

2001 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-SB55)

Received: 06/23/2001

Received By: **rkite**

Wanted: **As time permits**

Identical to LRB:

For: **Assembly Republican Caucus**

By/Representing: **Tessmer**

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**

Requester's email:

Pre Topic:

ARC:.....Tessmer - AM94,

Topic:

Exempt certain piers from DNR regulation and require DNR to promulgate new rules

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	rkite 06/27/2001	hhagen 06/27/2001	rschluet 06/27/2001	_____	lrb_docadmin 06/27/2001		

FE Sent For:

<END>

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Received: 06/23/2001

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For: Assembly Republican Caucus

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Submit via email: NO

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Pre Topic:

ARC:.....Tessmer - AM94,

Per Adam Buschka -
talk to Mike in
Gunderson's office

Topic:



Exempt certain piers from DNR regulation and require DNR to promulgate new rules

Per Mike - use
LRB-2585

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/?	rkite	11 kmh 6/27/01					
			6-26-1				

FE Sent For:

<END>

department and the applicant agree or unless the applicant makes material additions or alterations to the project for which the application has been submitted.

Additionally, amend Section 30.02 (4)(a) to require a public hearing be held with 30 days of an order to conduct such a hearing.

Agency affected: DNR

Fiscal Impact: \$0

Location/Status: New motion (Kedzie)

F. Piers and Docks

All piers and docks built before January 1, 2001 would be "grandfathered" and not subject to current DNR rulemaking authority. Further, the DNR would be required to promulgate new rules to regulate piers and docks constructed after January 1, 2001.

Location/Status: New motion (Gunderson)

Fiscal impact: None.

*talk to
Mike in
Gunderson's
office*

G. Land Purchase Approval

Require the Board of Commissioners of Public Lands to submit a request to the Joint Committee on Finance for approval of the land purchase which is currently owned by WPS in Marinette County

Affected agency: Public Lands

Fiscal Impact: None.

Location/Status: Adopt ARC Amendment #258 (Montgomery)

6. Air Management

A. Bureau of Air Management — General Construction Permits

Authorize DNR to promulgate administrative rules that specify the types of stationary sources of air emissions that may obtain general construction permits. A general construction permit may cover several similar stationary sources. It would be used instead of issuing an individual construction permit for each source covered by the general construction permit. Examples of categories for which a general construction permit might be created would include crushers, package boilers, degreasing units, dry cleaners and hot-mix asphalt plants.

Affected agency: DNR

Fiscal Impact: \$0

Location/Status: Adopt ARC Amendment #193 (Kedzie)

Per Adam Roselka - talk to Mike in
Gunderson's office re: instructions

Per Mike -

draft same as LRB 2585/P1
but change "grandfathering" date to Jan 1, 2001
provide that draft covers owners (under
s. 30.131) and ~~stop~~ local govs. (under
s. 30.13(4)(c))

2001

Date (time) needed soon

LRB b 1672, 1

**ARC CAUCUS BUDGET AMENDMENT
[ONLY FOR CAUCUS]**

RNK : hnh :

EMW

See form **AMENDMENTS — COMPONENTS & ITEMS.**

**CAUCUS AMENDMENT
TO ASSEMBLY SUBSTITUTE AMENDMENT 1
TO 2001 SENATE BILL 55**

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

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

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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, boat shelters, and boathouses 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.

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

Item #. 492, 12: after prev. that line insert:

5 "SECTION 30.12 (2m) of the statutes is created to read:

6 (1247d) 30.12 (2m) PIERS AND BOAT SHELTERS EXEMPT FROM ENFORCEMENT ACTION. A pier
 7 or boat shelter that ~~is~~ ^{was} in place on the day before the effective date of this subsection
 8 ~~...~~ ^{January 1, 2001} [revisor inserts date] or that ~~has been~~ ^{was} seasonally placed in the same location in
 9 each of the years beginning with 1996 and ending with 2000, is exempt from any

under this section
January 1, 2001

1 enforcement action by the department that requires a riparian owner to repair,
2 renovate, modify, or remove the pier or boat shelter, unless the riparian owner
3 reconstructs or materially alters the pier or boat shelter ~~on or after the effective date~~
4 ~~of this subsection.~~ [revisor inserts date].

page line
Item # 494, 18: after that line insert:

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

1247+

6 30.12 (3m) APPLICATION AND PROMULGATION OF RULES. Every rule promulgated

under this section

7 by the department 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:

1252m

14 30.121 (6m) APPLICATION AND PROMULGATION OF RULES. Notwithstanding sub.

under this section

15 (6), every rule promulgated by the department 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].

