

SB 553 – Sponsor: Sen. Tallian

Background:

In 2014, the Gunderson Trust, a lakefront residential property owner, filed a lawsuit in the LaPorte County Superior Court seeking a declaration that it owned the Indiana Lake Michigan shore to the “water’s edge” and had a right to exclude other Indiana citizens from using it.

The small, precious portion of Indiana’s sandy Lake Michigan shore not occupied by industrial ports is a natural reserve of dunes and beach used by generations of Indiana citizens for swimming, boating, sunbathing, picnicking, birding, fishing, shelling, and beach sports – and cherished for just relaxing and enjoying the Lake and dune environment. Not only is the shoreline fundamental to the state’s identity, but the recreational tourism it generates provides extraordinary economic value. The Lake Michigan dunes and beaches attract roughly 1.8 million visitors each year. Activities such as recreational boating, sports fishing, swimming, and other beach activities provide over \$ 3 billion to Indiana’s economy each year. ¹

Indiana Supreme Court’s Ruling: *Gunderson v. State*

(90 N.E.3d 1171(Ind. 2018))

After working its way through the courts, the Gunderson dispute was decided in favor of all Indiana citizens by the Indiana Supreme Court on February 14, 2018. The Court made the following three key rulings, but *left one decision for the Indiana General Assembly*. **SB 553 is designed to address the limited question of what recreational uses are permitted. It provides that all ordinary recreational uses are permitted.**

What is the boundary of public and private property on the Lake Michigan shore?	The Court held that the boundary separating public and private ownership along the shores of Lake Michigan is the natural <i>ordinary high water mark (OHWM)</i> , a legal standard established in Indiana and federal law reflecting the high point to which the waters extend on a recurring basis, as shown by a combination of changes in soil and vegetation and other confirmatory factors. ²
Who may use the shore of Lake Michigan lakeward of the OHWM?	The Court held that the State holds the Lake Michigan shore lakeward of the OHWM <i>in trust for the public’s use</i> under the Public Trust Doctrine, a <i>federal rule of law</i> on navigable waters that goes back 100’s of years and which the State cannot alter for Lake Michigan.
What activities are permitted on the shore held in trust for the public? Addressed by SB 553 →	The Court held that, minimally, the Lake Michigan shore can be used for: <i>fishing, navigation, and commerce</i> , as well as <i>walking</i> on the shore. But, no one may permanently occupy or monopolize the shore to the exclusion of others. The Court also recognized that the Lake Michigan shore has traditionally been used for <u>recreation</u>, but expressly left it to the Indiana General Assembly to define the scope of permissible recreational activities.

¹ Great Lakes Commission: What the Great Lakes mean to Indiana. Glc.org.

² Gunderson has petitioned the U.S. Supreme Court to review the natural OHWM holding – not the recreational uses holding. That petition is pending before the U.S. Supreme Court at this time.

