



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3906/1
RNK:wlj:rs

2013 BILL

1 **AN ACT to repeal and recreate 30.2038 of the statutes; relating to:**
2 **establishing the shoreline of Lake Michigan in the city of Milwaukee.**

Analysis by the Legislative Reference Bureau

This bill fixes and establishes the shoreline in the city of Milwaukee (city) in accordance with an agreement entered into in 1913 (agreement of 1913) between the Chicago and Northwestern Railway company and the city. The bill provides that this shoreline constitutes the boundary line between the lake bed of Lake Michigan and land that is not part of the lake bed of Lake Michigan. The bill specifies than any restrictions or other conditions imposed on the use of land or conveyance of land under various enactments of the legislature conveying a part of the lake bed of Lake Michigan do not apply to land located to the west of the shoreline as established under the bill. The bill provides that a person may challenge the shoreline boundary as established under the bill only by bringing an action in court for a declaratory judgment.

The bill also makes legislative findings and declarations with respect to the authority of the legislature to act as representative of the state in exercising the function of trustee of the public trust in navigable waters established under article IX, section 1, of the Wisconsin Constitution. The bill contains other findings that describe land conveyances under the agreement of 1913 and under various other legislative enactments and that describe other activities that occurred after 1913 to

BILL

establish that the shoreline in the city of Milwaukee is as described in the agreement of 1913.

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

1 SECTION 1. 30.2038 of the statutes, as created by 2013 Wisconsin Act 20, is
2 repealed and recreated to read:

3 **30.2038 Milwaukee shoreline established.** (1) (a) The shoreline of Lake
4 Michigan in the city of Milwaukee is fixed and established to extend from
5 approximately the line of East Lafayette Place extended easterly on the north to the
6 present north harbor entrance wall of the Milwaukee River on the south as specified
7 in an agreement between the Chicago and Northwestern Railway Company and the
8 city of Milwaukee recorded with the office of the register of deeds of Milwaukee
9 County on April 23, 1913, in volume 662, pages 326-330, as document number
10 762955.

11 (b) The shoreline described under par. (a) constitutes the boundary line
12 between the lake bed of Lake Michigan and land that is not part of the lake bed of
13 Lake Michigan.

14 (2) Any restrictions, conditions, reverters, or limitations imposed on the use of
15 land or conveyance of land under chapter 358, laws of 1909, chapter 389, laws of
16 1915, chapter 284, laws of 1923, chapter 150, laws of 1929, chapter 151, laws of 1929,
17 chapter 516, laws of 1929, chapter 381, laws of 1931, chapter 76, laws of 1973, 1985
18 Act 327, and any other act conveying a part of the lake bed of Lake Michigan do not
19 apply to land located to the west of the shoreline described under sub. (1) (a).

20 (3) A person challenging the boundary as described under sub. (1) (a) may do
21 so only by bringing an action under ch. 841. The person bringing the action under

BILL

1 ch. 841 has the burden of proving, by clear and convincing evidence, that the
2 boundary is not as described under sub. (1) (a).

3 **SECTION 2. Nonstatutory provisions.**

4 (1) In this SECTION:

5 (a) "Agreement of 1913" means the agreement described in section 30.2038 (1)
6 (a) of the statutes, as affected by this act.

7 (b) "City" means the city of Milwaukee.

8 (c) "Railroad" means the Chicago and Northwestern Railway Company.

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

13 (3) The legislature finds that the best available evidence confirms that the
14 boundary line established under section 30.2038 (1) (a) of the statutes, as affected
15 by this act, is the location of the natural and historical shoreline of Lake Michigan.
16 The legislature further finds all of the following:

17 (a) That this state, Milwaukee County, the city, and residents of this state have
18 relied on this boundary line since the execution and recording of the agreement of
19 1913.

20 (b) That since 1913 the city has placed extensive fill on the lake bed easterly
21 of the entire length of this boundary line.

22 (c) That since 1913 all land lying westerly of the boundary line has been
23 conveyed by deed, including by deeds conveyed by this state to Milwaukee County.

24 (d) That some of the parcels of land lying immediately west of the boundary line
25 are owned by private parties.

BILL

1 (e) That the boundary line has been explicitly recited by the legislature in
2 chapter 150, laws of 1929, chapter 151, laws of 1929, and in subsequent enactments
3 of the legislature.

4 (f) That the department of natural resources and the U. S. Army Corps of
5 Engineers have prepared comprehensive maps of the lake bed grants to the city that
6 concern the city harbor and lake shore of Lake Michigan, all of which depict the
7 shoreline as described under section 30.2038 (1) (a) of the statutes, as affected by this
8 act.

9 (g) That this state, Milwaukee County, and others have relied on those maps
10 in determining their respective rights.

11 (4) The legislature finds that the agreement of 1913 included a transfer from
12 the city to the railroad of a small area of land that was submerged and connected to
13 Lake Michigan at the time the agreement of 1913 was executed. The legislature
14 further finds all of the following:

15 (a) That this submerged area of land was located between approximately
16 Mason Street on the north and Chicago Street on the south and extended
17 approximately 100 feet eastward of the breakwater that existed at that time.

