

State of Wisconsin



2023 Senate Bill 541

Date of enactment:
Date of publication*:

2023 WISCONSIN ACT

AN ACT *to create* 30.2034, 30.2039 and 885.335 of the statutes; **relating to:** use of fill in certain waterways.

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

SECTION 1. 30.2034 of the statutes is created to read:

30.2034 Change to existing approvals. (1) DEFINITIONS. In this section:

(a) "Fill authorization" means the authorization of fill in an area of a Great Lakes water by the legislature in specific legislation or a lake bed grant or by a submerged land lease under s. 24.39.

(b) "Filled area" means an area in a Great Lakes water filled before August 8, 1989, pursuant to a fill authorization.

(c) "Grantee" means a municipality that has been granted a fill authorization.

(d) "Great Lakes water" means Lake Superior, Lake Michigan, Green Bay, or Sturgeon Bay.

(e) Notwithstanding s. 30.01 (4), "municipality" means a city or village.

(2) APPLICATIONS BY GRANTEES. (a) A grantee may apply to the department to change the uses allowed within filled areas of a fill authorization.

(b) An application under par. (a) shall include all of the following information:

1. A legal description of the fill authorization and the filled area proposed to be used.

2. A description of the proposed change to the existing fill authorization, including a detailed description of the proposed uses consistent with sub. (3).

3. A determination from the governing body of the municipality approving the proposed change and requesting authorization from the department.

(3) STANDARDS FOR APPROVAL. The department shall evaluate applications submitted under sub. (2) based on whether the uses proposed in the application meet the following criteria:

(a) The filled area proposed to be used is used for parking lots, public or private buildings, roads, or railroads on the effective date of this paragraph [LRB inserts date].

(b) The filled area proposed to be used does not include any area currently used for public park purposes.

(c) The filled area proposed to be used remains under the ownership and control of the municipality. In this paragraph, "ownership and control" includes leases or licenses to private or public entities for the provision of concessions, as defined under s. 30.2039 (1) (a), subject to compliance with the other criteria under this subsection.

(d) The application is consistent with any waterfront development plan approved under s. 30.2039 (2) (d).

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

(e) The application promotes appropriate public uses consistent with the public interest, and may include concessions, as defined in s. 30.2039 (1) (a), open to the public under long-term lease with the municipality, if the concessions provide a significant public benefit to the public interest in navigable waters.

(f) The application includes appropriate mechanisms for department enforcement.

(g) The application promotes other public objectives, which may include the elimination of blight, the remediation of brownfields, and other private economic development benefits.

(h) The application requires that the proceeds from any lease or license to private or public entities to create or operate a concession, as defined in s. 30.2039 (1) (a), be used by the municipality to promote the public interest in navigable waters pursuant to a plan approved by the department. This paragraph does not apply to revenue from real property taxes received by the municipality.

(4) DEPARTMENT APPROVAL OF APPLICATIONS. (a) No later than 90 days after receiving an application under sub. (2), the department shall hold a public hearing and provide public notice by publishing a class 2 notice under ch. 985 and by posting notice on the department's website.

(b) No later than 90 days following the public hearing under par. (a), the department shall make a determination on whether to approve the application under sub. (2). The department and the applicant may agree to extend this timeline. The failure of the department to act within 90 days or within any timeline agreed to by the department and the applicant may not be deemed to be an approval by the department.

(c) Determinations made under par. (b) are subject to review under ch. 227.

SECTION 2. 30.2039 of the statutes is created to read:

30.2039 Great Lakes and river waterfront property. (1) DEFINITIONS. In this section:

(a) "Concession" means a private allowable use that is a structure or facility that provides lodging, restaurant and food and beverage services, or retail services supporting the public interest in navigable waters and that support public access and use of navigable waters.

(b) "Great Lakes water" means Lake Superior, Lake Michigan, Green Bay, or Sturgeon Bay.

(c) Notwithstanding s. 30.01 (4), "municipality" means a city or village.

(d) "Public use" means public access and use, including the provision of, access to, and use of parkland, trails and roads, and public recreational facilities.

(e) "Record title holder" means a person with a claim of ownership of property based on a recorded conveyance of an ownership interest in the property.

(f) "Upland" means property that remained at an elevation above the current ordinary high water mark from December 9, 1977, to the effective date of this paragraph

... [LRB inserts date], other than for temporary maintenance activities or because of accretion or reliction.

(2) WATERFRONT DEVELOPMENT PLAN. (a) *Authority.* A municipality may create a waterfront development plan with respect to parcels that include land that may have been part of a riverbed or that may have been part of the submerged bed of a Great Lakes water at the time of statehood.

(b) *Elements of the plan.* A municipality shall include all of the following information in a waterfront development plan under this subsection:

1. A map identifying parcels of land that are subject to the proposed plan area.

2. An approximate delineation of the shoreland at statehood based on existing government survey maps.

3. A delineation of upland areas. In determining whether portions of the proposed plan area are upland, the municipality may use photographs, survey data, publicly available global positioning system mapping, geographic information system mapping, or other documentation.

4. A delineation of any area that is subject to a lake bed grant or a submerged land lease, a bulkhead line established under s. 30.11, or a shoreline established under s. 30.2038.

5. An overall plan for the development of the proposed plan area, including a map showing areas that will be dedicated to the public for public use and areas that will allow for private uses. The boundary between the proposed public use areas and remaining areas shall be surveyed and delineated on the map under subd. 1.

6. A description of areas and types of proposed public use consistent with the standards established under par. (d) and any restrictions on public use to be proposed for safety or security reasons. The plan shall describe how the public use areas will be accessible to the public.

