



## 2003 ASSEMBLY BILL 445

July 25, 2003 - Introduced by Representatives GUNDERSON, KERKMAN, AINSWORTH, ALBERS, GRONEMUS, GROTHMAN, HAHN, HINES, LADWIG, D. MEYER, OLSEN, OWENS, PETROWSKI, RHOADES, SERATTI, WEBER and M. WILLIAMS, cosponsored by Senators STEPP and A. LASEE. Referred to Committee on Natural Resources.

1     **AN ACT** *to amend* 30.13 (4) (a) and 30.13 (4) (b); and *to create* 30.12 (2m), 30.12  
2           (3m), 30.121 (6m), 30.13 (1p), 30.13 (7), 30.131 (3) and 30.131 (4) of the statutes;  
3           **relating to:** regulating piers and boat shelters and requiring the exercise of  
4           rule-making authority.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, no person may deposit any material or place any structure upon the bed of any navigable water where no bulkhead line has been established or, if a bulkhead line has been established, beyond that established line unless the person is granted a permit by the Department of Natural Resources (DNR) pursuant to statute or unless otherwise authorized by the legislature. A bulkhead line is a line established by a municipality in the public interest that conforms as nearly as practicable to an existing shore. Among the kinds of structures for which current law authorizes DNR to issue a permit are structures that are built or maintained by a riparian owner for his or her own use, provided they do not materially obstruct navigation or reduce the effective flood flow capacity of a stream and are not detrimental to the public interest. Additionally, a riparian owner may construct a wharf or pier without a permit if, among other things, the wharf or pier does not interfere with public rights in navigable waters and allows the free movement of water underneath. Current law also provides that a nonriparian owner is also exempt from the permit requirement if the wharf or pier would not require a permit if placed by a riparian owner and if the wharf or pier meets certain other requirements.

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This bill provides that DNR may not take any enforcement action under these current law provisions if the enforcement would require the owner of a pier or boat shelter that was in place on January 1, 2003, or that was seasonally placed in the same location in each of the years beginning with 1998 and ending with 2002 to repair or remove the pier or boat shelter. The bill specifies that an owner is not entitled to this exemption if he or she reconstructed or materially altered the pier or boat shelter after January 2003 or if DNR filed a complaint stating that the pier or boat shelter presents a danger to navigation or the public interest. The bill also makes those rules promulgated by the department that relate to the regulation of piers or boat shelters under these provisions in current law void. The bill requires DNR to promulgate new rules to supersede the rules made void under the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 30.12 (2m) of the statutes is created to read:

2           30.12 **(2m)** PIERS AND BOAT SHELTERS EXEMPT FROM ENFORCEMENT ACTION. (a)

3           Except as provided in par. (b), a riparian owner of a pier or boat shelter that was in  
4           place on January 1, 2003, or that was seasonally placed in the same location in each  
5           of the years beginning with 1998 and ending with 2002, is exempt from any  
6           enforcement action by the department under this section that requires the riparian  
7           owner to repair, renovate, modify, or remove the pier or boat shelter.

8           (b) Paragraph (a) does not apply to any of the following:

9           1. A pier or boat shelter about which the department has filed a complaint that  
10           states that the pier or boat shelter presents an imminent and substantial danger to  
11           navigation or the public interest, if the complaint was filed no later than 60 days prior  
12           to the effective date of this subdivision .... [revisor inserts date].

13           2. A pier or boat shelter that a riparian owner reconstructed or materially  
14           altered after January 1, 2003.

15           **SECTION 2.** 30.12 (3m) of the statutes is created to read:

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1           **30.12 (3m)** APPLICATION AND PROMULGATION OF RULES. Every rule promulgated  
2 by the department under this section that relates to the regulation of piers or boat  
3 shelters under sub. (2) and that is in effect on the day before the effective date of this  
4 subsection .... [revisor inserts date], shall be void. The department shall promulgate  
5 rules regulating piers and boat shelters under sub. (2) that shall supersede the rules  
6 promulgated by the department under sub. (2) that were in effect on the day before  
7 the effective date of this subsection .... [revisor inserts date]. The rules shall include  
8 construction standards for piers and boat shelters, standards concerning the  
9 permissible length and width of piers, standards concerning the number of slips that  
10 a pier may contain, and standards specifying where boat shelters may be located.

11           **SECTION 3.** 30.121 (6m) of the statutes is created to read:

12           **30.121 (6m)** APPLICATION AND PROMULGATION OF RULES. Notwithstanding sub.  
13 (6), every rule promulgated by the department under this section that relates to the  
14 regulation of boathouses and that is in effect on the day before the effective date of  
15 this subsection .... [revisor inserts date], shall be void. The department shall  
16 promulgate rules regulating boathouses under this section that shall supersede the  
17 rules promulgated by the department under this section that were in effect on the  
18 day before the effective date of this subsection .... [revisor inserts date].

