

2001 Jr2 DRAFTING REQUEST

Senate Amendment (SA-SSA1-AB1)

Received: **04/01/2002**

Received By: **gibson**

Wanted: **Soon**

Identical to LRB:

For: **Senate Democratic Caucus 69220**

By/Representing: **Engel**

This file may be shown to any legislator: **NO**

Drafter: **gibson**

May Contact:

Addl. Drafters:

Subject: **Nat. Res. - nav. waters**
Nat. Res. - wet/shore/flood
Nat. Res. - miscellaneous

Extra Copies: **RNK**

Submit via email: **NO**

Pre Topic:

SCC:.....Engel - CN5552,

Topic:

Regulation of structures in navigable waters

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	gibson 04/01/2002	jdyer 04/02/2002	pgreensl 04/02/2002	_____	lrb_docadmin 04/02/2002		

FE Sent For:

<END>

2001 Jr2 DRAFTING REQUEST

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Received: 04/01/2002

Received By: gibsom

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1?	gibsom	1 4/2 ju	4 PG	4/2 PG 19			

FE Sent For:

<END>

DNR

1. Repeal s. 59.692(1v), related to special treatment under shoreland zoning for gazebos.
2. Repeal s. 31.02 (4g), related to fish ladders.
3. Repeal s. 30.2037, related to the high water mark of Big Silver Lake in Waushara County.
4. Include the provisions of 1999 AB 930, which would require a DNR permit for the construction of a solid pier (a pier that prevents the free movement of water beneath the pier).
5. Repeal s. 30.12(4m), special provisions for the Duck Creek Drainage District.

CN 5552



State of Wisconsin
2001 - 2002 LEGISLATURE

January 2002 Special Session

LRBb2952/8

1
RMR

MGG:.....

Jld

9am
Tues

SCC:.....Engel - 5552, Regulation of structures in navigable waters

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS SENATE AMENDMENT,

TO SENATE SUBSTITUTE AMENDMENT 1,

TO ASSEMBLY BILL 1

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page ³⁰ ~~3~~, line ¹⁷ ~~3~~: after that line insert:

3 SECTION ^{88b} ~~??~~. 30.01 (6a) ~~✓~~ of the statutes is created to read:

4 30.01 (6a) "Solid pier" means a pier that prevents the free movement of water
5 underneath the pier, including a pier that has a rock-filled crib or similar device as
6 a foundation. ✓

7 2. Page ~~?~~, line ~~?~~: after that line insert:

8 SECTION ^{88f} ~~??~~. 30.12 (1) (intro.) ~~✓~~ of the statutes is amended to read:

9 30.12 (1) GENERAL PROHIBITION (intro.) Except as provided under ~~subs.~~ sub. (4)

10 and ~~(4m)~~ [✓], unless a permit has been granted by the department pursuant to statute

1 or the legislature has otherwise authorized structures or deposits in navigable
2 waters, it is unlawful:

History: 1975 c. 250, 421; 1977 c. 130, 447; 1981 c. 226, 330; 1981 c. 390 s. 252; 1987 a. 374; 1989 a. 31; 1993 a. 132, 151, 236, 491; 1995 a. 27, 201, 227; 1997 a. 35, 248; 1999 a. 9; 2001 a. 16.

3 SECTION 30.12 (2) of the statutes is amended to read:

4 30.12 (2) PERMITS TO PLACE STRUCTURES OR DEPOSITS IN NAVIGABLE WATERS;
5 GENERALLY. The department, upon application and after proceeding in accordance
6 with s. 30.02 (3) and (4), may grant to any riparian owner a permit to build or
7 maintain for the owner's use a structure otherwise prohibited under sub. (1), if the
8 structure does not materially obstruct navigation or reduce the effective flood flow
9 capacity of a stream and is not detrimental to the public interest. ~~The procedures~~
10 ~~in this subsection do not apply to permits issued under sub. (3)~~ Beginning on the
11 effective date of this subsection... [revisor inserts date], this subsection does not
12 apply to solid piers. plain

History: 1975 c. 250, 421; 1977 c. 130, 447; 1981 c. 226, 330; 1981 c. 390 s. 252; 1987 a. 374; 1989 a. 31; 1993 a. 132, 151, 236, 491; 1995 a. 27, 201, 227; 1997 a. 35, 248; 1999 a. 9; 2001 a. 16.

13 SECTION 30.12 (2g) of the statutes is created to read:

14 30.12 (2g) SOLID PIERS IN NAVIGABLE WATERS. (a) Beginning on the effective date
15 of this ~~subsection~~ ^{paragraph} ~~subsection~~.... [revisor inserts date], a person may not build or place a solid pier
16 extending beyond the ordinary high-water mark of any navigable water, unless the
17 department issues a permit as provided under ^{par. (b)} ~~par. (b)~~.

