



2019 ASSEMBLY BILL 333

July 3, 2019 - Introduced by Representatives WITTKE, NEUBAUER, MCGUIRE, SKOWRONSKI, OHNSTAD and BOWEN, cosponsored by Senators WANGGAARD and WIRCH. Referred to Committee on State Affairs.

- 1 **AN ACT to create** 30.2039 of the statutes; **relating to:** use of formerly submerged
2 land in the city of Racine.

Analysis by the Legislative Reference Bureau

This bill expands the authorized uses of three parcels of lakebed that were granted by the state to the City of Racine between 1917 and 1963 and that remain unsubmerged through the use of lakebed fill.

Identified parcels

The bill identifies three parcels to which the bill applies:

1. One parcel of submerged land conveyed to the City of Racine in 1917 for the purpose of a public park.
2. One parcel of partly submerged land conveyed to the City of Racine in 1937 for the purpose of providing various public facilities, including docks, wharves, highways, and parks.
3. One parcel of partly submerged land conveyed to the City of Racine in 1963 for the purpose of providing various public facilities, including docks, wharves, highways, and parks, and for providing water recreation.

General use

This bill provides that the owner of the identified parcels may use the parcels for any public or public-private use, including the placement, replacement, or repair of structures, subject to restrictions. "Public-private use" means any use authorized by resolution of the common council of the city of Racine under a public-private partnership that is consistent with a public development plan. The bill makes the following restrictions on all uses of the specified parcels:

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1. The 15 vertical feet above the surface of the lakebed fill may not be conveyed out of public ownership or converted to a private use.

2. Public use of the parcel must provide or increase public recreation, arts, event, or civic opportunities in or near navigable waters or increase or improve public access to navigable water.

3. The public owner of the parcel must maintain control over any private interest in and use of the parcel through use of specified contractual requirements.

4. At least 20 percent of property tax revenues generated from a public-private partnership must be dedicated to support and improve public access to and enjoyment of navigable waters or recreational opportunities within the parcels.

5. The majority of the land area of the parcels must remain in public ownership, be open to the public, and not be subject to public-private use.

Hotel development

The bill further authorizes the development of a hotel at a specified location on a portion of the identified parcels, subject to the following requirements:

1. The hotel must have an observation deck on the uppermost story or rooftop that offers views of Lake Michigan and is accessible to the public.

2. The hotel must have a restaurant on the uppermost story or rooftop that offers views of Lake Michigan and is accessible to the public.

3. The operator of the hotel must operate an adjacent municipal conference center so that the hotel functions as an expansion of the space and capabilities of the municipal conference center.

4. The ground floor of the hotel must occupy at least the first 15 vertical feet above the surface of the lakebed fill, and the majority of the space must contain conference and meeting space for events held at the municipal conference center.

5. The first-floor space of the hotel building must be at least 15 feet above the surface of the lakebed fill.

Because this bill concerns a conveyance of a lakebed area, the Department of Natural Resources, as required by law, will prepare a detailed report to be printed as an appendix to this bill.

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

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

1 **SECTION 1.** 30.2039 of the statutes is created to read:

2 **30.2039 Use of filled lakebed in the city of Racine.** (1) In this section:

3 (a) “Common council” means the common council of the city of Racine.

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1 (b) “Public-private partnership” means a relationship in which a public entity
2 contracts with a private entity to obtain specified public benefits from the private
3 entity in exchange for allowing the private entity to construct, operate, and lease
4 infrastructure in, on, or above formerly submerged lands that were filled subject to
5 a lakebed grant and to control air rights and own infrastructure within the space that
6 is more than 15 feet above the surface of the lakebed fill.

7 (c) “Public-private partnership agreement” means a written agreement
8 between a public entity and one or more private entities that is approved by the
9 common council.

10 (d) “Public-private use” means any use or combination of uses expressly
11 authorized by resolution of the common council that occurs under a public-private
12 partnership and is consistent with a public comprehensive development or
13 redevelopment plan approved by the common council.

14 **(2)** (a) Notwithstanding s. 24.39 (4), 30.11, or 30.12 or any provision of a grant
15 of a parcel identified in par. (c) and subject to par. (b), the owner of a parcel that is
16 identified in par. (c) may use the parcel for any public or public-private use permitted
17 under federal, state, and local law, including the placement, replacement, or repair
18 of structures, if all of the following apply:

19 1. No portion of a parcel that is within 15 feet of the surface of the lakebed fill
20 and that has previously been designated for public use is conveyed out of public
21 ownership or converted to an entirely private use.

22 2. Any public use provides or increases public recreation, arts, event, or civic
23 opportunities in or near navigable waters or increases or improves public access to
24 navigable water, including public opportunity and convenience to view, enter,
25 navigate, recreate on or near, or otherwise enjoy the navigable waters.

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1 3. The public owner secures and maintains control over the location, nature,
2 use, operation, and termination of any private interest in and use of real estate and
3 infrastructure by doing all of the following by resolution of the common council prior
4 to implementation:

5 a. Entering into a development agreement or construction contract with the
6 holder of the private interest.

7 b. Entering into a management contract with the holder of the private interest
8 or issuing the holder of the private interest an occupancy permit, conditional use
9 permit, or license to operate.

