



State of Wisconsin
2021 - 2022 LEGISLATURE

LRBa1291/1
ZDW:skw

**SENATE AMENDMENT 1,
TO SENATE BILL 900**

February 16, 2022 - Offered by Senator STROEBEL.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 2: delete “all of the following:” and substitute “the portions of
3 all of the following rivers that are within the Great Lakes basin and within
4 incorporated areas:”.

5 **2.** Page 2, line 3: delete “River and Algoma Harbor.” and substitute “River.”.

6 **3.** Page 2, line 4: delete “and Green Bay.” and substitute “in Brown County.”.

7 **4.** Page 2, line 6: delete that line.

8 **5.** Page 2, line 7: delete “River and Kewaunee Harbor.” and substitute “River.”.

9 **6.** Page 2, line 8: delete lines 8 and 9 and substitute:

10 “(f) Kinnickinnic River, Menomonee River, and Milwaukee River.”.

11 **7.** Page 3, line 1: delete “River and Manitowoc Harbor.” and substitute
12 “River.”.

1 **8.** Page 3, line 3: delete “River and Racine Harbor.” and substitute “River.”.

2 **9.** Page 3, line 4: delete “River and Sheboygan Harbor.” and substitute
3 “River.”.

4 **10.** Page 3, line 5: delete “River and Superior Harbor.” and substitute “River.”.

5 **11.** Page 3, line 6: delete “River and Two Rivers Harbor.” and substitute “River
6 and East Twin River.”.

7 **12.** Page 6, line 16: delete “The department” and substitute “For purposes of
8 this section, the department”.

9 **13.** Page 6, line 18: after “interest” insert “as provided in sub. (4) (c)”.

10 **14.** Page 7, line 8: after “841.10.” insert “A determination under this section
11 shall be recorded with the register of deeds.”.

12 **15.** Page 7, line 14: delete lines 14 to 20 and substitute:

13 **“885.335 Actions concerning real estate near Great Lakes waters or**
14 **commercial rivers. (1)** No claim or counterclaim may be made in an action
15 relating to the possession or title of any real estate if the claim or counterclaim is
16 based on an assertion that the property includes portions of land that may have at
17 one time been submerged beneath a Great Lakes water if such portions of land are
18 upland, as defined in s. 30.2039 (1) (e), and the property is not subject to a lake bed
19 grant or submerged land lease.

20 **(2)** No claim or counterclaim may be made in an action relating to the allowable
21 use of any real estate if the claim or counterclaim is based on an assertion that the
22 property includes portions of land that may have at one time been submerged
23 beneath a commercial river, as defined in s. 30.01 (1h), or an assertion that the

1 allowable use of the property is otherwise limited by a prior approval issued by the
2 state or a local government, if s. 30.122 (2) is applicable to such portions of land.

3 **SECTION 8m. Nonstatutory provisions.**

4 (1) LEGISLATIVE FINDINGS.

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

9 (b) The legislature recognizes that title to natural lake beds as existing at
10 statehood, including those in the Great Lakes, generally is held by the state. *State*
11 *v. Bleck*, 114 Wis. 2d 454 (1983); *Illinois Steel Co. v. Bilot*, 109 Wis. 418 (1901); *State*
12 *v. Trudeau*, 139 Wis. 2d 91 (1987).

13 (c) However, the legislature finds that the original government survey of the
14 state included many inaccuracies, especially along bodies of water, where the
15 boundaries between lake or river beds and other low-lying areas like wetlands are
16 difficult to determine, even with present-day methods. The combination of the
17 dynamic nature of Great Lakes waters and the evolution of commercial harbors,
18 urban areas, and other lakeshore development has resulted in considerable changes
19 in lake bed shorelines since the original government survey. In many cases, these
20 changes occurred between the time of the government survey and the date of
21 statehood, resulting in a lack of reliable documentation of the location of shorelines
22 on the date of statehood. The historical record on the extent of natural or artificial
23 changes to lake bed areas before and after statehood is often incomplete and
24 inconclusive. Similarly, the extent to which artificial fill has been authorized and the
25 allowable uses of lake bed areas is often unclear.

1 (d) The legislature declares that the uncertainty of title to and the uncertainty
2 associated with permissible uses of some lakefront property are a substantial
3 impediment to orderly redevelopment and transfer of valuable lakefront properties,
4 and it is in the public interest to promote the use of upland areas in a way that
5 provides certainty and facilitates economic development, increased tax base, and
6 public access.

7 (e) The legislature declares that lakefront areas serve a variety of public
8 purposes beyond commercial navigation and are increasingly valuable for scenic and
9 recreational uses. Redevelopment of lakefront areas has resulted in the cleanup of
10 contaminated areas, elimination of blight, increased economic development,
11 increased tax base, and improved public access to and enjoyment of lake waters.

12 (f) The legislature declares that the best available method to establish the
13 shoreline between a Great Lakes lake bed and adjoining uplands for purposes of
14 establishing ownership and allowable use of the adjoining uplands is the method
15 established under s. 30.2039, as created by this act, and that this method is in the
16 public interest, is consistent with the public trust doctrine, and promotes the most
17 equitable method of determining the ownership and use rights applicable to
18 lakefront property on the Great Lakes.

