

**2003 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-AB445)**

Received: **10/10/2003**

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: **YES**

Requester's email: **Rep.Gunderson@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Revise exemptions for piers and boat hoists

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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>
/?							
/1	rkite 10/13/2003	wjackson 10/13/2003	jfrantze 10/14/2003	_____	lemery 10/14/2003	lemery 10/14/2003	

FE Sent For:

<END>

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1/?	rkite	1/11/13	2/10/14	<i>[Signature]</i> 10/14			

FE Sent For:

<END>

**Kite, Robin**

---

**From:** Bruhn, Mike  
**Sent:** Thursday, October 09, 2003 11:06 AM  
**To:** Kite, Robin  
**Subject:** RE: Substitute amendment for AB 445

Robin,

2  
0 Can you also add in grandfathering of piers for which the legality of that pier has been determined in judicial or administrative proceedings.

Thanks,

Mike

-----Original Message-----

**From:** Bruhn, Mike  
**Sent:** Wednesday, October 08, 2003 3:46 PM  
**To:** Kite, Robin  
**Subject:** RE: Substitute amendment for AB 445

I apologize, I should have also informed you that the bill is scheduled for an exec on the 15<sup>th</sup>.

Mike

-----Original Message-----

**From:** Bruhn, Mike  
**Sent:** Tuesday, October 07, 2003 4:48 PM  
**To:** Kite, Robin  
**Subject:** Substitute amendment for AB 445

*Remove boathouse & boat shelters in draft*

Robin,

We have been working with the DNR to come up with a Substitute Amendment for AB 445 (grandfathering of piers). We'd like a Sub. drafted which does a number of things:

- ✓ 1) Eliminate the grandfathering exemptions for boathouse *may not be in here*
- ✓ 2) Eliminate the grandfathering exemptions for boat shelters.
- ✓ 3) Eliminate the grandfathering exemption if a pier obstructs navigability or impedes flow. (We want this to be specific, so that it really does obstruct navigability or really does impede flow).
- ✓ 4) Eliminate the grandfathering exemption if a pier violates another person's riparian rights.
- ✓ 5) Add in a provision to give the DNR 90 days to adopt emergency rules before voiding the existing rules.
- 6) Remove grandfathering exemption if there is an ongoing DNR action or written complaint on the pier.
- ✓ 7) Include grandfathering of boat hoists in the bill.

If you have any questions, please feel free to contact me at 266-3363.

Thanks,

Mike Bruhn  
Rep. Gunderson's office

*cell phone  
576-0650*

2003

Date (time) needed

Tues.  
10/14/03 (10:00a.m.)

LRBs 021411

**SUBSTITUTE AMENDMENT  
[TO A BILL]**

RNK: Wlj:

Use the appropriate components and routines developed for substitute amendments.

D-Note

S (A) SUBSTITUTE AMENDMENT

TO 2003 SB (AB) 445 (LRB-)

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the statutes; relating to: *regulating piers and boat hoists and requiring the exercise of rule-making authority.*

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

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

SECTION #.

## 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~~<sup>hoists</sup> and requiring the exercise of  
4 rule-making authority.

---

### ***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.

**ASSEMBLY BILL 445**

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.

*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~~ <sup>Exemptions</sup> FROM ENFORCEMENT ACTION. (a)

3 Except as provided in par. (b), a riparian owner of a pier or boat ~~shelter~~ <sup>hoist</sup> 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~~ <sup>hoist</sup>

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]

Insert  
2-12

13 2. A pier or boat ~~shelter~~ <sup>hoist</sup> that a riparian owner reconstructed or materially  
14 altered after January 1, 2003.

Insert  
2-14

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

**ASSEMBLY BILL 445**

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~~ <sup>hoists</sup> 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~~ <sup>hoists</sup> 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~~ <sup>hoists</sup>, standards concerning the  
 9 permissible length and width of piers, <sup>and</sup> 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. <sup>(a)</sup> A riparian proprietor that  
 21 owns a pier <sup>or boat hoist</sup> 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

ASSEMBLY BILL 445

1 riparian proprietor to repair, renovate, modify, or remove the pier ~~unless the~~ <sup>or boat hoist</sup>  
2 ~~riparian proprietor reconstructs or materially alters the pier after January 1, 2004.~~

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 <sup>or boat hoists</sup> 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 <sup>and boat hoists</sup> under

insert  
4-20

**ASSEMBLY BILL 445**

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 <sup>and boat hoists</sup> 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 <sup>or boat hoist</sup> 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 <sup>or boat hoist</sup> or the owner of riparian land that abuts the pier <sup>or boat hoist</sup> to repair,  
 12 renovate, modify, or remove the pier <sup>or boat hoist</sup>, unless the person who placed the pier <sup>or boat hoist</sup> or the  
 13 riparian owner, reconstructs or materially alters the pier <sup>or boat hoist</sup> 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 <sup>or boat hoists</sup> 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 <sup>and boat hoists</sup> 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), ~~30.12 (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

ASSEMBLY BILL 445

*attach  
Tracy's  
note*

1 (1) of the statutes no later than the first day of the ~~10~~<sup>10</sup>th 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 boats~~

*shelter hoists*

*Plain*

*insert  
eff.  
date*

(END)

Insert 2-12

§ 1. A pier or boat hoist that is the subject of an enforcement action initiated by the department before the effective date of this subdivision .... [revisor inserts date]; alleging that the pier or boat hoist presents an imminent and substantial danger to navigation or the public interest.

