

## **SB 45 (99-2107/1)**

# **AN ACT RELATING TO CONVEYANCE OF A LAKEBED AREA TO THE CITY OF MILWAUKEE**

*REPORT BY THE DEPARTMENT OF NATURAL RESOURCES*

*Under Section 13.097, Wisconsin Statutes*

*Prepared by the Bureau of Fisheries Management and Habitat Protection*

*October 1, 1999*

### **Report Requirement**

Section 13.097, Wisconsin Statutes, requires the Department of Natural Resources to prepare a report to be attached to bills that convey lake bed areas. The content of the report is specified in S. 13.097, Wis. Stats. The report requires the Department to make judgments about whether or not the proposed grant and the uses specified in the grant are consistent with the public trust purposes required by the State Constitution. To compile this report, the Department relied on guidance from the Supreme Court contained in *Priewe v. Wis. S.L. & Imp. Co.*, 103 Wis. 537 (1899), *State v. PSC*, 261 Wis. 492 (1952), *Madison v. State*, 1 Wis. 2d 252 (1957), *State v. Trudeau*, 139 Wis. 2d 91 (1987) and other cases that outline the public trust doctrine.

### **Description of the Proposed Legislation**

This bill adds public park purposes to the uses of the lakebed previously granted to the City of Milwaukee by Laws of 1929, chapter 151, section 1.

### **Findings of the Department**

- A. Location and description of the lake bed grant area
  - 1. The grant area is a portion of Lake Michigan along the eastern boundary of the City of Milwaukee, Milwaukee County.
  - 2. The grant involves previously filled lakebed currently used for navigation and fishery purposes.
  
- B. Purposes of the proposed conveyance
  - 1. In addition to the previously granted purposes, the filled lakebed area would be used for public park purposes, specifically a state park that will provide access to Lake Michigan from the City of Milwaukee.

- C. Use of the lakebed area subject to the proposed conveyance – The lakebed area in question has been previously conveyed and is in use for navigation and fishery purposes.
- D. Effect of the proposed conveyance on public trust purpose uses – This amendment to the previous grant would allow the development of a state park. State Park status is compatible with the requirement for public control of lakebed grant areas. Such a use can be expected to increase public access to navigable waters.
- E. Potential of the grantee to manage the uses of the lakebed area
  - 1. The City of Milwaukee has the capability to manage this lakebed grant area in conformance with the public trust doctrine.
  - 2. The grantee is a governmental unit.
  - 3. The grant continues to limit conveyance of granted lands to any party other than to the government of the United States for navigation, to any harbor district or other public corporation, or to others by lease for an initial term of not more than 30 years. As part of the study of state park feasibility and development, the method and duration of land conveyance should be examined in light of state park designation.

### **Conclusions of the Department**

- A. Public trust uses – Opportunities for public trust uses would be increased.
- B. Public access – Public access opportunities would be increased.
- C. Purposes of proposed conveyance – The proposed legislation ensures that the previously conveyed area will continue to be used in compliance with the public trust doctrine.
- D. Management by the grantee – The City of Milwaukee is capable of managing the grant in conformance with the public trust doctrine.
- E. Government control – The legislation contains sufficient provisions for continued government control of the lakebed grant area.
- F. Commercial uses – No commercial uses are proposed or authorized by the proposed amendment.
- G. Consistency with the public trust doctrine – The proposed amendment to the lakebed grant is consistent with the public trust doctrine.