



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-5531/1
ZDW:skw

2021 ASSEMBLY BILL 849

January 18, 2022 - Introduced by Representatives WITTKÉ, KATSMA, VORPAGEL, KUGLITSCH and MURPHY, cosponsored by Senators STROEBEL, BALLWEG, JACQUE and FELZKOWSKI. Referred to Committee on Environment.

1 **AN ACT** *to renumber* 30.122; *to amend* 30.122 (title); and *to create* 30.01 (1h),
2 30.122 (2), 30.122 (3), 30.2039 and 885.335 of the statutes; **relating to:** use of
3 fill in commercial waterways and establishing shorelines of Great Lakes
4 waters.

Analysis by the Legislative Reference Bureau

This bill provides for the lawful public or private use of land that has been above the ordinary high water mark of a commercial waterway or a Great Lakes water since December 9, 1977. Under current law, all permanent alterations, deposits, or structures, other than boathouses, that affect navigable waters are presumed in conformity with the law if they were constructed before December 9, 1977, and did not require a permit at the time of construction.

Historic fill in commercial waterways

The bill applies, in part, to fill placed prior to 1977 that created land above the ordinary high water mark of a commercial waterway, which is a specified list of rivers and harbors. If the fill is unauthorized fill for which the Department of Natural Resources has not initiated an enforcement action or is within an authorized bulkhead line and not specifically restricted by a submerged land lease, the owner of the fill may use the fill for any purpose.

Establishing the shorelines of Great Lakes waters

The bill applies, in part, to property that 1) includes land that may have been part of the submerged bed of a Great Lakes water at the time of statehood; 2) includes

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portions of land that are upland, which is defined to mean land that has been above the ordinary high water mark since December 9, 1977; 3) is within a municipality; and 4) is not subject to a lake bed grant or a submerged land lease and is not landward of the statutorily established shoreline in the city of Milwaukee.

The record title holder of applicable land may submit a proposed shoreline to the municipality in which the land is located. The municipality must approve the proposed shoreline if the municipality determines the proposed shoreline is in the public interest and the proposed uses will promote the interests of the public. If a municipality approves a proposed shoreline, the municipality must submit the approval to DNR for review.

Following a public notice and comment period, DNR must adopt the shoreline approved by the municipality unless DNR determines that a portion of the area landward of the shoreline is not upland or there is not substantial evidence that the shoreline as proposed is in the public interest. A determination by DNR establishes the shoreline for purposes of determining the boundary of title between land held in trust by the state and land held in fee title ownership.

The bill also prohibits the commencement of any action affecting the possession or title of any real estate based on an assertion that the property includes portions of land that may have at one time been submerged beneath a Great Lakes water if the portions of land are upland and not subject to a lake bed grant or a submerged land lease.

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

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

- 1 **SECTION 1.** 30.01 (1h) of the statutes is created to read:
- 2 30.01 (1h) "Commercial waterway" includes all of the following:
- 3 (a) Ahnapee River and Algoma Harbor.
- 4 (b) East River and Green Bay.
- 5 (c) Fox River.
- 6 (d) Kenosha Harbor.
- 7 (e) Kewaunee River and Kewaunee Harbor.
- 8 (f) Kinnickinnic River, Menomonee River, Milwaukee River, and Milwaukee
- 9 Harbor.

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1 (g) Manitowoc River and Manitowoc Harbor.

2 (h) Menominee River.

3 (i) Root River and Racine Harbor.

4 (j) Sheboygan River and Sheboygan Harbor.

5 (k) St. Louis River and Superior Harbor.

6 (L) West Twin River and Two Rivers Harbor.

7 **SECTION 2.** 30.122 (title) of the statutes is amended to read:

8 **30.122 (title) Unauthorized structures and fill.**

9 **SECTION 3.** 30.122 of the statutes is renumbered 30.122 (1).

10 **SECTION 4.** 30.122 (2) of the statutes is created to read:

11 30.122 (2) A fill or deposit placed in a commercial waterway before December
12 9, 1977, that created land at an elevation above the current ordinary high water
13 mark and that has remained above the current ordinary high water mark since
14 December 9, 1977, may be used by the owner of the fill or deposit for any public or
15 private purpose without restrictions imposed if any of the following apply:

16 (a) The fill is unauthorized and the department has not initiated an
17 enforcement action relating to the fill prior to effective date of this paragraph
18 [LRB inserts date].

19 (b) The fill is within an authorized bulkhead line established as provided under
20 s. 30.11 and use of the filled area is not specifically restricted by the terms included
21 in a submerged land lease under s. 24.39 (4).

22 **SECTION 5.** 30.122 (3) of the statutes is created to read:

23 30.122 (3) Nothing in this section abridges the riparian rights of riparian
24 owners.

25 **SECTION 6.** 30.2039 of the statutes is created to read:

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1 **30.2039 Great Lakes shorelines established. (1) DEFINITIONS.** In this
2 section:

3 (a) “Great Lakes water” means Lake Superior, Lake Michigan, Green Bay, or
4 Sturgeon Bay.

5 (b) “Municipality” means a city or village.

6 (c) “Record title holder” means a person with a claim of ownership of property
7 based on a recorded conveyance of an ownership interest in the property.

