



State of Wisconsin  
2023 - 2024 LEGISLATURE

LRBs0263/1  
ZDW:skw

**SENATE SUBSTITUTE AMENDMENT 1,  
TO SENATE BILL 541**

January 29, 2024 - Offered by Senator STROEBEL.

1 **AN ACT to create** 30.2034, 30.2039 and 885.335 of the statutes; **relating to:** use  
2 of fill in certain waterways.

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*Analysis by the Legislative Reference Bureau*

***Development of Great Lakes and river waterfront property***

This bill provides that a city or village (municipality) may create a waterfront development plan with respect to parcels that may have been part of a riverbed or the submerged bed of a Great Lakes water at the time of statehood. The municipality must submit required information to the Department of Natural Resources, 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 makes several determinations, including 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 change 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.

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

1           **SECTION 1.** 30.2034 of the statutes is created to read:

2           **30.2034 Change to existing approvals. (1) DEFINITIONS.** In this section:

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

6           (b) “Filled area” means an area in a Great Lakes water filled before August 8,  
7 1989, pursuant to a fill authorization.

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

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

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

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

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

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

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

5           3. A determination from the governing body of the municipality approving the  
6 proposed change and requesting authorization from the department.

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

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

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

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

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

21           (e) The application promotes appropriate public uses consistent with the public  
22 interest, which may include concessions, as defined in s. 30.2039 (1) (a), open to the  
23 public under long-term lease with the municipality, if the concessions provide a  
24 significant public benefit to the public interest.

1 (f) The application includes appropriate mechanisms for department  
2 enforcement.

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

6 (h) The application requires that the proceeds from any lease or license to  
7 private or public entities to create or operate a concession, as defined in s. 30.2039  
8 (1) (a), be used by the municipality to promote the public interest in navigable waters  
9 pursuant to a plan approved by the department. This paragraph does not apply to  
10 revenue from real property taxes received by the municipality.

11 **(4) DEPARTMENT APPROVAL OF APPLICATIONS.** (a) No later than 90 days after  
12 receiving an application under sub. (2), the department shall hold a public hearing  
13 and provide public notice by publishing a class 2 notice under ch. 985 and by posting  
14 notice on the department's website.

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

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

22 **SECTION 2.** 30.2039 of the statutes is created to read:

23 **30.2039 Great Lakes and river waterfront property. (1) DEFINITIONS.** In  
24 this section:

1 (a) “Concession” means a private allowable use that is a structure or facility  
2 that provides lodging, restaurant and food and beverage services, or retail services  
3 that support public access and use of navigable waters.

4 (b) “Great Lakes water” means Lake Superior, Lake Michigan, Green Bay, or  
5 Sturgeon Bay.

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

7 (d) “Public use” means public access and use, including access to and use of  
8 parkland, trails and roads, and public recreational facilities.

9 (e) “Record title holder” means a person with a claim of ownership of property  
10 based on a recorded conveyance of an ownership interest in the property.

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

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

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

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

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

24 3. A delineation of upland areas. In determining whether portions of the  
25 proposed plan area are upland, the municipality may use photographs, survey data,

1 publicly available global positioning system mapping, geographic information  
2 system mapping, or other documentation.

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

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

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

13 7. A plan for implementing and enforcing the development and perpetual  
14 maintenance of the public use areas, including appropriate ordinances. The plan  
15 shall require that the record title owner grant an easement to the department  
16 ensuring that future use of public use areas will be consistent with the plan and shall  
17 include appropriate mechanisms for department enforcement.

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

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

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

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

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

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

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

13           3. The amount and location of the public use areas provide a net benefit to the  
14 public interest. Appropriate public uses in public use areas may include concessions  
15 open to the public under long-term lease with a municipality if the concessions  
16 provide a significant benefit to the public interest.

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

19           5. The plan requires that the proceeds from any lease or license to private or  
20 public entities to create or operate a concession be used by the municipality to  
21 promote the public interest in navigable waters pursuant to a plan approved by the  
22 department. This paragraph does not apply to revenue from real property taxes  
23 received by the municipality.

24           (e) *Effect of determination.* 1. An approval under par. (d) constitutes a  
25 determination by the department that the public interest is served by

1 implementation of the plan and, with respect to areas that may have been part of the  
2 submerged bed of a Great Lakes water at the time of statehood, the boundary  
3 established between land that is held in trust by the state or is otherwise publicly  
4 owned and land held in private fee title ownership is in the public interest.

5 2. Following an approval under par. (d), the applicant shall record the approval  
6 with the register of deeds and the department shall post the approval on the  
7 department's website. Upon implementation of the portions of the plan approved  
8 under par. (d) that relate to the public use areas, and any conditions imposed in the  
9 approval related to those areas, areas designated for private use that may have been  
10 part of a riverbed at the time of statehood shall not be subject to a navigational  
11 servitude and, for areas that may have been part of the submerged bed of a Great  
12 Lakes water at the time of statehood, the boundary between land that is held in trust  
13 by the state or is otherwise publicly owned and land held in private fee title  
14 ownership shall have the same effect as if the boundary were confirmed in a quiet  
15 title action granted by a court under s. 841.10.

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

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

21 (g) *Review.* Determinations made under par. (d) are subject to review under ch.  
22 227.

23 **(3) TITLE TO NONRIPARIAN PARCELS.** A parcel that may include areas that were  
24 part of the submerged bed of a Great Lakes water at the time of statehood and that  
25 remained separated from a Great Lakes water by one or more other parcels from



1 December 9, 1977, to the effective date of this subsection .... [LRB inserts date], for  
2 which there is a record title holder, and that was not filled pursuant to a fill  
3 authorization as defined in s. 30.2034 (1) (a), is deemed to be not part of the lake bed  
4 of a Great Lakes water and to be held in fee title ownership. For land held in fee title  
5 ownership as determined under this subsection, this determination operates in the  
6 same manner as if a person were granted quiet title to the property by a court under  
7 s. 841.10.

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

18 **SECTION 3.** 885.335 of the statutes is created to read:

19 **885.335 Actions concerning real estate abutting Great Lakes water.** No  
20 claim or counterclaim may be made in an action relating to the possession or title of  
21 any real estate if the claim or counterclaim is based on an assertion that the property  
22 includes portions of land that may have at one time been submerged beneath a Great  
23 Lakes water if any of the following apply:

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

