

## AB 393 (LRB 15-3347)

# 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 Watershed Management  
October 15, 2015*

### 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. Section 13.097, Wis. Stats., specifies the content of the report; sub. (2) requires the Department to make the findings listed in sub. (4), and sub. (6) requires the Department to conclude, based on its findings, whether or not the proposed legislation authorizing the grant and uses specified in the grant is consistent with protecting and enhancing the public trust purposes required by the State Constitution. “Public trust purpose” is defined in s. 13.097(1)(c), Wis. Stats., as “a purpose in furtherance of the public trust in navigable waters that is established under article IX, Section 1, of the constitution. “

To compile this report, the Department relied on *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 Wisconsin Supreme Court cases that discuss the public trust doctrine and public trust purposes.

### Description of the Proposed Legislation

This bill amends a grant of submerged lands to Brown County under Laws of 1977, Chapter 15, to include an additional area of submerged land contiguous to the land conveyed by Act 15. The purposes of the conveyance remain the same and are limited to use for public slips, basins, docks, wharves, structures, wildlife refuges, recreation, and park purposes.

### Department Findings

#### A. Location and Description of the Lakebed Grant Area

1. The grant area of approximately 4.06 acres of the bed of Green Bay north of and adjacent to Private Claim Number 46, East Side of the Fox River, City of Green Bay, Brown County, has the dimensions described in the proposed legislation.
2. The grant area is adjacent and contiguous to an area of approximately 102.96 acres of the bed of Green Bay that was granted to Brown County by Laws of 1977, Chapter 15. The dimensions of the Chapter 15 grant area are described in Chapter 15.

#### B. Purposes of the Proposed Conveyance

1. The filled lakebed area would be used for public slips, basins, docks, wharves, structures, wildlife refuges, recreation and park purposes.

2. The express language of the proposed legislation will allow the intended uses of the lake bed subject to the proposed conveyance.
- C. Use of the Lakebed Area Subject to the Proposed Conveyance – The area proposed to be conveyed is adjacent to an area conveyed earlier for the same purposes. The size of the area proposed to be conveyed is reasonably needed to fulfill the purposes of the prior conveyance.
  - D. Effect of the Proposed Conveyance on Public Trust Purpose Uses – This amendment to the prior grant will allow a county park to be developed on the lakebed area already conveyed. Development of a county park will increase opportunities for the public to access navigable waters to navigate, fish, swim, recreate, and enjoy natural scenic beauty, all public trust purpose uses. County ownership is compatible with the requirement for public control of lakebed grant areas. The proposed conveyance limits structures that may be erected on the lakebed area to structures that facilitate: public access to and use of the area; construction and maintenance of navigations aids; or construction and maintenance of the land.
  - E. Potential Subsequent Conveyances - The proposed legislation expressly prohibits the grantee Brown County from conveying all or part of, any rights to, or any interest in the land granted to anyone except the State or its political subdivision or special purpose district, and imposes on grantees of later conveyances the same restrictions regarding types of structures and subsequent conveyances as those imposed on the grantee Brown County.
  - F. Potential of the Grantee to Manage the Uses of the Lakebed Grant Area
    1. Brown County has the capability to manage this lakebed grant area in conformance with the public trust doctrine and is currently managing the lakebed area previously conveyed by Laws of 1977, Ch. 15 in accordance with the public trust doctrine.
    2. Brown County is a governmental unit.

### **Department Conclusions**

- A. Public Trust Purpose Uses – Upon completion of the project, the current opportunities for public trust purpose uses in the lakebed grant area will be enhanced and the opportunities for public trust purpose uses will substantially outweigh any loss of current opportunities for public trust purpose uses in the lakebed grant area.
- B. Public Access – All residents of the state will be able without restriction to participate in the uses of the lakebed grant area upon completion of the project.
- C. Purposes of Proposed Conveyance – The proposed legislation expands the previously conveyed area and will be used for similar purposes. The public trust purposes of the conveyance as expressed in the legislation are sufficiently narrow to permit only the specific public trust purpose uses proposed by the grantee Brown County.
- D. Management by the Grantee – Brown County has managed the lakebed conveyed to it by Laws of 1977, Chapter 15 in conformance with public trust purposes. Its proposals for use of the lake bed area subject to this proposed conveyance conform with a public trust purpose.

- E. Government Control – The legislation contains sufficient provisions for continued control of the lakebed grant area by a governmental unit.
- F. Commercial Uses – No commercial uses are proposed or authorized by the proposed conveyance.
- G. Consistency with Protecting and Enhancing a Public Trust Purpose – Based on the above findings and conclusions, the proposed legislation to expand the existing area of lakebed granted to Brown County is consistent with protecting and enhancing a public trust purpose.