June 28, 2019 - Introduced by Senators WANGGAARD and WIRCH, cosponsored by Representatives WITTKIE, NEUBAUER, MCGUIRE, SKOWRONSKI, OHNSTAD and BOWEN. Referred to Committee on Natural Resources and Energy.

AN ACT to create 30.2039 of the statutes; relating to: use of formerly submerged land in the city of Racine.

Analysis by the Legislative Reference Bureau

This bill expands the authorized uses of three parcels of lakebed that were granted by the state to the City of Racine between 1917 and 1963 and that remain unsubmerged through the use of lakebed fill.

Identified parcels

The bill identifies three parcels to which the bill applies:

1. One parcel of submerged land conveyed to the City of Racine in 1917 for the purpose of a public park.
2. One parcel of partly submerged land conveyed to the City of Racine in 1937 for the purpose of providing various public facilities, including docks, wharves, highways, and parks.
3. One parcel of partly submerged land conveyed to the City of Racine in 1963 for the purpose of providing various public facilities, including docks, wharves, highways, and parks, and for providing water recreation.

General use

This bill provides that the owner of the identified parcels may use the parcels for any public or public-private use, including the placement, replacement, or repair of structures, subject to restrictions. “Public-private use” means any use authorized by resolution of the common council of the city of Racine under a public-private partnership that is consistent with a public development plan. The bill makes the following restrictions on all uses of the specified parcels:
1. The 15 vertical feet above the surface of the lakebed fill may not be conveyed out of public ownership or converted to a private use.

2. Public use of the parcel must provide or increase public recreation, arts, event, or civic opportunities in or near navigable waters or increase or improve public access to navigable water.

3. The public owner of the parcel must maintain control over any private interest in and use of the parcel through use of specified contractual requirements.

4. At least 20 percent of property tax revenues generated from a public-private partnership must be dedicated to support and improve public access to and enjoyment of navigable waters or recreational opportunities within the parcels.

5. The majority of the land area of the parcels must remain in public ownership, be open to the public, and not be subject to public-private use.

**Hotel development**

The bill further authorizes the development of a hotel at a specified location on a portion of the identified parcels, subject to the following requirements:

1. The hotel must have an observation deck on the uppermost story or rooftop that offers views of Lake Michigan and is accessible to the public.

2. The hotel must have a restaurant on the uppermost story or rooftop that offers views of Lake Michigan and is accessible to the public.

3. The operator of the hotel must operate an adjacent municipal conference center so that the hotel functions as an expansion of the space and capabilities of the municipal conference center.

4. The ground floor of the hotel must occupy at least the first 15 vertical feet above the surface of the lakebed fill, and the majority of the space must contain conference and meeting space for events held at the municipal conference center.

5. The first-floor space of the hotel building must be at least 15 feet above the surface of the lakebed fill.

Because this bill concerns a conveyance of a lakebed area, the Department of Natural Resources, as required by law, will prepare a detailed report to be printed as an appendix to this bill.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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

1. **SECTION 1.** 30.2039 of the statutes is created to read:

2. **30.2039 Use of filled lakebed in the city of Racine.** (1) In this section:

3. (a) “Common council” means the common council of the city of Racine.
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(b) “Public-private partnership” means a relationship in which a public entity contracts with a private entity to obtain specified public benefits from the private entity in exchange for allowing the private entity to construct, operate, and lease infrastructure in, on, or above formerly submerged lands that were filled subject to a lakebed grant and to control air rights and own infrastructure within the space that is more than 15 feet above the surface of the lakebed fill.

(c) “Public-private partnership agreement” means a written agreement between a public entity and one or more private entities that is approved by the common council.

(d) “Public-private use” means any use or combination of uses expressly authorized by resolution of the common council that occurs under a public-private partnership and is consistent with a public comprehensive development or redevelopment plan approved by the common council.

(2) (a) Notwithstanding s. 24.39 (4), 30.11, or 30.12 or any provision of a grant of a parcel identified in par. (c) and subject to par. (b), the owner of a parcel that is identified in par. (c) may use the parcel for any public or public-private use permitted under federal, state, and local law, including the placement, replacement, or repair of structures, if all of the following apply:

1. No portion of a parcel that is within 15 feet of the surface of the lakebed fill and that has previously been designated for public use is conveyed out of public ownership or converted to an entirely private use.

2. Any public use provides or increases public recreation, arts, event, or civic opportunities in or near navigable waters or increases or improves public access to navigable water, including public opportunity and convenience to view, enter, navigate, recreate on or near, or otherwise enjoy the navigable waters.
3. The public owner secures and maintains control over the location, nature, use, operation, and termination of any private interest in and use of real estate and infrastructure by doing all of the following by resolution of the common council prior to implementation:

a. Entering into a development agreement or construction contract with the holder of the private interest.

b. Entering into a management contract with the holder of the private interest or issuing the holder of the private interest an occupancy permit, conditional use permit, or license to operate.

c. Transferring rights and interest in real estate by any lawful contractual method that is subject to a contractual mechanism such as revocation, rescission, reversionary interest, or option to purchase for fair market value that provides for the mandatory transfer of all rights and interests in the real estate to the local municipality upon a material breach or violation by the grantee of any contract, license, or agreement pertaining to use or ownership of the real estate.

d. Providing in contract that interests transferred are for an initial period of 98 years with an option to renew for not more than 2 terms of 25 years each.

e. Providing in contract that any interests transferred from the local municipality may not be further conveyed without the approval of the common council.

f. Entering into a contract or awarding a permit or license that authorizes annual inspection of the private space by the municipality.

