

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2585/P1dn
RNK:wlj:kjf

May 2, 2001

I have prepared this draft in preliminary form to give you the opportunity to consider the issues raised in this note and to make any changes to the draft before preparing it in final form.

1. You will note that the exemptions created in the draft to enforcement action by the DNR apply not only to permanent piers and boat shelters but also to piers and boat shelters that have been seasonally placed at least once in each of the years 1996 to 2000. This ensures that the exemption is applied to structures that have been placed in the same location for at least five years. Is this consistent with your intent?
2. In your instructions for the draft, you requested that the enforcement exemptions apply to piers and boat shelters that were constructed before January 1, 2001. Because we cannot predict when this proposal might be enacted into law, I provided instead that the exemptions would apply to a structure that is in place on the day before the effective date of this proposal. Is this O.K.?
3. I have included a provision in the draft that allows DNR to promulgate emergency rules to be effective until the permanent rules are in place. The draft gives DNR approximately one year to submit proposed permanent rules to the legislative council. Is this O.K.?
4. This draft does not affect piers placed by persons other than riparian owners, under s. 30.131, stats., or the right of a municipality, under s. 30.13 (4) (c), stats., to remove a pier that extends beyond a pierhead line established by the municipality. If it was your intention to treat these statutes in this draft, please let me know, and I will redraft accordingly.
5. Current law, under s. 30.121, stats., generally prohibits the construction or placement of a boathouse (as opposed to a boat shelter) after December 16, 1979, beyond the ordinary high-water mark of any navigable waterway. The statute, however, allows a riparian owner of any boathouse existing before that date to repair and maintain the boathouse if the cost of the repair or maintenance does not exceed 50% of the equalized assessed value of the houseboat. This draft requires DNR to promulgate new rules relating to boathouses under that section. However, because the statutes, in s. 30.121, currently prohibit the construction of boathouses after December

16, 1979, I did not include a provision in the draft exempting such boathouses from enforcement action by the DNR. Is this consistent with your intent?

6. Under what is known as the public trust doctrine, all navigable waters are held in trust by the state for the benefit of the public. This doctrine is embodied both in common law and in article IX, section 1, of the Wisconsin Constitution. The purpose of the public trust doctrine is not only to promote navigation but also to protect certain other public uses of the water, such as recreational uses. Structures that are placed in these waters that interfere with navigation or with these other public uses of the waters, may violate the public trust doctrine. Because certain provisions of this draft prevent the DNR from taking enforcement action requiring the repair, renovation, modification, or removal of certain piers, boat shelters, or boathouses, regardless of whether those structures interfere with navigation or public recreation, these provisions could be challenged as violations of the public trust doctrine. Please contact me if you would like to discuss this issue in greater detail or if you would like to redraft to avoid such a challenge.

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