

2001 DRAFTING REQUEST

Bill

Received: 02/21/2001

Received By: rkite

Wanted: As time permits

Identical to LRB:

For: Scott Gunderson (608) 266-3363

By/Representing: Mike Bruhn

This file may be shown to any legislator: NO

Drafter: rkite

May Contact:

Addl. Drafters:

Subject: Nat. Res. - nav. waters

Extra Copies:

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Regulation of piers, boathouses, and gazebos

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>
/P1	rkite 05/01/2001	wjackson 05/01/2001	kfollet 05/03/2001	_____	lrb_docadmin 05/03/2001		
/1	rkite 08/31/2001	wjackson 09/21/2001	pgreysl 09/21/2001	_____	lrb_docadmin 09/21/2001	lrb_docadminState 09/26/2001	

FE Sent For:

<END>

At Intro.

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Addl. Drafters:

Subject: Nat. Res. - nav. waters

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Requester's email:

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**Pre Topic:**

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**Topic:**

Regulation of piers, boathouses, and gazebos

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**Instructions:**

See Attached

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**Drafting History:**

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/P1	rkite 05/01/2001	wjackson 05/01/2001	kfollet 05/03/2001	<del>9/21</del>	lrb_docadmin 05/03/2001		

FE Sent For:

1. WLJ 9/21

9/21 P8  
P8 <END>

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Wanted: **As time permits**

Identical to LRB:

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By/Representing: **Mike Bruhn**

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May Contact:

Alt. Drafters:

Subject: **Nat. Res. - nav. waters**

Extra Copies:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Regulation of piers, boathouses, and gazebos

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**Instructions:**

See Attached

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**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>
/?	rkite	/pl WLj 5/1	Lj SP2	Kj/PS 5/3			

FE Sent For:

<END>

# Bill Request Form

Legislative Reference Bureau  
100 N. Hamilton Street  
Legal Section 266-3561

Use of this form is optional. It is often better to talk directly with the LRB attorney who will draft the bill.  
Use this form only for bill draft requests. Attach more pages if necessary.

Date 2/19/01

Legislator, agency, or other person requesting this draft Rep. Gunderson

Person submitting request (name and phone number) \_\_\_\_\_

Persons to contact for questions about this draft (names and phone numbers) Mike BRUNN  
266/3363

Describe the problem, including any helpful examples. How do you want to solve the problem?

Please draft a bill which directs the Department of Natural Resources to promulgate new administrative rules regulating piers, boathouses, gazebos which will be reviewed by the legislative standing committees. This legislation should <sup>exempt</sup> grandfather any pier, boathouse, or gazebo constructed before Jan. 1, 2001 from regulation by the Department of Natural Resources.

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 1999 LRB-2345/1 or 1997 AB-67).

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? YES  NO

If yes:                      Anyone who asks?    YES    NO  
   Any legislator?        YES    NO

Only the following persons \_\_\_\_\_

Do you consider this request urgent?    YES    NO                      If yes, please indicate why \_\_\_\_\_

Should we give this request priority over any pending request of this legislator, agency, or person?

YES    NO

Called Mike Bruhn

Problem is that DNR has been requiring people who have had long standing piers, boathouses, etc. to take them down or alter them because technically they violate DNR rules.

Mike wants to provide that these structures that existed before Jan. 1, 2001, are exempt from DNR rules & require DNR to promulgate new rules.

Then, if a pre-existing structure is not altered in any way, it is exempt from the rules.

But if altered, the structure must comply with rules.

Any structure built on or after Jan 1, 2001 will be subject to new rules.

Called Mike to ask if he want to include boat shelters.

include boat shelters as well -

I also explained that the statutes don't refer to gazebos - perhaps they are just a part of the pier structure.

He agreed that we should not specifically list gazebos in the draft.



(soon)  
State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-2585/P1

RNK.../...  
WJ

D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

GEN

1 AN ACT ...; relating to: the regulation of piers, boat shelters, and boathouses and  
2 requiring the exercise of rule-making authority. ✓

---

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version of the draft.