Insert 2-14

§ 3. A pier or boat hoist that interferes with rights of other riparian owners.

§ 4. A pier or boat hoist that materially obstructs navigation or reduces the effective flood flow ~~to~~ capacity of a stream.

§ 5. A pier or boat hoist that an administrative hearing officer has determined <sup>or</sup> that a court has ordered must be repaired, renovated, modified, or removed.

Insert 4-20

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

¶ 1. A pier<sup>or boat hoist</sup> that the riparian proprietor reconstructed or materially altered after January 1, 2003.

~~2. A pier that interferes with public rights in navigable waters.~~

¶ 2. A pier<sup>or boat hoist</sup> that interferes with rights of other riparian owners.

¶ 3. A pier<sup>or boat hoist</sup> that materially obstructs navigation or reduces the effective flood flow<sup>capacity</sup> of a stream.

¶ 4. A pier<sup>or boat hoist</sup> that an administrative hearing officer has determined or that a court has ordered must be repaired, renovated, modified, or removed.

2003

Insert eff. date

Nonstat File Sequence: **FFF**

LRB 50214 11

RNK : \_\_\_\_\_

**EFFECTIVE DATE**

1. In the component bar: For the action phrase, execute: ... **create** → **action:** → \*NS: → **effdate**  
For the text, execute: ..... **create** → **text:** → \*NS: → **effdateA**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed.

**SECTION # \_\_\_\_\_ . Effective date.**

( #1 ) ( 1 ) ..... This act takes effect  
 on the first day of the 4th month beginning  
after publication (2)

1. In the component bar: For the action phrase, execute: .. **create** → **action:** → \*NS: → **effdateE**  
For the text, execute: ..... **create** → **text:** → \*NS: → **effdate**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed.

**SECTION # \_\_\_\_\_ . Effective dates; .....**

..... This act takes effect on the day after publication, except as follows:

( #1 ) ( ) ..... The treatment of  
 sections .....  
 of the statutes takes effect on .....

1. In the component bar: For the budget action phrase, execute:.. **create** → **action:** → \*NS: → **94XX**  
For the text, execute: ..... **create** → **text:** → \*NS: → **effdate**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed. Below, for the budget, fill in the 9400 department code.

**SECTION 94 \_\_\_\_\_ . Effective dates; .....**

.....

( #1 ) ( ) ..... The treatment of  
 sections .....  
 of the statutes takes effect on .....

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

LRBs0214/1dn

RNK:./:...

WLj

Please review this substitute amendment closely to ensure that it is consistent with your intent.

As you know, Assembly Bill 445 gives DNR approximately one year in which to submit proposed rules to the legislative council. This substitute amendment, unlike the original bill, includes a delayed effective date provision to address your request that DNR be given approximately 90 days to promulgate emergency rules before the new law would apply. The substitute amendment correspondingly reduces the length of time in which DNR must submit proposed rules to the legislative council staff by approximately the same amount of time. This approach ensures that DNR has approximately one year to promulgate rules from the date that the bill is passed, while at the same time <sup>gives</sup> ~~giving~~ DNR approximately 90 days to promulgate emergency rules. This ~~one~~ year rule-making deadline is consistent with the deadline under the original bill.

Please feel free to contact me if you have any questions concerning this draft.

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

LRBs0214/1dn  
RNK:wlj:jf

October 14, 2003

Please review this substitute amendment closely to ensure that it is consistent with your intent.

As you know, Assembly Bill 445 gives DNR approximately one year in which to submit proposed rules to the legislative council. This substitute amendment, unlike the original bill, includes a delayed effective date provision to address your request that DNR be given approximately 90 days to promulgate emergency rules before the new law would apply. The substitute amendment correspondingly reduces the length of time in which DNR must submit proposed rules to the legislative council staff by approximately the same amount of time. This approach ensures that DNR has approximately one year to promulgate rules from the date that the bill is passed, while at the same time gives DNR approximately 90 days to promulgate emergency rules. This one-year rule-making deadline is consistent with the deadline under the original bill.

Please feel free to contact me if you have any questions concerning this draft.

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