

2007 SENATE BILL 169

April 27, 2007 – Introduced by Senators BRESKE, KEDZIE, DARLING, PLALE and ROESSLER, cosponsored by Representatives GUNDERSON, KLEEFISCH, KREUSER, ALBERS, BALLWEG, BIES, HAHN, KAUFERT, KERKMAN, LEMAHIEU, LOTHIAN, MONTGOMERY, MURSAU, MUSSER, NELSON, NYGREN, SOLETSKI, STASKUNAS, TAUCHEN, TOWNSEND, VRUWINK and VUKMIR. Referred to Committee on Environment and Natural Resources.

1 **AN ACT** *to amend* 25.29 (1) (c), 30.12 (1g) (f), 30.12 (1p) (a) (intro.), 30.12 (1p) (a)
 2 2., 30.12 (3m) (a), 30.13 (1) (intro.), 30.285 (1) (a), 30.285 (2) (intro.) and 30.291
 3 (1); and *to create* 30.03 (4) (am), 30.12 (1j), 30.12 (1k), 30.12 (3m) (am), 30.12
 4 (3m) (ar), 30.12 (3m) (cm), 30.12 (3m) (d), 30.206 (1g) and 30.285 (1) (e) of the
 5 statutes; **relating to:** the regulation of certain structures in navigable waters,
 6 granting rule-making authority, and making an appropriation.

Analysis by the Legislative Reference Bureau

Under current law, with certain exceptions, 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). A bulkhead line is a line established by a municipality in the public interest that conforms as nearly as practicable to an existing shore. This bill does the following:

Permit exemption for certain piers and wharves

This bill modifies the current law permitting exemption for certain piers and wharves. Under current law, in order for the permit exemption to apply, the pier or wharf may not be in an area of special natural resource interest, may not interfere with the riparian rights of other riparian owners, and may only have a specified

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number of boat slips that varies depending on the riparian owner's shoreline footage. Additionally, current law provides that the pier or wharf may extend no further than one of two points, whichever of these two points is closer to the shoreline. This bill changes this distance requirement so that the pier or wharf may extend to whichever of these two points is farther from the shoreline.

Current law also specifies that for the exemption to apply, the pier or wharf may be no more than six feet wide. This bill expands the exemption for a pier so that a pier may have an area as a loading platform that is more than six feet wide if the platform is not more than eight feet wide, it extends perpendicular to one or both sides of the pier, and it is located at the lakeward end of the pier or at the end of the pier that extends into a stream.

Additional boat slips

This bill allows a riparian owner of a property that is adjacent to a lake of 50 acres or more and on which there are three or more dwelling units or on which there are commercial structures to place a pier or wharf having more boat slips than would be allowed without a permit, if the owner obtains an individual permit authorizing the configuration of the pier or wharf or if the configuration of the pier or wharf is authorized under a general permit. The number of additional boat slips that the owner may have under the bill depends on the property's shoreline footage and the use of the property. Under the bill, DNR may not refuse to allow an application for an individual permit and may not deny an individual permit on the basis of the number of slips proposed by a riparian owner if the number of slips proposed does not exceed the number allowed under the bill.

Exemption for certain existing structures

The bill creates a new permitting exemption for certain piers and wharves that were placed on the bed of a navigable water on or before February 6, 2004. The exemption applies if the pier or wharf meets certain size requirements, the pier or wharf does not interfere with the riparian rights of other riparian owners, and the riparian owner registers the pier or wharf with DNR by a specific date. Generally, under this exemption, the pier or wharf may not be more than eight feet wide except that a pier may have a loading platform that is more than eight feet wide if the platform meets certain other configuration requirements.

Prohibition on enforcement

The bill prohibits DNR from taking any enforcement action against a riparian owner of a pier, wharf, boat shelter, boat hoist, or boat lift (structure) for which a permit or written authorization was issued on or before February 6, 2004, if the structure is in compliance with the permit or authorization. The prohibition does not apply to enforcement actions initiated by DNR before February 6, 2004, if the enforcement action is still pending on the bill's effective date.