4. Not less than 20 percent of property tax revenues generated from each public-private partnership are dedicated to support and improve public access to navigable waters, aids to navigation, enjoyment of scenic beauty or opportunities for
fishing and recreation at locations within parcels identified in par. (b) 2. in
accordance with a development plan, master plan, or tax incremental district plan
approved by the common council. This subdivision applies to any tax increment
district that contains part or all of a parcel identified in par. (b) 2.

5. The majority of the land area of the parcels identified in par. (c) remains in
public ownership, is open to the public, and is not subject to public-private use.

(b) 1. Subject to subd. 2., the owner of a parcel that is identified in par. (c) and
that has previously been designated for public use may divide, convey, and reconvey
the parcel only if the parcel remains under public ownership and is used for public
or public-private uses.

2. The owner of the area of any parcel in the city of Racine identified in par. (c)
that has previously been designated for public use and that is within the area north
of the center line of 11th Street extended, east of the west right-of-way of Pershing
Park Drive to where it abuts the south line of 6th Street extended at a point 541.30
feet east of the east line of Lake Avenue, and north from that point east of a line
extending north along the west line of the paved walkway for Festival Park extended
to where it abuts a point on the south line of 4th Street extended located 537.86 feet
east of the east line of Lake Avenue, shall retain ownership of the area, shall use the
area only for public uses, and shall dedicate 100 percent of the area to public access
to the water.

(c) The riparian owner of the following parcels may use the parcels in any
manner that is consistent with the requirements of pars. (a) and (b):

1. The parcel identified and granted to the city of Racine under chapter 325,
laws of 1917.
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2. The parcel identified as “Parcel No. 1” and granted to the city of Racine under chapter 318, laws of 1937.

3. The parcel identified and granted to the city of Racine under chapter 44, laws of 1963.

(3) The owner of the parcels identified in sub. (2) (c) 1. may develop a hotel on the portion of the parcels that is north of the north line of 6th Street extended, south of the south line of 5th Street extended, and west of the area described in sub. (2) (b) 2., if the requirements of sub. (2) (a) 1. to 5. are met and if all of the following apply:

(a) The hotel has an observation deck on the uppermost story or rooftop that offers views of Lake Michigan and is accessible to the public by elevator, free of charge, not less than 12 hours per day and not less than 300 days per year, except as necessary for reasonable repair and maintenance or for public safety.

(b) The hotel has a restaurant on the uppermost story or rooftop that offers views of Lake Michigan and is accessible to the public by elevator and available for use by the public without cover charge during all open hours and open not less than 200 days per year, subject to reasonable requirements for appropriate attire and minimum purchase of and customary charges for food and beverage.

(c) The operator of the hotel operates an adjacent municipal conference center in conjunction with the hotel so that the hotel functions as an expansion of the space and capabilities of the municipal conference center.

(d) The ground-floor space of the hotel building occupies not less than 15 feet of vertical space above the surface of the lakebed fill and the first-floor space of the hotel building begins more than 15 feet above the surface of the lakebed fill.
(e) The majority of the space on the ground floor of the hotel building contains conference and meeting space available for use by events held at the adjacent municipal conference center.

**SECTION 2. Nonstatutory provisions.**

(1) **LEGISLATIVE FINDINGS AND INTENT.** The legislature finds all of the following:

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

(b) Where fill of navigable waters pursuant to a legislative lakebed grant has resulted in unsubmerged land, it is unlikely that the land will be returned to a submerged state.

(c) The navigational and recreational uses of a waterway will not be adversely affected by allowing the placement of structures on formerly submerged land.

(d) Navigable waters serve a variety of public purposes, including scenic and recreational uses, and development of waterfront areas may promote the public health and welfare generally and result in increased economic development, increased tax base, improved opportunity for recreation, and improved public access to waters.

(e) The public interest in formerly submerged lands and the waters that remain navigable will be adequately served and will not be substantially impaired by the uses and transfer of rights and interests allowed of historic fill in accordance with the limitations and controls required of a public entity to implement such uses and transfer of formerly submerged lands filled pursuant to a legislative lakebed grant.
(f) The public trust purposes are adequately served if formerly submerged lands filled subject to a legislative lakebed grant are developed in accordance with the public controls required of a public-private partnership under s. 30.2039 and if at least 20 percent of the revenues generated from local taxes assessed on and collected from the development or tax increment districts containing the development are dedicated for and used to improve public access to waters, public recreational, arts, events, or civic opportunities in or near navigable waters, and aids to navigation.

(g) It is in the public interest to allow parcels of formerly submerged land filled pursuant to a legislative lakebed grant to be used for any public or public-private purpose, including the placement, replacement, or repair of structures, if the areas within 15 feet of the surface of the lakebed fill remain publicly owned and public access to the water is maintained.