



State of Wisconsin
2023 - 2024 LEGISLATURE

LRBs0217/1
ZDW:skw

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 579**

January 9, 2024 - Offered by Representative WITTKÉ.

1 **AN ACT** *to renumber* 30.122; *to amend* 30.122 (title); and *to create* 30.01 (1h),
2 30.122 (2), 30.122 (3), 30.2034, 30.2039 and 885.335 of the statutes; **relating**
3 **to:** use of fill in commercial waterways and Great Lakes waters.

Analysis by the Legislative Reference Bureau

This bill provides several methods for establishing the lawful public or private use of fill placed on the bed of the Great Lakes and certain rivers and harbors.

Historic fill in commercial waterways

The bill applies, in part, to fill placed prior to 1977 that created land above the ordinary high water mark of a commercial waterway, which is a specified list of rivers. If the fill is unauthorized fill for which the Department of Natural Resources has not initiated an enforcement action or is within an authorized bulkhead line and not specifically restricted by a submerged land lease, the fill is considered land held in private fee title ownership and is not subject to a navigational servitude.

Development of Great Lakes waterfront property

The bill provides that a city or village (municipality) may create a waterfront development plan with respect to parcels that may have been part of the submerged bed of a Great Lakes water at the time of statehood. The municipality must submit required information to DNR, including a map of the parcels and a plan for development of the parcels that details any public and private uses. Following a

public notice and comment period, DNR must determine whether the plan is approved. DNR may not approve a plan unless it determines that 1) the plan contains the required elements, 2) proposed private uses are not inconsistent with existing lake bed grants or submerged land leases, 3) the amount and location of proposed public use areas are appropriate to protect public interests, or 4) the plan contains sufficient provisions to ensure that the public uses proposed in the plan will be implemented and perpetually maintained.

Amendments to existing approvals

The bill provides that a municipality may apply to DNR to amend the uses allowed within an area of a Great Lakes water that was filled pursuant to a fill authorization granted by the legislature or a submerged land lease. DNR must review the proposed uses based on several criteria that generally consider whether the proposed uses are consistent with the public interest. Following a public notice and comment period, DNR must approve the plan unless DNR determines that the specified criteria were not met.

Claims relating to possession or title

The bill prohibits any claim or counterclaim in an action relating to the possession or title of any real estate if the claim or counterclaim is based on an assertion that the property includes portions of land that may have at one time been submerged beneath a Great Lakes water if 1) the property is upland and the use of the land has not materially changed, 2) the property is held in fee title ownership as determined under a Great Lakes waterfront development plan, 3) the property is held in fee title ownership based on being separated from a Great Lakes water, or 4) use of the property has been approved by DNR as an amended use.

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

- 1 **SECTION 1.** 30.01 (1h) of the statutes is created to read:
- 2 30.01 (1h) “Commercial waterway” includes the portions of all of the following
- 3 rivers that are within the Great Lakes basin and within incorporated areas:
- 4 (a) Ahnapee River.
- 5 (b) East River in Brown County.
- 6 (c) Fox River, but excluding Lake Winnebago, Lake Butte des Morts, Lake
- 7 Winneconne, and Lake Poygan.
- 8 (d) Kewaunee River.
- 9 (e) Kinnickinnic River.

- 1 (f) Manitowoc River.
- 2 (g) Menominee River.
- 3 (h) Menomonee River.
- 4 (i) Milwaukee River.
- 5 (j) Root River.
- 6 (k) Sheboygan River.
- 7 (L) St. Louis River.
- 8 (m) West Twin River.

9 **SECTION 2.** 30.122 (title) of the statutes is amended to read:

10 **30.122 (title) Unauthorized structures and fill.**

11 **SECTION 3.** 30.122 of the statutes is renumbered 30.122 (1).