10 c. Transferring rights and interest in real estate by any lawful contractual
11 method that is subject to a contractual mechanism such as revocation, rescission,
12 reversionary interest, or option to purchase for fair market value that provides for
13 the mandatory transfer of all rights and interests in the real estate to the local
14 municipality upon a material breach or violation by the grantee of any contract,
15 license, or agreement pertaining to use or ownership of the real estate.

16 d. Providing in contract that interests transferred are for an initial period of
17 98 years with an option to renew for not more than 2 terms of 25 years each.

18 e. Providing in contract that any interests transferred from the local
19 municipality may not be further conveyed without the approval of the common
20 council.

21 f. Entering into a contract or awarding a permit or license that authorizes
22 annual inspection of the private space by the municipality.

23 4. Not less than 20 percent of property tax revenues generated from each
24 public-private partnership are dedicated to support and improve public access to
25 navigable waters, aids to navigation, enjoyment of scenic beauty or opportunities for

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1 fishing and recreation at locations within parcels identified in par. (b) 2. in
2 accordance with a development plan, master plan, or tax incremental district plan
3 approved by the common council. This subdivision applies to any tax increment
4 district that contains part or all of a parcel identified in par. (b) 2.

5 5. The majority of the land area of the parcels identified in par. (c) remains in
6 public ownership, is open to the public, and is not subject to public-private use.

7 (b) 1. Subject to subd. 2., the owner of a parcel that is identified in par. (c) and
8 that has previously been designated for public use may divide, convey, and reconvey
9 the parcel only if the parcel remains under public ownership and is used for public
10 or public-private uses.

11 2. The owner of the area of any parcel in the city of Racine identified in par. (c)
12 that has previously been designated for public use and that is within the area north
13 of the center line of 11th Street extended, east of the west right-of-way of Pershing
14 Park Drive to where it abuts the south line of 6th Street extended at a point 541.30
15 feet east of the east line of Lake Avenue, and north from that point east of a line
16 extending north along the west line of the paved walkway for Festival Park extended
17 to where it abuts a point on the south line of 4th Street extended located 537.86 feet
18 east of the east line of Lake Avenue, shall retain ownership of the area, shall use the
19 area only for public uses, and shall dedicate 100 percent of the area to public access
20 to the water.

21 (c) The riparian owner of the following parcels may use the parcels in any
22 manner that is consistent with the requirements of pars. (a) and (b):

23 1. The parcel identified and granted to the city of Racine under chapter 325,
24 laws of 1917.

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1 2. The parcel identified as “Parcel No. 1” and granted to the city of Racine under
2 chapter 318, laws of 1937.

3 3. The parcel identified and granted to the city of Racine under chapter 44, laws
4 of 1963.

5 **(3)** The owner of the parcels identified in sub. (2) (c) 1. may develop a hotel on
6 the portion of the parcels that is north of the north line of 6th Street extended, south
7 of the south line of 5th Street extended, and west of the area described in sub. (2) (b)
8 2., if the requirements of sub. (2) (a) 1. to 5. are met and if all of the following apply:

9 (a) The hotel has an observation deck on the uppermost story or rooftop that
10 offers views of Lake Michigan and is accessible to the public by elevator, free of
11 charge, not less than 12 hours per day and not less than 300 days per year, except
12 as necessary for reasonable repair and maintenance or for public safety.

13 (b) The hotel has a restaurant on the uppermost story or rooftop that offers
14 views of Lake Michigan and is accessible to the public by elevator and available for
15 use by the public without cover charge during all open hours and open not less than
16 200 days per year, subject to reasonable requirements for appropriate attire and
17 minimum purchase of and customary charges for food and beverage.

18 (c) The operator of the hotel operates an adjacent municipal conference center
19 in conjunction with the hotel so that the hotel functions as an expansion of the space
20 and capabilities of the municipal conference center.

21 (d) The ground-floor space of the hotel building occupies not less than 15 feet
22 of vertical space above the surface of the lakebed fill and the first-floor space of the
23 hotel building begins more than 15 feet above the surface of the lakebed fill.

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1 (e) The majority of the space on the ground floor of the hotel building contains
2 conference and meeting space available for use by events held at the adjacent
3 municipal conference center.

SECTION 2. Nonstatutory provisions.

4 (1) LEGISLATIVE FINDINGS AND INTENT. The legislature finds all of the following:

5 (a) The state is the trustee of the public trust established under article IX,
6 section 1, of the Wisconsin Constitution and the legislature is authorized as
7 representative of the state to exercise the function of the trustee in matters of specific
8 application.
9 application.

10 (b) Where fill of navigable waters pursuant to a legislative lakebed grant has
11 resulted in unsubmerged land, it is unlikely that the land will be returned to a
12 submerged state.

13 (c) The navigational and recreational uses of a waterway will not be adversely
14 affected by allowing the placement of structures on formerly submerged land.

15 (d) Navigable waters serve a variety of public purposes, including scenic and
16 recreational uses, and development of waterfront areas may promote the public
17 health and welfare generally and result in increased economic development,
18 increased tax base, improved opportunity for recreation, and improved public access
19 to waters.

20 (e) The public interest in formerly submerged lands and the waters that remain
21 navigable will be adequately served and will not be substantially impaired by the
22 uses and transfer of rights and interests allowed of historic fill in accordance with
23 the limitations and controls required of a public entity to implement such uses and
24 transfer of formerly submerged lands filled pursuant to a legislative lakebed grant.