19 (g) The legislature finds, as the representative of the state with respect to the
20 specific application of the public trust in navigable waters, that the system for
21 establishing the shoreline of Great Lakes waters under s. 30.2039, as created by this
22 act, is permissible under the law because this system is based upon the longstanding
23 doctrine of accretion. In support of this finding, the legislature recognizes that courts
24 have held that title to lake beds may be altered under the common law doctrines of
25 accretion and reliction through both natural processes and through the placement

1 of artificial fill. *De Simone v. Kramer*, 77 Wis. 2d 188 (1977); *Heise v. Village of*
2 *Pewaukee*, 92 Wis. 2d 333 (1979); *W. H. Pugh Coal Co. v. State*, 105 Wis. 2d 123 (1981);
3 *Doemel v. Jantz*, 180 Wis. 225 (1923); *Angelo v. Railroad Com.*, 194 Wis. 543 (1928);
4 *Jansky v. City of Two Rivers*, 227 Wis. 228 (1938).

5 (h) Should a reviewing court of competent jurisdiction disagree with the
6 legislative finding in par. (g), the legislature finds that the system for establishing
7 the shoreline of Great Lakes waters under s. 30.2039, as created by this act, is
8 permissible under the law because the system is separately supported by the
9 longstanding doctrine of adverse possession under both common law and the
10 statutes. In support of this finding, the legislature recognizes all of the following:

11 1. Property subject to the system for establishing the shoreline of Great Lakes
12 waters is required to have been upland for more than 40 years, which is consistent
13 with the doctrine of adverse possession.

14 2. Adverse possession is a well-settled mechanism for conforming legal title to
15 the expectations of and actual use by individuals in possession of property.

16 3. The legislature has authority to determine the criteria necessary to establish
17 a claim of adverse possession against private parties or the state.

18 4. Multiple cases have indicated that the allowance for adverse possession of
19 formerly submerged lands is constitutional. *Illinois Steel Co. v. Bilot*, 109 Wis. 418
20 (1901); *State v. Bednarski*, 1 Wis. 2d 639 (1957); *State v. Adelmeyer*, 221 Wis. 246
21 (1936).

22 (i) Should a reviewing court of competent jurisdiction disagree with the
23 legislative findings in par. (g), the legislature finds that the system for establishing
24 the shoreline of Great Lakes waters under s. 30.2039, as created by this act, is
25 permissible under the law because the system is separately supported by case law

1 allowing the legislature to make certain transfers of lake bed to a private party for
2 private purposes. In particular, the legislature, as representative of the state with
3 respect to the specific application of the public trust in navigable waters, may convey
4 a nominal area of lake bed to a private party for private purposes if the conveyance
5 furthers the public trust and is part and parcel of a larger scheme that is purely
6 public in nature. *Milwaukee v. State*, 193 Wis. 423 (1927). The legislature finds that
7 any transfers of former lake bed to a private party that may be held to occur under
8 s. 30.2039, as created by this act, are nominal transfers and are part and parcel of
9 a larger scheme that is purely public in nature, for the reasons recognized above. The
10 department of natural resources is not required to prepare a report under s. 13.097
11 (2) with regard to the process by which the department may establish a shoreline
12 under s. 30.2039, as created by this act.

13 (j) The legislature recognizes that in interpreting the public trust, the courts
14 in Wisconsin have made a distinction between the ownership of the beds of navigable
15 streams and natural lakes. For stream beds, the title is held by a fee title owner but
16 this title is qualified by the rights of the public to use the water for navigation.
17 *Munninghoff v. Wis. Conservation Com.*, 255 Wis. 252 (1949); *FAS, LLC v. Town of*
18 *Bass Lake*, 2007 WI 73.

19 (k) The legislature recognizes that in *Muench v. Public Service Com.*, 261 Wis.
20 492 (1952), the court held that the public trust extends only to land under the stream
21 of a navigable water so long as the land constitutes part of the bed of the stream, and
22 if the course of the stream is changed so that the land is no longer is part of the river
23 bed, it ceases to be impressed with the public trust. For instance, the provisions
24 under s. 30.195 allow for the relocation of navigable streams. When such action is

1 taken, any area that was formerly the bed of a stream is no longer subject to the
2 public trust and may be used for any allowable private purpose.

3 (L) The legislature finds that river banks can move as a result of natural or
4 artificial processes. In developed settings, major rivers and associated harbors were
5 often used for commercial navigation, resulting in dredging of commercial channels
6 and the placement of fill along riverbanks for piers, wharfs, seawalls, and similar
7 structures. See, e.g., Wis. Leg. Council, “Conclusions and Recommendations of the
8 Ports and Navigation Committee on Revision of the Ports and Navigation Laws,”
9 *1959 Report* vol. 1 (Madison, WI: Legislative Council, Jan. 1959).

10 (m) The legislature finds that the historic record on the extent of natural or
11 artificial changes to the original riverbank and river bed is often incomplete and
12 inconclusive. Similarly, the extent to which artificial fill has been authorized and the
13 allowable uses of the original riverbank and river bed is often unclear. Historically,
14 the state has authorized filling of riverbanks by legislative grant, permits under ch.
15 30, or legislative delegations to municipalities. These authorizations include
16 pierhead lines, dock and wharf lines, dock lines, wharf lines, shorelines, bulkhead
17 lines, and similar authorizations. Today, dredging and filling of navigable waters is
18 regulated through permits issued by the department of natural resources under the
19 provisions of ch. 30.

20 (n) The legislature finds that today, rivers and harbors serve a variety of public
21 purposes beyond commercial navigation. Riverfront areas are increasingly valuable
22 for scenic and recreational values. Redevelopment of riverfront areas has resulted
23 in cleanup of contaminated areas, increased economic development, increased tax
24 base, and improved public access to these rivers.