---

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

3 SECTION 1. 30.12 (2m) ✓ of the statutes is created to read:  
4 30.12 (2m) PIERS AND BOAT SHELTERS EXEMPT FROM ENFORCEMENT ACTION. A pier  
5 or boat shelter that is in place on the day before the effective date of this subsection  
6 .... [revisor inserts date], or that has been seasonally placed in the same location in  
7 each of the years beginning with 1996 and ending with 2000, is exempt from any  
8 enforcement action by the department that requires a riparian owner to repair,  
9 renovate, modify, or remove the pier or boat shelter, unless the riparian owner

1 reconstructs or materially alters the pier or boat shelter on or after the effective date  
2 of this subsection .... [revisor inserts date].

3 SECTION 2. 30.12 (3m)<sup>✓</sup> of the statutes is created to read:

4 30.12 (3m) APPLICATION AND PROMULGATION OF RULES. Every rule promulgated  
5 by the department that relates to the regulation of piers or boat shelters under sub.  
6 (2) and that is in effect on the day before the effective date of this subsection ....  
7 [revisor inserts date]<sup>^</sup> shall be void. The department shall promulgate rules  
8 regulating piers and boat shelters under sub. (2) that shall supersede the rules  
9 promulgated by the department under sub. (2) that were in effect on the day before  
10 the effective date of this subsection .... [revisor inserts date].

11 SECTION 3. 30.121 (6m)<sup>✓</sup> 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 that relates to the regulation of  
14 boathouses under this section and that is in effect on the day before the effective date  
15 of this <sup>sub</sup>section .... [revisor inserts date]<sup>^</sup> shall be void. The department shall  
16 promulgate rules regulating <sup>4</sup>boathouses under this section that shall supersede the  
17 rules promulgated by the department under this section<sup>✓</sup> that were in effect on the  
18 day before the effective date of this <sup>sub</sup>section .... [revisor inserts date].

19 SECTION 4. 30.13 (1m)<sup>P</sup> of the statutes is created to read:

20 30.13 (1m)<sup>Ⓟ</sup> PIERS EXEMPT FROM ENFORCEMENT ACTION. A pier that is in place on  
21 the day before <sup>the</sup> effective date of this subsection .... [revisor inserts date], or that has  
22 been seasonally placed in the same location in each of the years beginning with 1996  
23 and ending with 2000, is exempt from any enforcement action by the department  
24 that requires a riparian proprietor to repair, renovate, modify, or remove the pier,



1 unless the riparian proprietor reconstructs or materially alters the pier on or after  
2 the effective date of this subsection .... [revisor inserts date].

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, unless  
10 authorization for the pier is expressly provided, or unless the pier is exempt from any  
11 enforcement action under sub. (1<sup>p</sup>/<sub>m</sub>) or 30.12 (2<sup>s</sup>/<sub>m</sub>).

History: 1981 c. 252; 1987 a. 374; 1999 a. 150 ss. 3, 120, 123, 125, 127, 129, 131, 133.

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 unless authorization for the pier is expressly provided, or unless the pier is exempt  
20 from any enforcement action under sub. (1<sup>p</sup>/<sub>m</sub>) or 30.12 (2<sup>s</sup>/<sub>m</sub>).

History: 1981 c. 252; 1987 a. 374; 1999 a. 150 ss. 3, 120, 123, 125, 127, 129, 131, 133.

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 ~~the~~ sub. (1) and that is  
24 in effect on the day before the effective date of this subsection .... [revisor inserts date].

1 shall be void. The department shall promulgate rules regulating piers under sub. (1)  
2 that shall supersede the rules promulgated by the department under sub. (1) that  
3 were in effect on the day before the effective date of this subsection .... [revisor inserts  
4 date].

5 **SECTION 8. Nonstatutory provisions.**

6 (1) The department of natural resources shall submit in proposed form the  
7 rules required under sections 30.12 (3m)<sup>✓</sup> and 30.13 (7)<sup>✓</sup> of the statutes, as created by  
8 this act, to the legislative council staff under section 227.15 (1)<sup>✓</sup> of the statutes no later  
9 than the first day of the 13th month beginning after the effective date of this  
10 subsection.<sup>✓</sup>

11 (2) The department of natural resources may use the procedures under section  
12 227.24<sup>✓</sup> of the statutes to promulgate emergency rules under sections 30.12 (3m)<sup>✓</sup> and  
13 30.13 (7)<sup>✓</sup> of the statutes, as created by this act. Notwithstanding section 227.24 (1)  
14 (c)<sup>✓</sup> and (2)<sup>✓</sup> of the statutes, the emergency rules may remain in effect until the date  
15 on which permanent rules take effect. Notwithstanding section 227.24 (1) (a) and  
16 (3) of the statutes, the department is not required to provide evidence that  
17 promulgating a rule under this subsection as an emergency rule is necessary for the  
18 preservation of public peace, health, safety, or welfare and is not required to provide  
19 a finding of emergency for a rule promulgated under this subsection.