12 **SECTION 4.** 30.122 (2) of the statutes is created to read:

13 30.122 (2) A fill or deposit placed in a commercial waterway before December
14 9, 1977, that created land at an elevation above the current ordinary high water
15 mark and that has remained above the current ordinary high water mark since
16 December 9, 1977, is considered land held in private fee title ownership and is not
17 subject to a navigational servitude if any of the following apply:

18 (a) The fill or deposit is unauthorized and the department has not initiated an
19 enforcement action relating to the fill or deposit prior to the effective date of this
20 paragraph [LRB inserts date].

21 (b) The fill or deposit is within an authorized bulkhead line established as
22 provided under s. 30.11 and use of the filled area is not specifically restricted by the
23 terms included in a submerged land lease under s. 24.39 (4).

24 **SECTION 5.** 30.122 (3) of the statutes is created to read:

1 30.122 (3) Nothing in this section abridges the riparian rights of riparian
2 owners.

3 **SECTION 6.** 30.2034 of the statutes is created to read:

4 **30.2034 Amendments to existing approvals. (1) DEFINITIONS.** In this
5 section:

6 (a) “Fill authorization” means the authorization of fill in an area of a Great
7 Lakes water by the legislature in specific legislation or a lake bed grant or by a
8 submerged land lease under s. 24.39.

9 (b) “Filled area” means an area in a Great Lakes water filled before August 8,
10 1989, pursuant to a fill authorization.

11 (c) “Grantee” means a municipality that has been granted a fill authorization.

12 (d) “Great Lakes water” means Lake Superior, Lake Michigan, Green Bay, or
13 Sturgeon Bay.

14 (e) Notwithstanding s. 30.01 (4), “municipality” means a city or village.

15 **(2) APPLICATIONS BY GRANTEES.** (a) A grantee may apply to the department to
16 amend the uses allowed within filled areas of a fill authorization.

17 (b) An application under par. (a) shall include all of the following information:

18 1. A legal description of the fill authorization and the filled area proposed to
19 be used.

20 2. A description of the proposed amendment to the existing fill authorization,
21 including a detailed description of the proposed uses consistent with sub. (3).

22 3. A determination from the governing body of the municipality approving the
23 proposed amendment and requesting authorization from the department.

1 **(3) STANDARDS FOR APPROVAL.** The department shall evaluate applications
2 submitted under sub. (2) based on whether the uses proposed in the application meet
3 the following criteria:

4 (a) The filled area proposed to be used is used for parking lots, public or private
5 buildings, roads, or railroads on the effective date of this paragraph [LRB inserts
6 date].

7 (b) The filled area proposed to be used does not include any area currently used
8 for public park purposes.

9 (c) The filled area proposed to be used remains under the ownership and control
10 of the municipality. In this paragraph, “ownership and control” includes leases or
11 licenses to private or public entities, subject to compliance with the other criteria
12 under this subsection.

13 (d) The application is consistent with any waterfront development plan
14 approved under s. 30.2039 (2) (d).

15 (e) The application promotes appropriate public uses consistent with the public
16 interest, which may include concessions, as defined in s. 30.2039 (1) (a), open to the
17 public under long-term lease with the municipality.

18 (f) The application includes appropriate mechanisms for department
19 enforcement.

20 (g) The application promotes other public objectives, which may include the
21 elimination of blight, the remediation of brownfields, and other private economic
22 development benefits.

23 **(4) DEPARTMENT APPROVAL OF APPLICATIONS.** (a) No later than 90 days after
24 receiving an application under sub. (2), the department shall hold a public hearing

1 and provide public notice by publishing a class 2 notice under ch. 985 and by posting
2 notice on the department's website.

3 (b) No later than 90 days following the public hearing under par. (a), the
4 department shall make a determination on whether to approve the application under
5 sub. (2). The department and the applicant may agree to extend this timeline. The
6 failure of the department to act within 90 days or within any timeline agreed to by
7 the department and the applicant may not be deemed to be an approval by the
8 department.

