



2013 ASSEMBLY BILL 655

1 **AN ACT** *to repeal and recreate* 30.2038 of the statutes; **relating to:**
2 establishing the shoreline of Lake Michigan in the city of Milwaukee.

Analysis by the Legislative Reference Bureau

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

3 **SECTION 1.** 30.2038 of the statutes, as created by 2013 Wisconsin Act 20, is
4 repealed and recreated to read:

5 **30.2038 Milwaukee shoreline established.** (1) (a) The shoreline of Lake
6 Michigan in the city of Milwaukee is fixed and established to extend from
7 approximately the line of East Lafayette Place extended easterly on the north to the
8 present north harbor entrance wall of the Milwaukee River on the south as specified
9 in an agreement between the Chicago and Northwestern Railway Company and the
10 city of Milwaukee recorded with the office of the register of deeds of Milwaukee

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1 County on April 23, 1913, in volume 662, pages 326–330, as document number
2 762955.

3 (b) The shoreline described under par. (a) constitutes the boundary line
4 between the lake bed of Lake Michigan and land that is not part of the lake bed of
5 Lake Michigan.

6 (2) Any restrictions, conditions, reverters, or limitations imposed on the use of
7 land or conveyance of land under chapter 358, laws of 1909, chapter 389, laws of
8 1915, chapter 284, laws of 1923, chapter 150, laws of 1929, chapter 151, laws of 1929,
9 chapter 516, laws of 1929, chapter 381, laws of 1931, chapter 76, laws of 1973, 1985
10 Act 327, and any other act conveying a part of the lake bed of Lake Michigan do not
11 apply to land located to the west of the shoreline described under sub. (1) (a).

12 (3) The declarations under sub. (1) are made in lieu of, and have the same effect
13 as, a final judgment entered by a court under ch. 841.

14 **SECTION 2. Nonstatutory provisions.**

15 (1) In this SECTION:

16 (a) “Agreement of 1913” means the agreement described in section 30.2038 (1)
17 (a) of the statutes, as affected by this act.

18 (b) “City” means the city of Milwaukee.

19 (c) “Railroad” means the Chicago and Northwestern Railway Company.

20 (2) The legislature declares that the state is the trustee of the public trust
21 established under article IX, section 1, of the Wisconsin Constitution and that the
22 legislature is authorized as representative of the state to exercise the function of the
23 trustee of that public trust in matters of specific application.

24 (3) The legislature finds that the best available evidence confirms that the
25 boundary line established under section 30.2038 (1) (a) of the statutes, as affected

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1 by this act, is the location of the natural and historical shoreline of Lake Michigan.

2 The legislature further finds all of the following:

3 (a) That this state, Milwaukee County, the city, and residents of this state have
4 relied on this boundary line since the execution and recording of the agreement of
5 1913.

6 (b) That since 1913 the city has placed extensive fill on the lake bed easterly
7 of the entire length of this boundary line.

8 (c) That since 1913 all land lying westerly of the boundary line has been
9 conveyed by deed, including by deeds conveyed by this state to Milwaukee County.

10 (d) That some of the parcels of land lying immediately west of the boundary line
11 are owned by private parties.

12 (e) That the boundary line has been explicitly recited by the legislature in
13 chapter 150, laws of 1929, chapter 151, laws of 1929, and in subsequent enactments
14 of the legislature.

15 (f) That the department of natural resources and the U. S. Army Corps of
16 Engineers have prepared comprehensive maps of the lake bed grants to the city that
17 concern the city harbor and lake shore of Lake Michigan, all of which depict the
18 shoreline as described under section 30.2038 (1) (a) of the statutes, as affected by this
19 act.

20 (g) That this state, Milwaukee County, and others have relied on those maps
21 in determining their respective rights.

22 (4) The legislature finds that the agreement of 1913 included a transfer from
23 the city to the railroad of a small area of land that was submerged and connected to
24 Lake Michigan at the time the agreement of 1913 was executed. The legislature
25 further finds all of the following:

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1 (a) That this submerged area of land was located between approximately
2 Mason Street on the north and Chicago Street on the south and extended
3 approximately 100 feet eastward of the breakwater that existed at that time.

4 (b) That the railroad built a new breakwater or seawall enclosing this
5 submerged area between 1913 and June 1915, that the area was filled, and that the
6 area has been upland since that time.

