



1995 SENATE BILL 666

March 27, 1996 - Introduced by Senator BURKE, cosponsored by Representative BOCK. Referred to Committee on Environment and Energy.

1 **AN ACT** *to renumber and amend* 13.097 (2) (a) and 13.097 (2) (b); *to amend*
2 13.097 (title), 13.097 (1) (b), 13.097 (4) (a) 1., 13.097 (4) (a) 2., 13.097 (4) (a) 3.,
3 13.097 (4) (b), 13.097 (4) (c), 13.097 (4) (d), 13.097 (4) (e) 1., 13.097 (4) (e) 2.,
4 13.097 (4) (f) (title), 13.097 (4) (f) 1., 13.097 (4) (f) 2., 13.097 (4) (f) 3., 13.097 (5),
5 13.097 (6) (a), 13.097 (6) (b), 13.097 (6) (c), 13.097 (6) (d), 13.097 (6) (e) and
6 13.097 (6) (f); and *to create* 13.097 (1) (d), 13.097 (2) (a) 1., 13.097 (2) (a) 2.,
7 13.097 (2) (b) 2. and 13.097 (2) (b) 3. of the statutes; **relating to:** reports
8 prepared by the department of natural resources for certain legislation
9 affecting the beds of navigable streams.

Analysis by the Legislative Reference Bureau

Under the "public trust doctrine" found in the state constitution, the navigable waters in the state are held in trust by the state for the benefit of the public. Under current law, whenever a bill or amendment to convey a portion of a navigable lake bed is introduced in the legislature, the department of natural resources (DNR) must prepare a report on the bill as to whether the conveyance serves a public trust purpose. The report must contain DNR's findings on various matters, including the location, description and purpose of the proposed conveyance, and the effect of the proposed conveyance on the public trust purpose. The report must be prepared within 15 days after the legislation is introduced. The report is printed as an appendix to the bill to which it applies. The legislature may pass the legislation before the report is received by the legislature.

Under this bill, a similar report must be prepared whenever a bill or amendment to authorize a deposit on or other use of the bed of a stream, river or flowage is introduced in the legislature.

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.** 13.097 (title) of the statutes is amended to read:

2 **13.097** (title) **Review of legislation providing for conveyances of**
3 **concerning lake bed areas or stream bed areas.**

4 **SECTION 2.** 13.097 (1) (b) of the statutes is amended to read:

5 13.097 (1) (b) "Lake bed area" means all or a portion of the bed of a navigable
6 lake.

7 **SECTION 3.** 13.097 (1) (d) of the statutes is created to read:

8 13.097 (1) (d) "Stream bed area" means all or a portion of the bed of a navigable
9 stream, river or flowage.

10 **SECTION 4.** 13.097 (2) (a) of the statutes is renumbered 13.097 (2) (a) (intro.)
11 and amended to read:

12 13.097 (2) (a) (intro.) ~~When legislation that conveys a lake bed area or that~~
13 ~~amends a prior conveyance of a lake bed area is introduced or offered in the~~
14 ~~legislature, the~~ The department shall prepare a report on the any legislation within
15 15 days of its being introduced or offered. ~~The department may request any~~
16 ~~information from the grantee under such legislation or from a past grantee of the~~
17 ~~lake bed area that is reasonably necessary for the department to prepare the report.~~
18 in the legislature if the legislation does any of the following:

19 **SECTION 5.** 13.097 (2) (a) 1. of the statutes is created to read:

1 13.097 (2) (a) 1. Conveys a lake bed area or amends a prior conveyance of a lake
2 bed area.

3 **SECTION 6.** 13.097 (2) (a) 2. of the statutes is created to read:

4 13.097 (2) (a) 2. Authorizes deposits on or other use of a stream bed area or
5 amends a prior such authorization.

6 **SECTION 7.** 13.097 (2) (b) of the statutes is renumbered 13.097 (2) (b) 1. and
7 amended to read:

8 13.097 (2) (b) 1. If the legislation conveys a lake bed area, the department shall
9 describe the conveyance contained in the legislation. If the legislation amends a
10 prior conveyance of a lake bed area, the department's report shall describe the prior
11 conveyance and how it is amended by this legislation. ~~The report shall include the~~
12 ~~department's findings under sub. (4) and its conclusions under sub. (6).~~

13 **SECTION 8.** 13.097 (2) (b) 2. of the statutes is created to read:

14 13.097 (2) (b) 2. If the legislation authorizes deposits on or other use of a stream
15 bed area, the department shall describe the authorization contained in the
16 legislation. If the legislation amends a prior authorization of deposits on or other use
17 of a stream bed area, the department's report shall describe the prior authorization
18 and how it is amended by this legislation.