Repair, replacement, and maintenance

The bill specifies that if a structure is exempt from permit requirements or enforcement action, the owner may repair, maintain, or replace the structure without obtaining a permit as long as the owner does not enlarge the structure. If the exempt structure is a pier or wharf, the owner may relocate or reconfigure the

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pier or wharf if the owner does not enlarge it, the owner has previously registered the pier or wharf with DNR, and the owner registers the reconfigured or relocated pier or wharf with DNR. The bill provides that DNR may not object to a minor relocation or reconfiguration.

Solid piers

The bill also authorizes DNR to promulgate rules that limit the issuance of individual permits for solid piers to outlying waters, harbors connected to outlying waters, the Fox River from the dam at De Pere to Lake Winnebago, Lake Winnebago, and the Mississippi River. A solid pier is a pier that does not allow for the free flow of water beneath the pier. The bill specifies that the rules may not prohibit issuance of individual permits for solid piers used for private or commercial purposes.

Consideration of alternatives

The bill requires that DNR, in determining whether to issue an individual permit to the owner of a proposed pier or wharf, must consider all reasonable alternatives offered by DNR and the owner of the pier or wharf relating to the location, design, construction, and installation of the pier or wharf.

Other provisions

Current law requires that an amount equal to 1.4 times the estimated motorboat gas tax payment be transferred each fiscal year from the transportation fund to the conservation fund. The estimated motorboat gas tax payment for each fiscal year is calculated by multiplying the number of registered motorboats on January 1 of the previous fiscal year by 50 gallons and then multiplying this product by the excise tax imposed on gasoline and diesel fuel on April 1 of the previous fiscal year. This bill provides that for fiscal years 2007–08, 2008–09, and 2009–10, the motorboat gas tax payment is calculated by multiplying the number of registered motorboats on January 1 of the previous fiscal year by 50.5 gallons rather than 50 gallons. The bill also increases an appropriation to DNR for water resources management to increase funding in fiscal year 2007–08 for the administration of activities related to permitting and exemption determinations for piers, wharves, and other structures.

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.** 25.29 (1) (c) of the statutes is amended to read:
- 2 25.29 (1) (c) For fiscal year 1992–93, and for each fiscal year thereafter, an
- 3 amount equal to the estimated motorboat gas tax payment multiplied by 1.4. The
- 4 Except for fiscal years 2007–08, 2008–09, and 2009–10, the estimated motorboat gas

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1 tax payment is calculated by multiplying the number of motorboats registered under
2 s. 30.52 on January 1 of the previous fiscal year by 50 gallons and multiplying that
3 product by the excise tax imposed under s. 78.01 (1) on April 1 of the previous fiscal
4 year. For fiscal years 2007–08, 2008–09, and 2009–10, the estimated motorboat gas
5 tax payment is calculated by multiplying the number of motorboats registered under
6 s. 30.52 on January 1 of the previous fiscal year by 50.5 gallons and multiplying that
7 product by the excise tax imposed under s. 78.01 (1) on April 1 of the previous fiscal
8 year.

9 **SECTION 2.** 30.03 (4) (am) of the statutes is created to read:

10 30.03 (4) (am) In determining an appropriate remedy for a violation under this
11 chapter relating to a pier or wharf, the department may not order the removal of a
12 pier or wharf unless the department considers all reasonable alternatives offered by
13 the department and the owner of the pier or wharf relating to the location, design,
14 construction, and installation of the pier or wharf.

15 **SECTION 3.** 30.12 (1g) (f) of the statutes is amended to read:

16 30.12 (1g) (f) A pier or wharf that is no more than 6 feet wide, that extends no
17 further than to a point where the water is 3 feet at its maximum depth, or to the point
18 where there is adequate depth for mooring a boat or using a boat hoist or boat lift,
19 whichever is closer to farther from the shoreline, and which that has no more than
20 than 2 boat slips for the first 50 feet of riparian owner's shoreline footage and no more
21 than one additional boat slip for each additional 50 feet of the riparian owner's
22 shoreline. Notwithstanding the width limitation in this paragraph, a pier may have
23 an area as a loading platform that is more than 6 feet wide if the platform is not more
24 than 8 feet wide, it extends perpendicular to one or both sides of the pier, and it is

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1 located at the lakeward end of the pier or at the end of the pier that extends into a
2 stream.