18 (b) Beginning on the effective date of this ^{paragraph} ~~subsection~~.... [revisor inserts date],
19 the department, upon application and after proceeding in accordance with s. 30.02
20 (3) and (4), may grant to any riparian owner a permit to build or place for the owner's
21 use a solid pier extending beyond the ordinary high-water mark of any navigable
22 water, if the structure does not materially obstruct navigation, does not reduce the
23 effective flood flow capacity of a stream, is not detrimental to the public interest, and

1 is used in association with a marina, boat livery, or harbor of refuge to which the
2 riparian owner provides the public access without restriction other than requiring
3 the payment of a reasonable mooring or anchoring fee. ✓

4 (c) The riparian owner of any solid pier extending beyond the ordinary
5 high-water mark that was built or placed before the effective date of this ✓ paragraph
6 ... [revisor inserts date], and for which the department issued a permit may repair
7 and maintain the solid pier if the cost of the repair or maintenance does not exceed
8 50% of the equalized assessed value of the solid pier at the time of the repair or
9 maintenance. If the solid pier is not subject to assessment, the riparian owner may
10 make repairs to or maintain the pier if the cost of the repair or maintenance does not
11 exceed 50% of the current fair market value of the solid pier.

12 SECTION ~~??~~ ^{38L} 30.12 (2r) ✓ of the statutes is created to read:

13 30.12 (2r) ^{(CS) Applicability of procedures.} The procedures in sub. (3) do not apply to permits issued under sub.

14 (2) or (2g). ✓

15 SECTION ~~??~~ ³⁸ⁿ 30.12 (4m) ✓ of the statutes is repealed. ○

16 3. Page 1, line 7 after that line insert:

17 SECTION ~~??~~ ^{88r} 30.2037 ✓ of the statutes is repealed. " " ↑↑

18 4. Page 3, line 8: after that line insert:

19 " SECTION ~~??~~ ^{92m} 31.02 (4g) ✓ of the statutes is repealed. " " ↑↑

20 5. Page 4, line 10 after that line insert:

21 SECTION ~~??~~ ^{150m} 59.692 (1v) ✓ of the statutes is repealed. " " ↑↑ ✓

22 (END)

make

" SECTION 150d. RP; 59.692 (1) (bn) ✓
SECTION 150g. RP; 59.692 (1) (d) ✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb2952/3dn

MGC:.....

JG

1. This amendment draft differs from 1999 AB-930 in the following ways:

a. As 1999 Assembly Bill 930 is drafted, it can be construed to remove the legislature's power to legislatively grant an exemption for a solid pier from the general prohibition under s. 30.12. See s. 30.12 (1) (intro.) in current law, and the notwithstanding language in s. 30.12 (1m) (b) in the bill. I have reviewed the drafting file for 1999 Assembly Bill 930 and do not think the elimination of the legislature's authority was intended. Therefore, I have reorganized the provisions in this bill so that the legislature can continue to legislate such exemptions.

b. I have change the verb "construct" to "build" to use consistent wording in s. 30.12.

c. I have retained the language prohibiting solid piers "beyond the ordinary high-water mark" although s. 30.12 (2) uses "beyond a lawfully established bulkhead line". I do not know if this distinction was intended. If time permits, you may wish to have someone knowledgeable contact me to discuss this.

d. As a drafting convention, I have moved the definition of "solid pier" to the definitions at the beginning of the chapter.

2. Since 1999 Assembly Bill 930 was introduced, 2001 Wisconsin Act 16 (the biennial budget act) added 2 provisions that exempt certain projects from the permitting requirements under s. 30.12 (2). See the creation of s. 30.12 (3) (bt) and s. 30.2026 (2) (d) and (3) (a) in that act. Since s. 30.2026 deals with an "artificial barrier" in Lake Belleville and s. 30.12 (3) (bt) deals with a "vertical wall" in the Wolf River and Fox River basin area, I did not change the cross-reference to broaden the exemption from s. 30.12 for these provisions since I assume these projects do not include a "solid pier".
OK?

