Determine which Indian tribes in this state have an interest in any cataloged burial site or class of cataloged 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 cataloged burial site or class of cataloged burial sites.

(d) As it deems necessary, review determinations of the director and the division of hearings and appeals in the department of administration 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.

(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 under sub. (2) (a).

(4) PROCEDURE FOR UNCATALOGED BURIAL SITES. (a) If the director determines that a burial site reported under sub. (3) is not cataloged under sub. (2) (a), he or she shall 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 give notice to the board, and to 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.

(d) If the director determines that an owner has satisfied the requirements under par. (c) 3., he or she shall 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) 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:

1. Apply to the director for a permit to disturb the burial site or the land. The application shall include the purpose of the disturbance and the names and addresses of any persons notified under subd. 2. The director shall send the applicant the names of any person in the registry with an interest in the burial site.

2. On a form provided by the director, notify any person whose name the director has sent under subd. 1. 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 of hearings and appeals in the department of administration 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 of hearings and appeals in the department of administration 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 which is the subject of the hearing under this paragraph, the division may 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).

3. If the determination under subd. 1m. or 2. is for granting a permit to disturb a burial site which is the subject of the hearing under this paragraph, 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 party in a hearing under this paragraph may appeal the determination under subd. 1m. or 2. 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) 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.

(c) The director shall enter into the catalog prepared under sub. (2) (a) the site of any reinterment under par. (a) or (b).

(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

157.70 DISPOSITION OF HUMAN REMAINS

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.

(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.

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

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