18 (b) That the railroad built a new breakwater or seawall enclosing this
19 submerged area between 1913 and June 1915, that the area was filled, and that the
20 area has been upland since that time.

21 (5) The legislature finds that the submerged area described in subsection (4)
22 is not lake bed of Lake Michigan because it had become or shortly would have become
23 upland owned by the railroad by the process of accretion. In support of this finding,
24 the legislature further finds all of the following:

25 (a) That the railroad owned the riparian land abutting the submerged area.

BILL

1 (b) That maps show that in 1913 the city had erected a timber cribbing
2 projecting several hundred feet into Lake Michigan along a line at approximately
3 Wisconsin Avenue extended, and the city was filling in lake bed north of this timber
4 cribbing.

5 (c) That later maps show extensive accretion caused by the buildup of alluvion
6 south of the timber cribbing as a result of the effects of this cribbing on natural wave
7 action.

8 (d) That the city installed rubble mound breakwaters in the lake bed east of the
9 submerged area causing further accretion.

10 (6) If a court finds under section 30.2038 (3) of the statutes, as affected by this
11 act, that the submerged area described in subsection (4) was lake bed of Lake
12 Michigan, the legislature declares all of the following:

13 (a) That the legislature has the authority as representative of the trustee of the
14 public trust in navigable waters to convey a nominal area of lake bed to a private
15 party for private purposes if such conveyance furthers the public trust and the
16 conveyance is not for a private purpose but is part and parcel of the larger scheme,
17 purely public in its nature, as declared by the Wisconsin Supreme Court in *City of*
18 *Milwaukee v. State of Wisconsin, 193 Wis. 423 (1927)*.

19 (b) That the conveyance of lake bed by the city to the railroad under the
20 agreement of 1913 was a conveyance of a nominal area of lake bed and was necessary
21 in consideration of the conveyance by the railroad to the city contained in the
22 agreement of 1913 and the conveyance of lake bed both fostered and advanced the
23 public purposes for which the lake bed was ceded to the city and was part and parcel
24 of a larger scheme, purely public in its nature. The legislature further finds all of the
25 following:

BILL

1 1. That the public purposes of the city's harbor and parks project undertaken
2 between 1880 and 1930 included the construction of a park and boulevard, the
3 establishment and maintenance of breakwaters, bulkheads, piers, wharves,
4 warehouses, transfer sheds, railway tracks, airports, and other harbor facilities, and
5 the creation of opportunities for improved navigation, fishing, swimming,
6 recreation, and enjoyment of scenic beauty in Lake Michigan and its tributaries.

7 2. That these purposes were threatened and frustrated by the rights of the
8 railroad, which owned land abutting areas ceded to the city by various acts of the
9 legislature, to take ownership of the likely accretion of land caused by the city's park
10 and harbor project, to construct docks and piers, to obtain access to Lake Michigan,
11 and to exercise other riparian rights.

12 3. That under the agreement of 1913 the railroad conveyed to the city
13 substantial amounts of riparian land along the location of the city's park and harbor
14 project and all riparian rights connected to that land.

15 4. That under the agreement of 1913 the city conveyed to the railroad the
16 submerged area described in subsection (4) which was nominal in size, consisting of
17 approximately 7 acres.

18 5. That this submerged area had no utility in aid of commerce or navigation or
19 any other public purpose, the transfer and fill of this area did not materially affect
20 the rights of the public in the free use of the waters of Lake Michigan, and the public
21 trust purposes served by the completed city harbor and park project described in
22 paragraph (b) 1. substantially outweighed any loss of public rights in navigable
23 waters that existed in the submerged area that was conveyed.

24 6. That any public rights in navigable waters that existed in the submerged
25 area that was conveyed had or would shortly have been lost when that area became

BILL

1 upland owned by the railroad by the process of accretion, as described in subsection
2 (5).

3 7. That the conveyance of this submerged area served the greater public
4 purpose for which the state granted submerged lands to the city and that chapter
5 358, laws of 1909, explicitly authorized that conveyance.

6 8. That the conveyance from the railroad to the city was made in exchange for
7 the conveyance of the submerged area and that the agreement of 1913 would not
8 have been executed if the conveyance of the submerged area was not included in the
9 agreement of 1913.

10 9. That the findings under this paragraph are made in lieu of, and have the
11 same effect as, a final judgment entered by a court under chapter 841 of the statutes.

12 (7) The legislature finds that reference to a breakwater constructed by the
13 railroad in chapter 389, laws of 1915, was a reference to the breakwater that enclosed
14 the submerged area under the agreement of 1913 as described in subsection (4).

15 (8) The department of natural resources is not required to prepare a report
16 under section 13.097 (2) of the statutes with regard to the establishment of the
17 shoreline of Lake Michigan under section 30.2038 (1) (a) of the statutes, as affected
18 by this act.

19

(END)