

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3906/1dn
RNK:wlj:rs

January 14, 2014

This draft is based entirely on language provided to me in draft form. I cannot verify the accuracy of the factual assertions in this draft.

The nonstatutory provision in this draft recites legislative findings with regard to the location of the Lake Michigan shoreline in the city of Milwaukee. Ordinarily, it is inadvisable to include legislative findings in a draft except in very limited circumstances. One of those circumstances is if there is a reasonable probability that a provision of a bill may be declared unconstitutional and the findings may help to sustain the provision if a court is made aware of the asserted constitutional basis for the provision.

I understand that the purpose of including legislative findings in this draft is to help sustain a finding that s. 30.2038, stats., as affected in this draft, does not violate the public trust doctrine as established under article IX, section 1, of the Wisconsin Constitution. I do not know whether there is a reasonable probability that the legislative findings in this draft are likely to help sustain the constitutionality of s. 30.2038, stats.

The nonstatutory provision of the draft also recites that certain of the legislative findings in the draft are made in lieu of, and have the same effect as, a final judgment entered by a court under ch. 841, stats. This provision could be challenged under the separation of powers doctrine. Article IV, section 1, of the Wisconsin Constitution vests the legislative powers of the state in the senate and assembly. Article VII, sections 2, 5, and 8, of the Wisconsin Constitution vest the judicial powers of the state in a unified court system and grants circuit courts and the courts of appeals original and appellate jurisdiction, respectively. Under the separation of powers doctrine, the constitution confers on each branch of government certain powers upon which the other branches may not intrude. It is possible that a court could find that a legislative declaration that certain legislative findings have the effect of a final judgment entered by a court confers judicial powers on the legislative branch in violation of the Wisconsin Constitution.

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