3 **SECTION 4.** 30.12 (1j) of the statutes is created to read:

4 **30.12 (1j) BOAT SLIPS FOR CERTAIN PIERS AND WHARVES.** (a) Subject to pars. (b)
5 and (c), the riparian owner or owners of a property that is adjacent to a lake of 50
6 acres or more and on which there are 3 or more dwelling units or on which there are
7 commercial structures may, in lieu of placing a pier or wharf described under sub.
8 (1g) (f), place a pier or wharf that has either of the following number of boat slips,
9 whichever is smaller:

10 1. Four boat slips for the first 50 feet of the property's shoreline footage and no
11 more than 2 boat slips for each additional 50 feet of the property's shoreline footage.

12 2. One boat slip for each dwelling unit, plus an additional number of boat slips
13 if the additional slips are open to the public and the use of the additional slips is
14 limited to the transient docking of boats for less than 24 hours.

15 (b) If the riparian owner or owners of a property described in par. (a) are eligible
16 to place a pier or wharf with the number of boat slips specified in par. (a), the pier
17 or wharf must be located in an area other than an area of special natural resource
18 interest, may not interfere with the riparian rights of other riparian owners, and
19 must meet all of the requirements for the placement of the pier or wharf specified
20 under sub. (1g) (f) except for the limitation on the number of boat slips allowed under
21 sub. (1g) (f).

22 (c) If the riparian owner or owners of a property described in par. (a) are eligible
23 and propose to place a pier or wharf with the number of boat slips specified in par.
24 (a), the riparian owner or owners shall apply to the department for an individual
25 permit under s. 30.208 authorizing the configuration of the pier or wharf unless the

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1 configuration is authorized by the department under a general permit under s.
2 30.206 (1g). The department may not deny the permit on the basis of the number of
3 slips proposed by the riparian owner or owners if the number of slips proposed does
4 not exceed the number allowed under par. (a). A riparian owner or owners who apply
5 for a permit under this paragraph shall be presumed to be entitled to the number of
6 slips allowed under par. (a).

7 **SECTION 5.** 30.12 (1k) of the statutes is created to read:

8 **30.12 (1k) EXEMPTION FOR CERTAIN STRUCTURES.** (a) In this subsection,
9 “structure” means a pier, wharf, boat shelter, boat hoist, or boat lift.

10 (b) In addition to the exemptions under sub. (1g), a riparian owner of a pier or
11 wharf that was placed on the bed of a navigable water on or before February 6, 2004,
12 is exempt from the permit requirements under this section if all of the following
13 apply:

14 1. The pier or wharf is not more than 8 feet wide as measured across the
15 shortest horizontal distance of any portion of the pier or wharf surface, except that
16 a pier may have an area as a loading platform that is more than 8 feet wide if the
17 platform is located at the lakeward end of the pier, or located at the end of the pier
18 that extends into a stream, does not have more than 300 square feet in surface area,
19 and meets the following width requirements:

20 a. If the platform has a surface area of 200 square feet or less, the platform may
21 be of any width.

22 b. If the platform has a surface area of more than 200 square feet but not more
23 than 300 square feet, the platform may not be more than 10 feet wide.

24 2. The pier or wharf does not interfere with the riparian rights of other riparian
25 owners.

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1 3. The riparian owner registers the pier or wharf with the department, in the
2 manner and form required by the department, no later than the first day of the 36th
3 month beginning after the effective date of this subdivision [revisor inserts date].

4 (c) The department shall make available to riparian owners a form for
5 registration of a pier or wharf under par. (b) 3. that is designed so that it may be
6 recorded with the register of deeds. A riparian owner may, but is not required to,
7 record the registration form with the register of deeds of the county where the pier
8 or wharf is located. The register of deeds may charge the fee under s. 59.43 (2) (ag)
9 for the recording of a pier or wharf registration under par. (b) 3. The department may
10 not charge a fee for the registration of a pier or wharf under par. (b) 3.

11 (cm) Except as provided in par. (d), the department may not take any
12 enforcement action under this chapter against a riparian owner for the placement
13 of any of the following:

14 1. A structure for which the department has issued a permit under this section
15 on or before February 6, 2004, if the structure is in compliance with that permit.