19 **SECTION 9.** 13.097 (2) (b) 3. of the statutes is created to read:

20 13.097 (2) (b) 3. The department's report under subd. 1. or 2. shall include the
21 department's findings under sub. (4) and its conclusions under sub. (6).

22 **SECTION 10.** 13.097 (4) (a) 1. of the statutes is amended to read:

23 13.097 (4) (a) 1. The name of the lake or stream in which the lake bed area or
24 stream bed area subject to the ~~proposed conveyance~~ legislation is located, the
25 location of the lake bed area in the lake or the stream bed area in the stream and the

1 name of the county and the town, village or city that is adjacent to the lake bed area
2 or to the stream bed area.

3 **SECTION 11.** 13.097 (4) (a) 2. of the statutes is amended to read:

4 13.097 (4) (a) 2. The approximate dimensions and size of the lake bed area or
5 the stream bed area subject to the ~~proposed conveyance~~ legislation.

6 **SECTION 12.** 13.097 (4) (a) 3. of the statutes is amended to read:

7 13.097 (4) (a) 3. ~~The~~ For a lake bed area or for a stream bed area that is the bed
8 of a flowage, the approximate area size of the lake or the flowage in which the lake
9 bed area or the stream bed area subject to the ~~proposed conveyance~~ legislation is
10 located.

11 **SECTION 13.** 13.097 (4) (b) of the statutes is amended to read:

12 13.097 (4) (b) (title) *Purposes of the proposed conveyance or authorization.* 1.
13 The purpose of the proposed conveyance or authorization, as expressed in the
14 legislation.

15 2. Any additional information on the intended uses of the lake bed area or the
16 stream bed area subject to the ~~proposed conveyance~~ legislation.

17 3. The extent to which the express language of the legislation will permit the
18 intended uses of the lake bed area or stream bed area subject to the proposed
19 conveyance or authorization.

20 **SECTION 14.** 13.097 (4) (c) of the statutes is amended to read:

21 13.097 (4) (c) (title) *Use of the lake bed area or stream bed area subject to the*
22 *~~proposed conveyance~~ legislation.* 1. The size of the area reasonably required for the
23 intended uses of the lake bed area or the stream bed area under the ~~proposed~~
24 ~~conveyance~~ legislation, as compared to the size of the lake bed area or stream bed

1 ~~area actually conveyed by~~ subject to the legislation, and a description of the
2 anticipated or potential uses of any excess area.

3 2. If the lake bed area or the stream bed area subject to the ~~proposed conveyance~~
4 legislation exceeds the area required for the intended uses, whether the excess area
5 will remain unused for a substantial period.

6 **SECTION 15.** 13.097 (4) (d) of the statutes is amended to read:

7 13.097 (4) (d) (title) *Effect of the ~~proposed conveyance~~ legislation on public trust*
8 *purpose uses.* 1. Opportunities for navigation, fishing, hunting, swimming,
9 recreation, enjoyment of scenic beauty and other public trust purpose uses that will
10 be lost or obtained when the grantee exercises the rights granted by the ~~proposed~~
11 conveyance legislation.

12 2. The type of uses that will be made of the lake bed area or the stream bed area
13 subject to the ~~proposed conveyance~~ legislation when the grantee exercises the rights
14 granted by the ~~proposed conveyance~~ legislation, and whether those uses are public
15 trust purpose uses.

16 3. Proposed restrictions on public access to the lake bed area or the stream bed
17 subject to the ~~proposed conveyance~~ legislation, upon completion of the project,
18 including physical restrictions such as fences, walls or lack of parking, legal
19 restrictions such as hours of operation or conversion to private property and financial
20 restrictions such as admission fees, licenses, permits or requirements to make
21 purchases.

22 **SECTION 16.** 13.097 (4) (e) 1. of the statutes is amended to read:

23 13.097 (4) (e) 1. The extent to which the ~~proposed conveyance~~ legislation
24 expressly prohibits or permits a subsequent conveyance of all or a part of the lake
25 bed area or of the stream bed area by the grantee under the legislation, including a

1 subsequent conveyance by warranty deed, quitclaim deed or lease, or is silent
2 regarding a subsequent conveyance by the grantee.

3 **SECTION 17.** 13.097 (4) (e) 2. of the statutes is amended to read:

4 13.097 (4) (e) 2. Whether the legislation imposes the same restrictions on
5 grantees of subsequent conveyances as it imposes on the original grantee of the
6 conveyance or authorization.