19           **SECTION 4.** 30.13 (1p) of the statutes is created to read:

20           **30.13 (1p)** PIERS EXEMPT FROM ENFORCEMENT ACTION. A riparian proprietor that  
21 owns a pier that was in place on January 1, 2003, or that was seasonally placed in  
22 the same location in each of the years beginning with 1998 and ending with 2003, is  
23 exempt from any enforcement action under this section by the department or by the  
24 governing body of a city, village, or town, or a designated officer, that requires the

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1 riparian proprietor to repair, renovate, modify, or remove the pier, unless the  
2 riparian proprietor reconstructs or materially alters the pier after January 1, 2003.

3 **SECTION 5.** 30.13 (4) (a) of the statutes is amended to read:

4 30.13 (4) (a) *Interferes with public rights.* A wharf ~~or pier which~~ that interferes  
5 with public rights in navigable waters constitutes an unlawful obstruction of  
6 navigable waters unless a permit is issued for the wharf ~~or pier~~ under s. 30.12 or  
7 unless authorization for the wharf ~~or pier~~ is expressly provided. A pier that  
8 interferes with public rights in navigable waters constitutes an unlawful obstruction  
9 of navigable waters unless a permit is issued for the pier under s. 30.12,  
10 authorization for the pier is expressly provided, or the pier is exempt from any  
11 enforcement action under sub. (1p) or s. 30.12 (2m) or 30.131 (4).

12 **SECTION 6.** 30.13 (4) (b) of the statutes is amended to read:

13 30.13 (4) (b) *Interferes with riparian rights.* A wharf ~~or pier which~~ that  
14 interferes with rights of other riparian proprietors constitutes an unlawful  
15 obstruction of navigable waters unless a permit is issued for the wharf ~~or pier~~ under  
16 s. 30.12 or unless authorization for the wharf or pier is expressly provided. A pier  
17 that interferes with the rights of other riparian proprietors constitutes an unlawful  
18 obstruction of navigable waters unless a permit is issued for the pier under s. 30.12,  
19 authorization for the pier is expressly provided, or the pier is exempt from any  
20 enforcement action under sub. (1p) or s. 30.12 (2m) or 30.131 (4).

21 **SECTION 7.** 30.13 (7) of the statutes is created to read:

22 30.13 (7) APPLICATION AND PROMULGATION OF RULES. Every rule promulgated by  
23 the department that relates to the regulation of piers under this section and that is  
24 in effect on the day before the effective date of this subsection ... [revisor inserts  
25 date], shall be void. The department shall promulgate rules regulating piers under

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1 this section that shall supersede the rules promulgated by the department under this  
2 section that were in effect on January 1, 2003. The rules shall include construction  
3 standards for piers, standards concerning the permissible length and width of piers,  
4 and standards concerning the number of slips that a pier may contain. The  
5 standards shall be different than the standards for piers contained in the rules  
6 promulgated under s. 30.12 (3m).

7 **SECTION 8.** 30.131 (3) of the statutes is created to read:

8 30.131 (3) A pier that was in place on January 1, 2003, or that was seasonally  
9 placed in the same location in each of the years beginning with 1998 and ending with  
10 2002, is exempt from any enforcement action by the department that requires the  
11 person who placed the pier or the owner of riparian land that abuts the pier to repair,  
12 renovate, modify, or remove the pier, unless the person who placed the pier, or the  
13 riparian owner, reconstructs or materially alters the pier after January 1, 2003.

14 **SECTION 9.** 30.131 (4) of the statutes is created to read:

15 30.131 (4) Every rule promulgated by the department that relates to the  
16 regulation of piers under this section and that is in effect on the day before the  
17 effective date of this subsection .... [revisor inserts date], shall be void. The  
18 department shall promulgate rules regulating piers under this section that shall  
19 supersede the rules promulgated by the department under this section that were in  
20 effect on the day before the effective date of this subsection .... [revisor inserts date].

21 **SECTION 10. Nonstatutory provisions.**

22 (1) The department of natural resources shall submit in proposed form the  
23 rules required under sections 30.12 (3m), 30.121 (6m), 30.13 (7), and 30.131 (4) of the  
24 statutes, as created by this act, to the legislative council staff under section 227.15

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1 (1) of the statutes no later than the first day of the 13th month beginning after the  
2 effective date of this subsection.

3 (2) The department of natural resources may use the procedures under section  
4 227.24 of the statutes to promulgate emergency rules under sections 30.12 (3m),  
5 30.121 (6m), 30.13 (7), and 30.131 (4) of the statutes, as created by this act.  
6 Notwithstanding section 227.24 (1) (c) and (2) of the statutes, the emergency rules  
7 may remain in effect until the date on which permanent rules take effect.  
8 Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not  
9 required to provide evidence that promulgating a rule under this subsection as an  
10 emergency rule is necessary for the preservation of public peace, health, safety, or  
11 welfare and is not required to provide a finding of emergency for a rule promulgated  
12 under this subsection.

13 (3) The department of natural resources shall appoint a committee under  
14 section 227.13 of the statutes to advise the department concerning rules to be  
15 promulgated under this act. The department shall ensure that the members of the  
16 committee represent property owners, contractors, lake associations, local  
17 governments, and other persons interested in issues related to piers and boat  
18 shelters.

19 (END)