8 (d) “Shoreline” means the boundary between upland and property waterward
9 of upland areas.

10 (e) “Upland” means property that has been at an elevation above the current
11 ordinary high water mark since December 9, 1977, other than for temporary
12 maintenance activities or because of accretion or reliction.

13 **(2) SCOPE.** This section applies to properties or portions of properties to which
14 all of the following apply:

15 (a) The property includes portions of land that may have been part of the
16 submerged bed of a Great Lakes water at the time of statehood.

17 (b) The property includes portions of land that are upland.

18 (c) The property is within a municipality.

19 (d) The property is not subject to a lake bed grant or a submerged land lease
20 and is not landward of the shoreline established under s. 30.2038.

21 **(3) APPLICATION.** (a) A record title holder for property that meets the
22 requirements under sub. (2) (a) to (d) may apply to the municipality in which the
23 property is located for a determination of the location of the shoreline in accordance
24 with this section.

25 (b) The application shall include all of the following information:

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1 1. The legal description of the property and a survey map showing the proposed
2 shoreline.

3 2. Photographs, survey data, publicly available global positioning system
4 mapping, or other documentation that provide evidence that the area landward of
5 the proposed shoreline is upland.

6 **(4) MUNICIPAL APPROVAL.** (a) Except as provided in sub. (5), a municipality that
7 receives an application under sub. (3) shall determine whether the shoreline
8 proposed under sub. (3) (b) 1. is in the public interest as provided in par. (c).

9 (b) A municipality may by ordinance adopt a proposed shoreline for multiple
10 properties within the municipality that abut a Great Lakes water if the municipality
11 determines that the location of the shoreline is in the public interest as provided in
12 par. (c).

13 (c) In making a determination under this subsection, the municipality shall
14 approve the proposed shoreline if the property meets the requirements under sub.
15 (2) (a) to (d), the municipality determines approval of the shoreline is in the public
16 interest, and the proposed use will promote the interests of the public, which may
17 include public rights in navigable waters, public use, economic development or
18 redevelopment, the elimination of blight, remediation of brownfields, and settling
19 uncertainty in title. In making a determination under this subsection, there is a
20 presumption that existing residential uses require minimal or no public access or
21 use.

22 **(5) EXCEPTION.** A parcel that has been separated from the submerged bed of a
23 Great Lakes water by one or more other parcels since December 9, 1977, is deemed
24 to be not part of the lakebed of a Great Lakes water and shall be affected by this
25 section in the same manner as property for which a determination is made that the

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1 property is held in fee title ownership and is not held in trust by the state for the
2 public under sub. (9).

3 (6) SUBMITTAL TO THE DEPARTMENT. Upon making a determination to approve
4 a shoreline under sub. (4), the municipality shall provide the approval to the
5 department for review.

6 (7) NOTICE. (a) No later than 30 days after receiving a request for review under
7 sub. (6), the department shall provide public notice by publishing a class 2 notice
8 under ch. 985 and by posting notice on the department's Internet site. The notice
9 shall provide an opportunity for members of the public to provide comments and
10 request a public hearing. If a public hearing is requested, notice of the public hearing
11 shall be provided by publishing a class 2 notice under ch. 985 and by posting notice
12 on the department's Internet site.

13 (b) No later than 60 days following public notice under par. (a), or 60 days
14 following a public hearing requested under par. (a), whichever is later, the
15 department shall make a determination under sub. (8).

16 (8) DETERMINATIONS BY THE DEPARTMENT. The department shall adopt the
17 shoreline approved by a municipality under sub. (4) and determine the shoreline is
18 consistent with the public interest unless the department determines any of the
19 following:

20 (a) A portion of the area landward of the shoreline approved by the municipality
21 under sub. (4) is not upland. If a determination under this paragraph is made, the
22 department shall modify the proposed shoreline so that any portion that is not
23 upland remains waterward of the shoreline and shall approve the modified
24 shoreline.

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1 (b) The determination of the municipality under sub. (4) that the proposed
2 shoreline is in the public interest is not supported by substantial evidence.

3 **(9) EFFECT OF DETERMINATION.** (a) A determination under this section
4 establishes the shoreline for purposes of determining the boundary of title between
5 land held in trust by the state and land held in fee title ownership. For land held in
6 fee title ownership as determined under this section, this determination operates in
7 the same manner as if a person were granted quiet title to the property by a court
8 under s. 841.10.

9 (b) A determination under this section does not alter the rights of any record
10 title holder other than to establish the shoreline under par. (a).

11 (c) This section does does not alter the right of property owners to seek a quiet
12 title action under common law.

13 **SECTION 7.** 885.335 of the statutes is created to read:

14 **885.335 Actions concerning real estate abutting Great Lakes water.** No
15 action affecting the possession or title of any real estate may be commenced, by any
16 person, the state, or a political subdivision or municipal corporation of the state,
17 based on an assertion that the property includes portions of land that may have at
18 one time been submerged beneath a Great Lakes water if such portions of land are
19 upland, as defined in s. 30.2039 (1) (e), and the property is not subject to a lake bed
20 grant or a submerged land lease.

21 (END)