20 (END)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2585/P1dn

RNK.....  
wly

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 before the effective date of this proposal. Is this O.K.?  
*on the day*
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 boat houses after

December 16, 1979, I did not include a provision in the draft exempting such boat houses 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.

Robin N. Kite  
Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.state.wi.us

**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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Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.state.wi.us

Rep. Gunderson (Mike) TW - LRB 2585

Redraft instructions 5-30-01

change "grandfathering date" to Jan 1, 2001  
(D-Note # 2.)

D-Note # 4 - make draft cover other  
owners under 30.131 & municipalities  
under 30.13(4)(c)



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-2585/1

RNK:wj:kjf

WLJ

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

REGEN

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) and 30.13 (7) of the statutes; relating to: the  
3 regulation of piers, <sup>and</sup> boat shelters ~~and boat houses~~ and requiring the exercise of  
4 rule-making authority.

*Analysis by the Legislative Reference Bureau*

~~This is a preliminary draft. An analysis will be provided in a later version of the draft.~~

Insert Anal.

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

5 SECTION 1. 30.12 (2m) of the statutes is created to read:  
6 30.12 (2m) PIERS AND BOAT SHELTERS EXEMPT FROM ENFORCEMENT ACTION. A pier  
7 or boat shelter that <sup>was</sup> in place on ~~the day~~ before the effective date of this subsection  
8 ~~(A. Revisor inserts date)~~ <sup>January 1, 2001</sup> ~~was~~ or that ~~has been~~ seasonally placed in the same location in  
9 each of the years beginning with 1996 and ending with 2000, is exempt from any



1 enforcement action by the department <sup>under this section</sup> that requires a riparian owner to repair,  
 2 renovate, modify, or remove the pier or boat shelter, unless the riparian owner  
 3 reconstructs <sup>ed</sup> or materially alters <sup>ed</sup> the pier or boat shelter ~~or~~ after the effective date  
 4 of this subsection ... [revisor inserts date] *January 1, 2001*

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

6 30.12 (3m) APPLICATION AND PROMULGATION OF RULES. Every rule promulgated  
 7 by the department <sup>under this section</sup> that relates to the regulation of piers or boat shelters under sub.  
 8 (2) and that is in effect on the day before the effective date of this subsection ...  
 9 [revisor inserts date], shall be void. The department shall promulgate rules  
 10 regulating piers and boat shelters under sub. (2) that shall supersede the rules  
 11 promulgated by the department under sub. (2) that were in effect on the day before  
 12 the effective date of this subsection ... [revisor inserts date].

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

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

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

22 30.13 (1p) PIERS EXEMPT FROM ENFORCEMENT ACTION. A pier that <sup>was</sup> in place on  
 23 ~~the day before the effective date of this subsection ... [revisor inserts date]~~, or that  
 24 ~~has been~~ <sup>was</sup> seasonally placed in the same location in each of the years beginning with  
 25 1996 and ending with 2000, is exempt from any enforcement action by the

*or by the governing body of a city, village, or town, or a designated officer,*  
department that requires a riparian proprietor to repair, renovate, modify, or remove

the pier, unless the riparian proprietor reconstructs or materially alters the pier ~~or~~

~~or~~ after the effective date of this subsection. [revisor inserts date] *January 1, 2001*

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

30.13 (4) (a) *Interferes with public rights.* A wharf ~~or pier~~ which that 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. A pier that interferes with public rights in navigable waters constitutes an unlawful obstruction of navigable waters unless a permit is issued for the pier under s. 30.12, ~~unless~~ authorization for the pier is expressly provided, or ~~unless~~ the pier is exempt from any enforcement action under sub. (1p) ~~or~~ <sup>STET</sup> s. 30.12 (2m) ~~or~~ 30.13(4)

