

1981 Senate Bill 414

Date published: April 26, 1982

CHAPTER 252 , Laws of 1981

AN ACT to renumber 30.16; to amend 30.13 (1), (2) and (4); and to create 30.13 (5), 30.16 (1) (title) and (2), 66.0495, 823.215 and 893.765 of the statutes, relating to removal of wharves and piers in navigable waters.

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

SECTION 1. 30.13 (1), (2) and (4) of the statutes are amended to read:

30.13 (1) (title) CONSTRUCTION ALLOWED WITHOUT PERMIT UNDER CERTAIN CIRCUMSTANCES. ~~Riparian proprietors~~ A riparian proprietor may construct ~~wharves or piers~~ a wharf or pier in a navigable water in aid of navigation without obtaining a permit under s. 30.12, ~~provided such wharves or piers do~~ if all of the following conditions are met:

(a) The wharf or pier does not interfere with public rights in navigable waters or.

(b) The wharf or pier does not interfere with rights of other riparian proprietors, and subject to.

(c) The wharf or pier does not extend beyond any pierhead line which may have been is established and to under sub. (3).

(d) The wharf or pier does not violate the regulations contained in sub. (2) and or in any ordinances enacted pursuant thereto. Except as otherwise expressly provided, any wharf or pier which does not comply with this subsection constitutes an unlawful obstruction of navigable waters under sub. (2).

(2) WHARVES AND PIERS REGULATED. ~~All wharves and piers~~ Any wharf or pier extending beyond the natural shore or an established bulkhead line shall be so constructed as to allow the free movement of water underneath and in such a manner as which will not cause the formation of land upon the bed of the water. A municipality may enact ordinances not inconsistent with this section regulating the construction and location of wharves and piers located within, or attached to land within, ~~such that~~ that municipality.

(4) (title) UNLAWFUL OBSTRUCTION.

(a) (title) Interferes with public rights. Any A wharf or pier which interferes with public rights in navigable waters constitutes an unlawful obstruction of navigable waters unless a permit is issued for the wharf or pier under s. 30.12 or unless authorization for the wharf or pier is expressly provided.

(b) (title) *Interferes with riparian rights.* A wharf or pier which interferes with rights of other riparian proprietors constitutes an unlawful obstruction of navigable waters unless a permit is issued for the wharf or pier under s. 30.12 or unless authorization for the wharf or pier is expressly provided.

(c) (title) *Extends beyond pierhead line; exception.* A wharf or pier extending which extends into navigable water waters beyond a lawfully established any pierhead line established under sub. (3) constitutes an unlawful obstruction of navigable water waters unless a valid permit, license or authorization for such the wharf or pier has been obtained pursuant to s. 30.12 (2) is granted or unless it is a permissible preexisting wharf or pier. A wharf or pier is a permissible preexisting wharf or pier if it existed prior to the establishment of the pierhead line, if it is not extended or expanded after that date and if the ownership of the land to which it is attached did not change after that date except that a wharf or pier continues its status as a permissible preexisting wharf or pier for one year after the date the change of ownership is recorded. The seasonal removal of a wharf or pier does not affect its status as a permissible preexisting wharf or pier if it is reestablished in substantially the same form. Status as a permissible preexisting wharf or pier does not imply that authorization for the wharf or pier is provided for the purposes of par. (a) or (b). The owner of a wharf or pier may submit evidence to the municipality that it is a permissible preexisting wharf or pier at any time after the municipality establishes the pierhead line.

(d) (title) *Violates regulations.* A wharf or pier which violates the regulations contained in sub. (2) or in any ordinance enacted under sub. (2) constitutes an unlawful obstruction of navigable waters.

SECTION 1m. 30.13 (5) of the statutes is created to read:

30.13 (5) REMOVAL OF WHARVES AND PIERS EXTENDING BEYOND PIERHEAD LINE. The governing body of a city, village or town may remove a wharf or pier which constitutes an unlawful obstruction of navigable waters under sub. (4) as provided under s. 66.0495.

SECTION 2. 30.16 of the statutes is renumbered 30.16 (1).

SECTION 3. 30.16 (1) (title) of the statutes is created to read:

30.16 (1) (title) WATERCRAFT AND FLOATS.