7 (5) The legislature finds that the submerged area described in subsection (4)
8 is not lake bed of Lake Michigan because it had become or shortly would have become
9 upland owned by the railroad by the process of accretion. In support of this finding,
10 the legislature further finds all of the following:

11 (a) That the railroad owned the riparian land abutting the submerged area.

12 (b) That maps show that in 1913 the city had erected a timber cribbing
13 projecting several hundred feet into Lake Michigan along a line at approximately
14 Wisconsin Avenue extended, and the city was filling in lake bed north of this timber
15 cribbing.

16 (c) That later maps show extensive accretion caused by the buildup of alluvion
17 south of the timber cribbing as a result of the effects of this cribbing on natural wave
18 action.

19 (d) That the city installed rubble mound breakwaters in the lake bed east of the
20 submerged area causing further accretion.

21 (6) If a court finds under section 30.2038 (3) of the statutes, as affected by this
22 act, that the submerged area described in subsection (4) was lake bed of Lake
23 Michigan, the legislature declares all of the following:

24 (a) That the legislature has the authority as representative of the trustee of the
25 public trust in navigable waters to convey a nominal area of lake bed to a private

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1 party for private purposes if such conveyance furthers the public trust and the
2 conveyance is part and parcel of the larger scheme, purely public in its nature, as
3 declared by the Wisconsin Supreme Court in *City of Milwaukee v. State of Wisconsin*,
4 *193 Wis. 423 (1927)*.

5 (b) That the conveyance of lake bed by the city to the railroad under the
6 agreement of 1913 was a conveyance of a nominal area of lake bed and was necessary
7 in consideration of the conveyance by the railroad to the city contained in the
8 agreement of 1913 and the conveyance of lake bed both fostered and advanced the
9 public purposes for which the lake bed was ceded to the city and was part and parcel
10 of a larger scheme, purely public in its nature. The legislature further finds all of the
11 following:

12 1. That the public purposes of the city's harbor and parks project undertaken
13 between 1880 and 1930 included the construction of a park and boulevard, the
14 establishment and maintenance of breakwaters, bulkheads, piers, wharves,
15 warehouses, transfer sheds, railway tracks, airports, and other harbor facilities, and
16 the creation of opportunities for improved navigation, fishing, swimming,
17 recreation, and enjoyment of scenic beauty in Lake Michigan and its tributaries.

18 2. That these purposes were threatened and frustrated by the rights of the
19 railroad, which owned land abutting areas ceded to the city by various acts of the
20 legislature, to take ownership of the likely accretion of land caused by the city's park
21 and harbor project, to construct docks and piers, to obtain access to Lake Michigan,
22 and to exercise other riparian rights.

23 3. That under the agreement of 1913 the railroad conveyed to the city
24 substantial amounts of riparian land along the location of the city's park and harbor
25 project and all riparian rights connected to that land.

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1 4. That under the agreement of 1913 the city conveyed to the railroad the
2 submerged area described in subsection (4) which was nominal in size, consisting of
3 approximately 7 acres.

4 5. That this submerged area had no utility in aid of commerce or navigation or
5 any other public purpose, the transfer and fill of this area did not materially affect
6 the rights of the public in the free use of the waters of Lake Michigan, and the public
7 trust purposes served by the completed city harbor and park project described in
8 paragraph (b) 1. substantially outweighed any loss of public rights in navigable
9 waters that existed in the submerged area that was conveyed.

10 6. That any public rights in navigable waters that existed in the submerged
11 area that was conveyed had or would shortly have been lost when that area became
12 upland owned by the railroad by the process of accretion, as described in subsection
13 (5).

14 7. That the conveyance of this submerged area served the greater public
15 purpose for which the state granted submerged lands to the city and that chapter
16 358, laws of 1909, explicitly authorized that conveyance.

17 8. That the conveyance from the railroad to the city was made in exchange for
18 the conveyance of the submerged area and that the agreement of 1913 would not
19 have been executed if the conveyance of the submerged area was not included in the
20 agreement of 1913.

21 (7) The legislature finds that reference to a breakwater constructed by the
22 railroad in chapter 389, laws of 1915, was a reference to the breakwater that enclosed
23 the submerged area under the agreement of 1913 as described in subsection (4).

24 (8) The department of natural resources is not required to prepare a report
25 under section 13.097 (2) of the statutes with regard to the establishment of the

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1 shoreline of Lake Michigan under section 30.2038 (1) (a) of the statutes, as affected
2 by this act.

3 (END)