7 **SECTION 18.** 13.097 (4) (f) (title) of the statutes is amended to read:

8 13.097 (4) (f) (title) *Potential of the grantee to manage the use of lake bed area*
9 *or stream bed area*.

10 **SECTION 19.** 13.097 (4) (f) 1. of the statutes is amended to read:

11 13.097 (4) (f) 1. What management controls are proposed by the grantee under
12 the legislation to assure that the lake bed area or the stream bed area is used only
13 for the public trust purposes authorized by the legislature, including the grantee's
14 internal controls and control exercised by the grantee over a lessee, a trespasser or
15 a grantee of a subsequent conveyance of all or part of the lake bed area or a trespasser
16 of the stream bed area.

17 **SECTION 20.** 13.097 (4) (f) 2. of the statutes is amended to read:

18 13.097 (4) (f) 2. Whether the grantee of the conveyance or authorization has
19 managed or is managing the use of any other lake bed areas ~~conveyed to the grantee~~
20 or stream bed areas in conformance with the any public trust purposes authorized
21 by those conveyances or authorizations.

22 **SECTION 21.** 13.097 (4) (f) 3. of the statutes is amended to read:

23 13.097 (4) (f) 3. If the grantee ~~of an original or subsequent conveyance~~ under
24 the legislation or a lessee is not a governmental unit, the extent to which the use of
25 the lake bed area or the stream bed area subject to the ~~proposed conveyance~~

1 legislation will be controlled or supervised by a governmental unit, to assure
2 conformity with a public trust purpose.

3 **SECTION 22.** 13.097 (5) of the statutes is amended to read:

4 13.097 (5) DEPARTMENT AUTHORITY TO REQUEST INFORMATION. The department
5 may request a grantee to provide the department with any information from a
6 grantee under the legislation or from a past grantee of a conveyance of the lake bed
7 area or of an authorization for deposits on or other use of the stream bed area that
8 is reasonably necessary for the department to prepare the a report under sub. (4) this
9 section.

10 **SECTION 23.** 13.097 (6) (a) of the statutes is amended to read:

11 13.097 (6) (a) *Public trust purpose uses.* Whether the opportunities for public
12 trust purpose uses upon completion of the project, including opportunities for
13 navigation, fishing, hunting, swimming, recreation and enjoyment of scenic beauty,
14 substantially outweigh any loss of current opportunities for public trust purpose
15 uses in that the lake bed area or the stream bed area and whether the current
16 opportunities for public trust purpose uses will be enhanced or diminished upon
17 completion of the project.

18 **SECTION 24.** 13.097 (6) (b) of the statutes is amended to read:

19 13.097 (6) (b) *Public access.* ~~Whether all~~ The degree to which residents of the
20 state will be able, without restriction, to participate in the uses of the lake bed area
21 or the stream bed area subject to the ~~proposed conveyance~~ legislation upon
22 completion of the project.

23 **SECTION 25.** 13.097 (6) (c) of the statutes is amended to read:

24 13.097 (6) (c) (title) *Purposes of the ~~proposed~~ conveyance or authorization.*
25 Whether the public trust purposes of the conveyance or authorization, as expressed

1 in the legislation, are sufficiently narrow to permit only the specific public trust
2 purpose uses proposed by the grantee.

3 **SECTION 26.** 13.097 (6) (d) of the statutes is amended to read:

4 13.097 (6) (d) *Management by the grantee.* Whether the grantee's management
5 of the use of any other lake bed areas ~~conveyed to the grantee~~ or stream bed areas
6 conforms with a public trust purpose and whether the grantee's proposals for the use
7 of the lake bed area or stream bed area subject to the ~~proposed conveyance~~ legislation
8 conform with a public trust purpose.

9 **SECTION 27.** 13.097 (6) (e) of the statutes is amended to read:

10 13.097 (6) (e) Whether the lake bed area or the stream bed area and ~~its~~ the
11 proposed public trust purpose uses of the area will be controlled or supervised by a
12 governmental unit.

13 **SECTION 28.** 13.097 (6) (f) of the statutes is amended to read:

14 13.097 (6) (f) *Commercial uses.* Whether any commercial uses of the lake bed
15 area or the stream bed area subject to the ~~proposed conveyance~~ legislation are minor
16 and incidental to free public trust purpose uses or whether commercial purposes
17 dominate the proposed use of the lake bed area or the stream bed area.

18 **SECTION 29. Initial applicability.**

19 (1) This act first applies to legislation introduced or offered on the effective date
20 of this subsection.

21 (END)