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb2952/1dn
MGG:jld:pg

April 2, 2002

1. This amendment draft differs from 1999 AB-930 in the following ways:
 - a. As 1999 Assembly Bill 930 is drafted, it can be construed to remove the legislature's power to legislatively grant an exemption for a solid pier from the general prohibition under s. 30.12. See s. 30.12 (1) (intro.) in current law, and the notwithstanding language in s. 30.12 (1m) (b) in the bill. I have reviewed the drafting file for 1999 Assembly Bill 930 and do not think the elimination of the legislature's authority was intended. Therefore, I have reorganized the provisions in this bill so that the legislature can continue to legislate such exemptions.
 - b. I have change the verb "construct" to "build" to use consistent wording in s. 30.12 (2) and (2g).
 - c. I have retained the language prohibiting solid piers "beyond the ordinary high-water mark" although s. 30.12 (2) uses "beyond a lawfully established bulkhead line." I do not know if this distinction was intended. If time permits, you may wish to have someone knowledgeable contact me to discuss this.
 - d. As a drafting convention, I have moved the definition of "solid pier" to the definitions at the beginning of the chapter.
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Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215



State of Wisconsin
2001 - 2002 LEGISLATURE
January 2002 Special Session

LRBb2952/1
MGG:jld:pg

SCC:.....Engel – 5552, Regulation of structures in navigable waters

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

**CAUCUS SENATE AMENDMENT ,
TO SENATE SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 1**

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 30, line 17: after that line insert:

3 **“SECTION 88b.** 30.01 (6a) of the statutes is created to read:

4 30.01 (6a) “Solid pier” means a pier that prevents the free movement of water
5 underneath the pier, including a pier that has a rock-filled crib or similar device as
6 a foundation.

7 **SECTION 88f.** 30.12 (1) (intro.) of the statutes is amended to read:

8 30.12 (1) GENERAL PROHIBITION (intro.) Except as provided under ~~subs.~~ sub. (4)
9 ~~and (4m)~~, unless a permit has been granted by the department pursuant to statute

1 or the legislature has otherwise authorized structures or deposits in navigable
2 waters, it is unlawful:

3 **SECTION 88g.** 30.12 (2) of the statutes is amended to read:

4 30.12 (2) PERMITS TO PLACE STRUCTURES OR DEPOSITS IN NAVIGABLE WATERS;
5 GENERALLY. The department, upon application and after proceeding in accordance
6 with s. 30.02 (3) and (4), may grant to any riparian owner a permit to build or
7 maintain for the owner's use a structure otherwise prohibited under sub. (1), if the
8 structure does not materially obstruct navigation or reduce the effective flood flow
9 capacity of a stream and is not detrimental to the public interest. ~~The procedures~~
10 ~~in this subsection do not apply to permits issued under sub. (3)~~ Beginning on the
11 effective date of this subsection [revisor inserts date], this subsection does not
12 apply to solid piers.

13 **SECTION 88j.** 30.12 (2g) of the statutes is created to read:

14 30.12 (2g) SOLID PIERS IN NAVIGABLE WATERS. (a) Beginning on the effective date
15 of this paragraph [revisor inserts date], a person may not build or place a solid pier
16 extending beyond the ordinary high-water mark of any navigable water, unless the
17 department issues a permit as provided under par. (b).

18 (b) Beginning on the effective date of this paragraph [revisor inserts date],
19 the department, upon application and after proceeding in accordance with s. 30.02
20 (3) and (4), may grant to any riparian owner a permit to build or place for the owner's
21 use a solid pier extending beyond the ordinary high-water mark of any navigable
22 water, if the structure does not materially obstruct navigation, does not reduce the
23 effective flood flow capacity of a stream, is not detrimental to the public interest, and
24 is used in association with a marina, boat livery, or harbor of refuge to which the

1 riparian owner provides the public access without restriction other than requiring
2 the payment of a reasonable mooring or anchoring fee.

3 (c) The riparian owner of any solid pier extending beyond the ordinary
4 high-water mark that was built or placed before the effective date of this paragraph
5 [revisor inserts date], and for which the department issued a permit may repair
6 and maintain the solid pier if the cost of the repair or maintenance does not exceed
7 50% of the equalized assessed value of the solid pier at the time of the repair or
8 maintenance. If the solid pier is not subject to assessment, the riparian owner may
9 make repairs to or maintain the pier if the cost of the repair or maintenance does not
10 exceed 50% of the current fair market value of the solid pier.

11 **SECTION 88L.** 30.12 (2r) of the statutes is created to read:

12 30.12 (2r) APPLICABILITY OF PROCEDURES. The procedures in sub. (3) do not apply
13 to permits issued under sub. (2) or (2g).

14 **SECTION 88n.** 30.12 (4m) of the statutes is repealed.

15 **SECTION 88r.** 30.2037 of the statutes is repealed.”.

16 **2.** Page 31, line 8: after that line insert:

17 “**SECTION 92m.** 31.02 (4g) of the statutes is repealed.”.

18 **3.** Page 48, line 10: after that line insert:

19 “**SECTION 150d.** 59.692 (1) (bn) of the statutes is repealed.

20 **SECTION 150g.** 59.692 (1) (d) of the statutes is repealed.

21 **SECTION 150m.** 59.692 (1v) of the statutes is repealed.”.

22 (END)