16 2. A structure for which the department has issued a written authorization on
17 or before February 6, 2004, if the structure is in compliance with that written
18 authorization.

19 3. A structure that is exempt under par. (b).

20 (d) The prohibition on enforcement action under par. (cm) does not apply to
21 enforcement action initiated by the department before February 6, 2004, if the
22 enforcement action remains pending on the effective date of this paragraph
23 [revisor inserts date].

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1 (e) A riparian owner who is exempt under par. (b) from the permit requirements
2 under this section or who is exempt under par. (cm) from enforcement action under
3 this chapter may do all of the following:

4 1. Repair, maintain, or replace the exempt structure without obtaining a
5 permit from the department under this section unless the owner enlarges the
6 structure.

7 2. If the exempt structure is a pier or wharf, relocate or reconfigure the pier or
8 wharf if the riparian owner does not enlarge the pier or wharf, the riparian owner
9 registered the pier or wharf with the department under par. (b) 3. and, before
10 relocating or reconfiguring the pier or wharf, the riparian owner registers the
11 reconfigured or relocated pier or wharf with the department under this subdivision.
12 The department may not object to a minor relocation or reconfiguration. If the
13 department objects to the relocation or reconfiguration of the pier or wharf, and the
14 riparian owner retains the pier or wharf in its original location and configuration,
15 the pier or wharf continues to qualify for the exemptions under pars. (b) and (cm).

16 (f) A decision of the department against the owner of a structure for which an
17 exemption is claimed under this subsection is subject to a trial de novo.

18 **SECTION 6.** 30.12 (1p) (a) (intro.) of the statutes is amended to read:

19 30.12 **(1p)** (a) (intro.) The department may promulgate rules concerning the
20 exempt activities under sub. (1g) and concerning piers and wharves under sub. (1j)
21 that only do any of the following:

22 **SECTION 7.** 30.12 (1p) (a) 2. of the statutes is amended to read:

23 30.12 **(1p)** (a) 2. Establish reasonable construction and design requirements
24 for the placement of structures under sub. (1g) (c), (d), (f), (g), (h), and (km) that are
25 consistent with the purpose of the activity and for piers and wharves under sub. (1j).

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1 **SECTION 8.** 30.12 (3m) (a) of the statutes is amended to read:

2 30.12 **(3m)** (a) For a structure or deposit that is not exempt under sub. (1g) and
3 that is not subject to a general permit under sub. (3), and for a structure or deposit
4 for which the department requires an individual permit under sub. (2m) or s. 30.206
5 (3r), a riparian owner may apply to the department for the individual permit that is
6 required under sub. (1) in order to place the structure for the owner's use or to deposit
7 the material.

8 **SECTION 9.** 30.12 (3m) (am) of the statutes is created to read:

9 30.12 **(3m)** (am) 1. Except as provided under subd. 2., the department may not
10 refuse to allow a riparian owner to apply for an individual permit for the placement
11 of a pier or wharf, including a solid pier, that exceeds the number of boat slips
12 authorized under sub. (1g) (f) or (1j). The department shall evaluate permit
13 applications under this paragraph on an individual basis and shall grant such
14 applications if the department finds that the pier or wharf meets the requirements
15 under par. (c) 1. to 3.

16 2. The department may deny an individual permit to the riparian owner or
17 owners of a property that is adjacent to a lake of 50 acres or more and on which there
18 are 3 or more dwelling units if the riparian owner or owners apply for an individual
19 permit for the placement of a pier or wharf with a number of boat slips that exceeds
20 the number of boat slips specified in sub. (1j) (a) 2.

21 **SECTION 10.** 30.12 (3m) (ar) of the statutes is created to read:

22 30.12 **(3m)** (ar) The department shall issue an individual permit under this
23 subsection to a riparian owner for a pier or wharf that was placed on the bed of a
24 navigable water on or before February 6, 2004, unless the department demonstrates
25 that one or more of the conditions under s. 30.13 (1) (a) to (e) has not been met. The

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1 department may not charge a riparian owner described under this paragraph a fee
2 for an individual permit issued under this subsection.