January 1, 2001

Item # 494, 19: after line:

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

1255f

22 30.13 (1p) PIERS EXEMPT FROM ENFORCEMENT ACTION. A pier that ~~is~~ in place on

was

23 ~~the day before the effective date of this subsection ... [revisor inserts date],~~ or that

24 ~~has been~~ *was* 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 *under this section* by the

or by the governing body of a city, village, or town, or a
 designated officer,
 department) that requires a riparian ~~proprietor~~ ^{owner} to repair, renovate, modify, or remove
 the pier, unless the riparian ~~proprietor~~ ^{owner} reconstructs or materially alters the pier ~~the~~
 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:

1255j

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~~ s. 30.12 (2m) ~~or~~ s. 30.131(4)

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

1255m

30.13 (4) (b) *Interferes with riparian rights.* A wharf ~~or pier which~~ that
 interferes with rights of other riparian ~~proprietors~~ ^{owners} 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~~ ^{owners} 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~~ s. 30.12 (2m) ~~or~~ s. 30.131(4)

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

1255p

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

this ~~was~~ section

January 1, 2001

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

[Ital]

Inserts
4-4

date.

page line

[CS
Am]

PIERS AND BOAT SHELTERS. (P) (a) Proposed rules.

SECTION 8. Nonstatutory provisions.

Item #. 1347, 19: after that line insert

6 (a) 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.

(b) Emergency rules. [Ital.]

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.

(END)

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1672/lins.
RNK.....

Insert 4-4

SECTION 1255t. 30.131 (3) of the statutes is created to read:

30.131 (3) PIERS EXEMPT FROM ENFORCEMENT ACTION. A pier 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, is exempt from any enforcement action by the department that requires the person who placed the pier or the owner of riparian land that abuts the pier to repair, renovate, modify, or remove the pier, unless the person who placed the pier or the riparian owner reconstructs or materially alters the pier ~~on or~~ after January 1, 2001.

SECTION 1255v. 30.131 (4) of the statutes is created to read:

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

6.16.72/1dn
RNL: hnt

Dade

This draft reflects my discussions with Mike in Representative Gunderson's office. I was directed by Adam Raschka to prepare this amendment with direction from Representative Gunderson's office.

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.
2. 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.
3. 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.
4. 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.

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

LRBb1672/1dn
RNK:hmh:rs

June 27, 2001

This draft reflects my discussions with Mike in Representative Gunderson's office. I was directed by Adam Raschka to prepare this amendment with direction from Representative Gunderson's office.

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.
2. 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.
3. 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.
4. 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.

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



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBb1672/1
RNK:hmh:rs

ARC:.....Tessmer – AM94, Exempt certain piers from DNR regulation and
require DNR to promulgate new rules

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS ASSEMBLY AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

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

2 **1.** Page 492, line 2: after that line insert:

3 “**SECTION 1247d.** 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 was in place on January 1, 2001, or that was seasonally placed
6 in the same location in each of the years beginning with 1996 and ending with 2000,
7 is exempt from any enforcement action by the department under this section that
8 requires a riparian owner to repair, renovate, modify, or remove the pier or boat
9 shelter, unless the riparian owner reconstructs or materially alters the pier or boat
10 shelter after January 1, 2001.”.

1 **2.** Page 494, line 8: after that line insert:

2 “**SECTION 1247t.** 30.12 (3m) of the statutes is created to read:

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

10 **SECTION 1252m.** 30.121 (6m) of the statutes is created to read:

11 **30.121 (6m) APPLICATION AND PROMULGATION OF RULES.** Notwithstanding sub.
12 (6), every rule promulgated by the department under this section that relates to the
13 regulation of boathouses under this section and that is in effect on the day before the
14 effective date of this subsection [revisor inserts date], shall be void. The
15 department shall promulgate rules regulating boathouses under this section that
16 shall supersede the rules promulgated by the department under this section that
17 were in effect on the day before the effective date of this subsection [revisor inserts
18 date].”

19 **3.** Page 494, line 19: after that line insert:

20 “**SECTION 1255f.** 30.13 (1p) of the statutes is created to read:

21 **30.13 (1p) PIERS EXEMPT FROM ENFORCEMENT ACTION.** A pier that was in place
22 on January 1, 2001, or that was seasonally placed in the same location in each of the
23 years beginning with 1996 and ending with 2000, is exempt from any enforcement
24 action under this section by the department, or by the governing body of a city,

1 village, or town, or a designated officer, that requires a riparian proprietor to repair,
2 renovate, modify, or remove the pier, unless the riparian proprietor reconstructs or
3 materially alters the pier after January 1, 2001.

4 **SECTION 1255j.** 30.13 (4) (a) of the statutes is amended to read:

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

13 **SECTION 1255m.** 30.13 (4) (b) of the statutes is amended to read:

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

22 **SECTION 1255p.** 30.13 (7) of the statutes is created to read:

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

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 1255t.** 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 1255v.** 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

1 under section 227.15 (1) of the statutes no later than the first day of the 13th month
2 beginning after the effective date of this subsection.

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

13

(END)