9 (c) Determinations made under par. (b) are subject to review under ch. 227.

10 **SECTION 7.** 30.2039 of the statutes is created to read:

11 **30.2039 Great Lakes waterfront property. (1) DEFINITIONS.** In this section:

12 (a) "Concession" means a structure or facility that provides lodging, restaurant
13 and food and beverage services, or retail services that support public access and use
14 of navigable waters.

15 (b) "Great Lakes water" means Lake Superior, Lake Michigan, Green Bay, or
16 Sturgeon Bay.

17 (c) Notwithstanding s. 30.01 (4), "municipality" means a city or village.

18 (d) "Public use" means public access and use, including access to and use of
19 parkland, trails and roads, and public recreational facilities.

20 (e) "Record title holder" means a person with a claim of ownership of property
21 based on a recorded conveyance of an ownership interest in the property.

22 (f) "Upland" means property that remained at an elevation above the current
23 ordinary high water mark from December 9, 1977, to the effective date of this
24 paragraph [LRB inserts date], other than for temporary maintenance activities
25 or because of accretion or reliction.

1 **(2) WATERFRONT DEVELOPMENT PLAN.** (a) *Authority.* A municipality may create
2 a waterfront development plan with respect to parcels that include land that may
3 have been part of the submerged bed of a Great Lakes water at the time of statehood.

4 (b) *Elements of the plan.* A municipality shall include all of the following
5 information in a waterfront development plan under this subsection:

6 1. A map identifying parcels of land that are subject to the proposed plan area.

7 2. An approximate delineation of the shoreland at statehood based on existing
8 government survey maps.

9 3. A delineation of upland areas. In determining whether portions of the
10 proposed plan area are upland, the municipality may use photographs, survey data,
11 publicly available global positioning system mapping, geographic information
12 system mapping, or other documentation.

13 4. A delineation of any area that is subject to a lake bed grant or a submerged
14 land lease or a shoreline established under s. 30.2038.

15 5. An overall plan for the development of the proposed plan area, including a
16 map showing areas that will be dedicated to the public for public use and areas that
17 will allow for private uses. The boundary between the proposed public use areas and
18 remaining areas shall be surveyed and delineated on the map under subd. 1.

19 6. A description of areas and types of proposed public use consistent with the
20 standards established under par. (d) and any restrictions on public use to be proposed
21 for safety or security reasons. The plan shall describe how the public use areas will
22 be accessible to the public.

23 7. A plan for implementing and enforcing the development and perpetual
24 maintenance of the public use areas, including appropriate ordinances. The plan
25 shall require that the record title owner grant an easement to the department

1 ensuring that future use of public use areas will be consistent with the plan and shall
2 include appropriate mechanisms for department enforcement.

3 (c) *Plan review.* 1. The municipality shall consult with any record title holders
4 within the plan area proposed under par. (b) prior to approval by the municipality.

5 2. Upon adoption of the waterfront development plan by the municipality, the
6 municipality shall provide the plan to the department for review and approval.

7 3. No later than 90 days after receiving a request for review under this
8 paragraph, the department shall hold a public hearing and shall provide public
9 notice by publishing a class 2 notice under ch. 985 and by posting notice on the
10 department's website.

11 4. No later than 90 days following the public hearing under subd. 3., the
12 department shall make a determination under par. (d). The department and the
13 applicant may agree to extend this timeline. The failure of the department to act
14 within 90 days or within any timeline agreed to by the department and the applicant
15 may not be deemed to be an approval by the department.

16 (d) *Determinations by the department.* The department may impose additional
17 restrictions and conditions on a plan submitted under par. (c) 2. but may not approve
18 a plan, with or without additional restrictions and conditions, unless the department
19 determines all of the following:

20 1. The plan meets the requirements of par. (b).

21 2. The private uses proposed in the plan are not inconsistent with existing lake
22 bed grants or submerged land leases.