7. A plan for implementing and enforcing the development and perpetual maintenance of the public use areas, including appropriate ordinances. The plan shall require that the record title owner grant an easement to the department ensuring that future use of public use areas will be consistent with the plan and shall include appropriate mechanisms for department enforcement.

(c) *Plan review.* 1. The municipality shall consult with any record title holders within the plan area proposed under par. (b) prior to approval by the municipality.

2. Upon adoption of the waterfront development plan by the municipality, the municipality shall provide the plan to the department for review and approval.

3. No later than 90 days after receiving a request for review under this paragraph, the department shall hold a public hearing and shall provide public notice by publishing a class 2 notice under ch. 985 and by posting notice on the department's website.

4. No later than 90 days following the public hearing under subd. 3., the department shall make a determina-

tion under par. (d). The department and the applicant may agree to extend this timeline. The failure of the department to act within 90 days or within any timeline agreed to by the department and the applicant may not be deemed to be an approval by the department.

(d) *Determinations by the department.* The department may impose additional restrictions and conditions on a plan submitted under par. (c) 2. but may not approve a plan, with or without additional restrictions and conditions, unless the department determines all of the following:

1. The plan meets the requirements of par. (b).
2. The uses proposed in the plan are not inconsistent with existing lake bed grants or submerged land leases.
3. The private uses proposed in the plan will not materially affect the public interest in navigable waters.
4. The amount and location of the public use areas to be developed and maintained under the plan provide a substantial benefit to the public interest in navigable waters. Appropriate uses in public use areas may include concessions open to the public under long-term lease with a municipality if the concessions provide a significant benefit to the public interest in navigable waters.
5. The plan contains sufficient provisions to ensure that the public uses proposed in the plan will be implemented and perpetually maintained.
6. The plan requires that the proceeds from any lease or license to private or public entities to create or operate a concession be used by the municipality to promote the public interest in navigable waters pursuant to a plan approved by the department. This paragraph does not apply to revenue from real property taxes received by the municipality.
7. The boundary established in the plan will not result in a substantial impairment of the public interest in navigable waters and is incidental to the development and perpetual maintenance of the public use areas of the plan.

(e) *Effect of determination.* 1. An approval under par. (d) constitutes a determination by the department that the public interest in navigable waters is served by implementation of the plan and, with respect to areas that may have been part of the submerged bed of a Great Lakes water at the time of statehood, the boundary established between land that is held in trust by the state or is otherwise publicly owned and land held in private fee title ownership is in the public interest in navigable waters.

2. Following an approval under par. (d), the applicant shall record the approval with the register of deeds and the department shall post the approval on the department's website. Upon implementation of the portions of the plan approved under par. (d) that relate to the public use areas, and any conditions imposed in the approval related to those areas, areas designated for private use that may have been part of a riverbed at the time of state-

hood shall not be subject to a navigational servitude and, for areas that may have been part of the submerged bed of a Great Lakes water at the time of statehood, the boundary between land that is held in trust by the state or is otherwise publicly owned and land held in private fee title ownership shall have the same effect as if the boundary were confirmed in a quiet title action granted by a court under s. 841.10.

3. This section does not alter the right of property owners to seek a quiet title action under common law.

(f) *Boundary amendments.* A municipality may seek to amend a public use boundary approved under par. (d) only by preparing and submitting a new plan using the process under this subsection.

(g) *Review.* Determinations made under par. (d) are subject to review under ch. 227.

(3) **TITLE TO NONRIPARIAN PARCELS.** A parcel that may include areas that were part of the submerged bed of a Great Lakes water at the time of statehood and that remained separated from a Great Lakes water by one or more other parcels from December 9, 1977, to the effective date of this subsection [LRB inserts date], for which there is a record title holder, and that is not subject to a fill authorization as defined in s. 30.2034 (1) (a), is deemed to be not part of the lake bed of a Great Lakes water and to be held in fee title ownership. For land held in fee title ownership as determined under this subsection, this determination operates in the same manner as if a person were granted quiet title to the property by a court under s. 841.10.

(4) **EXCEPTION FOR EXISTING USES.** The department shall treat upland property adjacent to a Great Lakes water, all or part of which may have been land that was part of the submerged lake bed of the Great Lakes water at the time of statehood, as property owned by the record title holder for purposes of exercising any regulatory authority, if the property includes portions of land that are upland and the use of such property has not materially changed since the effective date of this subsection [LRB inserts date]. In this subsection, "materially changed" means a material modification or termination of an existing use and does not include the maintenance, repair, replacement, restoration, rebuilding, or remodeling of any part of any existing structure or the transfer of the property. This subsection may not be construed as authorizing the combining of existing uses on multiple properties for the purposes of this subsection.

SECTION 3. 885.335 of the statutes is created to read:
885.335 Actions concerning real estate abutting Great Lakes water. (1) No claim or counterclaim may be made in an action relating to the possession or title of any real estate if the claim or counterclaim is 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 any of the following apply:

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(a) The property is upland, as defined in s. 30.2039 (1) (f), and the use of the property has not materially changed, as defined in s. 30.2039 (4).

(b) The property was designated as land held in fee title ownership by a determination made under s. 30.2039 (2) (d) that establishes the boundary between land held in trust by the state and land held in fee title ownership.

(c) The property is held in fee title ownership as determined under s. 30.2039 (3).

(d) The use of the property is approved under s. 30.2034.

(2) This section does not apply to administrative and judicial review of decisions of the department of natural resources under s. 30.2034 or 30.2039 or ch. 227.

SECTION 4. Nonstatutory provisions.

(1) Notwithstanding s. 13.097 (2), the department of natural resources may not prepare a report under s. 13.097 (2) (a) for this bill.