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

30.13 (4) (b) *Interferes with riparian rights.* A wharf ~~or pier~~ which that 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. A pier that interferes with the rights of other riparian proprietors constitutes an unlawful obstruction of navigable waters unless a permit is issued for the pier under s. 30.12, ~~unless~~ authorization for the pier is expressly provided, or ~~unless~~ the pier is exempt from any enforcement action under sub. (1p) ~~or~~ <sup>STET</sup> s. 30.12 (2m) ~~or~~ 30.13(4)

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

30.13 (7) APPLICATION AND PROMULGATION OF RULES. Every rule promulgated by the department that relates to the regulation of piers under ~~sub. (1p) ~~or~~ s. 30.12 (2m) ~~or~~ 30.13(4)~~ and that is in effect on the day before the effective date of this subsection .... [revisor inserts date], *this section*

*This section*

*this section*

1 shall be void. The department shall promulgate rules regulating piers under ~~sub (1)~~  
2 that shall supersede the rules promulgated by the department under ~~sub (1)~~ that  
3 were in effect on ~~the day before the effective date of this subsection~~... Revisor inserts

4-4

4 ~~date~~ *January 1, 2001*

5 **SECTION 8. Nonstatutory provisions.**

*30.121(6m), and 30.131(4)*

6 (1) The department of natural resources shall submit in proposed form the  
7 rules required under sections 30.12 (3m) ~~and~~ 30.13 (7) of the statutes, as created by  
8 this act, to the legislative council staff under section 227.15 (1) of the statutes no later  
9 than the first day of the 13th month beginning after the effective date of this  
10 subsection.

*30.121(6m), and 30.131(4)*

11 (2) The department of natural resources may use the procedures under section  
12 227.24 of the statutes to promulgate emergency rules under sections 30.12 (3m) ~~and~~  
13 30.13 (7) of the statutes, as created by this act. Notwithstanding section 227.24 (1)  
14 (c) and (2) of the statutes, the emergency rules may remain in effect until the date  
15 on which permanent rules take effect. Notwithstanding section 227.24 (1) (a) and  
16 (3) of the statutes, the department is not required to provide evidence that  
17 promulgating a rule under this subsection as an emergency rule is necessary for the  
18 preservation of public peace, health, safety, or welfare and is not required to provide  
19 a finding of emergency for a rule promulgated under this subsection.

20 (END)

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2585/1ins  
RNK:wlj:kjf

INSERT ANAL.

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.

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, 2001, or that was seasonally placed in the same location in each of the years beginning with 1996 and ending with 2000 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 1, 2001. 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.

- 4 -  
Insert 4-4

1 date], shall be void. The department shall promulgate rules regulating piers under  
2 this section that shall supersede the rules promulgated by the department under this  
3 section that were in effect on January 1, 2001.

4 SECTION ~~1255x~~<sup>#</sup> 30.131 (3) of the statutes is created to read:

5 30.131 (3) PIERS EXEMPT FROM ENFORCEMENT ACTION. A pier that was in place  
6 on January 1, 2001, or that was seasonally placed in the same location in each of the  
7 years beginning with 1996 and ending with 2000, is exempt from any enforcement  
8 action by the department that requires the person who placed the pier or the owner  
9 of riparian land that abuts the pier to repair, renovate, modify, or remove the pier,  
10 unless the person who placed the pier or the riparian owner reconstructs or  
11 materially alters the pier after January 1, 2001.

12 SECTION ~~1255x~~<sup>#</sup> 30.131 (4) of the statutes is created to read:

13 30.131 (4) APPLICATION AND PROMULGATION OF RULES. Every rule promulgated  
14 by the department that relates to the regulation of piers under this section and that  
15 is in effect on the day before the effective date of this subsection .... [revisor inserts  
16 date], shall be void. The department shall promulgate rules regulating piers under  
17 this section that shall supersede the rules promulgated by the department under this  
18 section that were in effect on the day before the effective date of this subsection ....  
19 [revisor inserts date].

20 ~~4. Page 1347, line 19: after that line insert:~~

21 ~~“(6n) PIERS AND BOAT SHELTERS.~~

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



# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

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September 21, 2001

### MEMORANDUM

To: Representative Gunderson

From: Robin N. Kite, Legislative Attorney

Re: LRB-2585/1 Regulation of piers, boathouses, and gazebos

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY  JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-7291 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.