3 **SECTION 11.** 30.12 (3m) (cm) of the statutes is created to read:

4 30.12 **(3m)** (cm) In determining whether to issue an individual permit to the
5 owner of a proposed pier or wharf, the department may not deny the permit unless
6 the department considers all reasonable alternatives offered by the department and
7 the owner of the pier or wharf relating to the location, design, construction, and
8 installation of the pier or wharf.

9 **SECTION 12.** 30.12 (3m) (d) of the statutes is created to read:

10 30.12 **(3m)** (d) 1. In this paragraph, “solid pier” means a pier that does not allow
11 for the free flow of water beneath the pier.

12 2. The department may promulgate rules that limit the issuance of individual
13 permits for solid piers to outlying waters, harbors connected to outlying waters, the
14 Fox River from the dam at De Pere to Lake Winnebago, Lake Winnebago, and the
15 Mississippi River. The rules may establish reasonable conditions to implement the
16 criteria under par. (c) 1. to 3. The rules may not prohibit the issuance of individual
17 permits for solid piers used for private or commercial purposes.

18 **SECTION 13.** 30.13 (1) (intro.) of the statutes is amended to read:

19 30.13 **(1)** CONSTRUCTION ALLOWED WITHOUT PERMIT UNDER CERTAIN
20 CIRCUMSTANCES. (intro.) A riparian proprietor may construct a wharf or pier in a
21 navigable waterway extending beyond the ordinary high-water mark or an
22 established bulkhead line in aid of navigation without obtaining a permit under s.
23 30.12 if the pier or wharf is exempt from obtaining a permit under s. 30.12 or if all
24 of the following conditions are met:

25 **SECTION 14.** 30.206 (1g) of the statutes is created to read:

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1 30.206 **(1g)** GENERAL PERMIT FOR CERTAIN PIERS AND WHARVES. The department
2 may issue a general permit under this section for the configuration of a pier or wharf
3 under s. 30.12 (1j).

4 **SECTION 15.** 30.285 (1) (a) of the statutes is amended to read:

5 30.285 **(1)** (a) The number of exempted activities that are conducted under ss.
6 30.12 (1g) and (1k), 30.123 (6), 30.19 (1m), and 30.20 (1g) of which the department
7 is aware.

8 **SECTION 16.** 30.285 (1) (e) of the statutes is created to read:

9 30.285 **(1)** (e) The number of piers and wharves for which the department
10 issued a permit authorizing the configuration of the pier or wharf under s. 30.12 (1j)
11 (c).

12 **SECTION 17.** 30.285 (2) (intro.) of the statutes is amended to read:

13 30.285 **(2)** (intro.) For each record kept under sub. (1) (b) to ~~(d)~~ (e), the
14 department shall include all of the following:

15 **SECTION 18.** 30.291 (1) of the statutes is amended to read:

16 30.291 **(1)** For purposes of determining whether an exemption is appropriate
17 under s. 30.12 (1k), (2m) or (2r), 30.123 (6m) or (6r), or 30.20 (1m) or (1r), whether
18 a general permit is appropriate under s. 30.206 (3), or whether authorization to
19 proceed under a general permit is appropriate under s. 30.206 (3r), any employee or
20 other representative of the department, upon presenting his or her credentials, may
21 enter the site and inspect any property on the site.

22 **SECTION 19. Fiscal changes.**

23 (1) WATER RESOURCES MANAGEMENT — LAKE, RIVER, AND INVASIVE SPECIES
24 MANAGEMENT. In the schedule under section 20.005 (3) of the statutes for the
25 appropriation to the department of natural resources under section 20.370 (4) (aq)

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1 of the statutes, as affected by the acts of 2007, the dollar amount is increased by
2 \$130,000 for fiscal year 2007–08 to increase funding for administration of activities
3 related to permitting and exemption determinations for piers, wharves, and related
4 structures under sections 30.12 (1g), (1j), (1k), and (3m), 30.13, and 30.206 (1g) of the
5 statutes, as affected by this act.

6 **SECTION 20. Effective dates.** This act takes effect on the day after publication,
7 except as follows:

8 (1) SECTION 19 (1) of this act takes effect on the day after publication, or on the
9 2nd day after publication of the 2007–09 biennial budget act, whichever is later.

10 (END)