

**2005 SB 469
LRB 05-4150/1**

**AN ACT RELATING TO CONVEYANCE OF A LAKEBED AREA
TO BROWN COUNTY**

REPORT BY THE DEPARTMENT OF NATURAL RESOURCES

Under Section 13.097, Wisconsin Statutes

Prepared by the Bureau of Fisheries Management and Habitat Protection

January, 2006

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 grants to Brown County all rights and title to certain portions of lake bed in Green Bay commonly referred to as the Cat Island Chain area where islands historically existed that have since eroded away. The proposal allows the reconstruction of the Cat Island Chain. The reconstructed islands will be for public use and public purposes only.

Findings of the Department

- A. Location and description of the lake bed grant area
 - 1. The grant area is a portion of Green Bay along the eastern boundary of the City of Green Bay and west of the Federal Navigation Channel in Green Bay located in Brown County.
 - 2. The grant involves portions of lakebed that were previously islands and associated littoral habitat used extensively by fish and wildlife for spawning, resting, rearing, nesting and foraging.

- B. Purposes of the proposed conveyance
 - 1. The conveyed lakebed area would allow the reconstruction of the islands utilizing dredged sediments from the federal navigation channel and subsequently armored with rock rip rap to prevent erosion. The islands would be for public use only.
- C. Use of the lakebed area subject to the proposed conveyance – The lakebed area in question has been previously used for navigation, fish and wildlife habitat and for public recreation purposes.
- D. Effect of the proposed conveyance on public trust purpose uses – This lakebed grant facilitates the re-establishment of valuable fish and wildlife habitat and increase diversity of public navigation opportunities on the restored islands and the restored near shore aquatic environments. This is compatible with the requirement for public control of lakebed grant areas.
- E. Potential of the grantee to manage the uses of the lakebed area
 - 1. Brown County 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 prohibits the county from conveying the land to any person other than this state, a political subdivision of the state or a special purpose district of this state.

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 conveyed lakebed area will continue to be used in compliance with the public trust doctrine.
- D. Management by the grantee – Brown County is capable of managing the grant in conformance with the public trust doctrine and is also required to cooperate with the Department of Natural Resources in the development and implementation of plans for the construction of the Cat Island Chain to ensure that the project purpose is successfully completed and to ensure that the water quality of Breen Bay is not adversely affected.
- 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 lakebed grant.
- G. Consistency with the public trust doctrine – The proposed lakebed grant is consistent with the public trust doctrine.