SECTION 4. 30.16 (2) of the statutes is created to read:

30.16 (2) REMOVAL OF OBSTRUCTIONS TO NAVIGATION; WHARVES AND PIERS; ALTERNATIVE. As an alternative to the procedure specified under sub. (1), the governing body of a city, village or town may remove that portion of a wharf or pier which constitutes an unlawful obstruction to navigation as provided under s. 66.0495.

SECTION 5. 66.0495 of the statutes is created to read:

**66.0495 Removal of wharves and piers in navigable waters.** (1) ORDER. (a) *Order to remove wharves or piers.* The governing body of a city, village or town or a designated officer may order the owner of a wharf or pier which constitutes an unlawful obstruction of navigable waters under s. 30.13 (4) to remove that portion of the wharf or pier which constitutes an unlawful obstruction.

(b) *Order to repair or remove dilapidated wharves and piers in navigable waters.* The governing body of a city, village or town or a designated officer may order the owner of a wharf or pier in navigable waters which in its judgment is so old, dilapidated or in need of repair that it is dangerous, unsafe or unfit for use to repair or remove the wharf or pier. If the governing body of a city, village or town or a designated officer determines that the cost of repair is likely to exceed 50% of the equalized assessed value of the wharf or pier or, if the wharf or pier is not subject to assessment, if the cost of repair is likely to exceed 50% of the current fair market value, then repair is presumed unreasonable and the wharf or pier is presumed to be a public nuisance.

(d) *Order; service; contents.* An order under this subsection shall be served upon the owner or person responsible in the manner provided for the service of a summons in circuit court. If the owner or person responsible cannot be found, the order may be served by posting it on the wharf or pier and by publishing it as a class 3 notice under ch. 985. The order shall specify the action to be taken and the time within which it shall be complied with. At least 50 days must be allowed for compliance.

(2) **REMOVAL.** (a) *Removal by municipality.* If the owner or person responsible fails to comply with an order issued under sub. (1), the governing body of a city, village or town or a designated officer may cause the wharf or pier to be removed through any available public agency or by a contract or arrangement by a private person. The cost of the removal may be charged against the real estate on which or adjacent to which the wharf or pier is located, constitutes a lien against that real estate and may be assessed and collected as a special tax. The governing body of the city, village or town or the designated officer may sell any salvage or valuable material resulting from the removal at the highest price obtainable. The governing body of the city, village or town or the designated officer shall remit the net proceeds of any sale, after deducting the expense of the removal, to the circuit court for use of the person entitled to the proceeds subject to the order of the court. The governing body of the city, village or town or the designated officer shall submit a report on any sale to the circuit court which shall include items of expense and the amount deducted. If there are no net proceeds, the report shall state that fact.

(b) *Court action.* If the owner or person responsible fails to comply with an order issued under sub. (1), the governing body of a city, village or town or a designated officer may commence an action in circuit court for a court order requiring the person to comply with the order issued under sub. (1). The court shall give the hearing on this action precedence over other matters on the court's calendar. Costs may be assessed in the discretion of the court.

(3) **CONTESTING ORDER FOR REMOVAL.** A person affected by an order issued under sub. (1) may apply to circuit court within 30 days after service of the order for a restraining order prohibiting the governing body of the city, village or town or the designated officer from removing the wharf or pier. The court shall conduct a hearing on the action within 20 days after application. The court shall give this hearing precedence over other matters on the court's calendar. The court shall determine whether the order issued under sub. (1) is reasonable. If the court finds that the order issued under sub. (1) is unreasonable, it shall issue a restraining order or modify it as the circumstances require and the governing body of the city, village or town or the designated officer may not issue another order under sub. (1) with respect to the wharf or pier unless its condition is substantially changed. Costs may be assessed in the discretion of the court. The remedy provided under this subsection is exclusive and no person affected by an order issued under sub. (1) may recover damages for the removal of a wharf or pier under this section.

SECTION 6. 823.215 of the statutes is created to read:

**823.215 Dilapidated wharves and piers in navigable waters declared nuisances.** Any wharf or pier in navigable waters which is declared so old, dilapidated or in need of repair that it is dangerous, unsafe or unfit for use under s. 66.0495 (1) (b) or repair is determined unreasonable under that section is a public nuisance and may be proceeded against under this chapter.

SECTION 7. 893.765 of the statutes is created to read:

**893.765 Order to remove wharves or piers in navigable waters; contesting.** An application under s. 66.0495 (3) to circuit court for a restraining order prohibiting the removal of a wharf or pier shall be made within 30 days after service of the order issued under s. 66.0495 (1) or be barred.

---