23 3. The amount and location of the public use areas are appropriate to protect
24 the public interest. Appropriate public uses in public use areas may include

1 concessions open to the public under long-term lease with a municipality if the uses
2 are consistent with the public interest.

3 4. The plan contains sufficient provisions to ensure that the public uses
4 proposed in the plan will be implemented and perpetually maintained.

5 (e) *Effect of determination.* 1. An approval under par. (d) constitutes a
6 determination by the department that the public interest is served by
7 implementation of the plan and the boundary established between land that is held
8 in trust by the state or is otherwise publicly owned and land held in private fee title
9 ownership is in the public interest.

10 2. Following an approval under par. (d), the applicant shall record the approval
11 with the register of deeds and the department shall post the approval on the
12 department's website. Upon implementation of the portions of the plan approved
13 under par. (d) that relate to the public use areas, and any conditions imposed in the
14 approval related to those areas, the boundary between land that is held in trust by
15 the state or is otherwise publicly owned and land held in private fee title ownership
16 shall have the same effect as if the boundary were confirmed in a quiet title action
17 granted by a court under s. 841.10.

18 3. This section does not alter the right of property owners to seek a quiet title
19 action under common law.

20 (f) *Boundary amendments.* A municipality may seek to amend a public use
21 boundary approved under par. (d) only by preparing and submitting a new plan using
22 the process under this subsection.

23 (g) *Review.* Determinations made under par. (d) are subject to review under ch.
24 227.

1 **(3) TITLE TO NONRIPARIAN PARCELS.** A parcel that may include areas that were
2 part of the submerged bed of a Great Lakes water at the time of statehood and that
3 remained separated from a Great Lakes water by one or more other parcels from
4 December 9, 1977, to the effective date of this subsection [LRB inserts date], for
5 which there is a record title holder, and that was not filled pursuant to a fill
6 authorization as defined in s. 30.2034 (1) (a), is deemed to be not part of the lake bed
7 of a Great Lakes water and to be held in fee title ownership. For land held in fee title
8 ownership as determined under this subsection, this determination operates in the
9 same manner as if a person were granted quiet title to the property by a court under
10 s. 841.10.

11 **(4) EXCEPTION FOR EXISTING USES.** The department shall treat upland property
12 adjacent to a Great Lakes water, all or part of which may have been land that was
13 part of the submerged lake bed of the Great Lakes water at the time of statehood, as
14 riparian property and owned by the record title holder for purposes of exercising any
15 regulatory authority, if the property includes portions of land that are upland and
16 the use of such property has not materially changed since the effective date of this
17 subsection [LRB inserts date]. In this subsection, “materially changed” means a
18 material modification or termination of an existing use and does not include the
19 maintenance, repair, replacement, restoration, rebuilding, remodeling, or expansion
20 of any part of any existing structure or the transfer of the property.

21 **SECTION 8.** 885.335 of the statutes is created to read:

22 **885.335 Actions concerning real estate abutting Great Lakes water.** No
23 claim or counterclaim may be made in an action relating to the possession or title of
24 any real estate if the claim or counterclaim is based on an assertion that the property

1 includes portions of land that may have at one time been submerged beneath a Great
2 Lakes water if any of the following apply:

3 (1) The property is upland, as defined in s. 30.2039 (1) (f), and the use of the
4 property has not materially changed, as defined in s. 30.2039 (4).

5 (2) The property was designated as land held in fee title ownership by a
6 determination made under s. 30.2039 (2) (d) that establishes the boundary between
7 land held in trust by the state and land held in fee title ownership.

8 (3) The property is held in fee title ownership as determined under s. 30.2039
9 (3).

10 (4) The use of the property is approved under s. 30.2034.

11 **SECTION 9. Nonstatutory provisions.**

12 (1) Notwithstanding s. 13.097 (2), the department of natural resources may not
13 prepare a report under s. 13.097 (2) (a) for this bill.

14 (END)