

2007 Assembly Bill 297

Date of enactment: **April 1, 2008**
Date of publication*: **April 15, 2008**

2007 WISCONSIN ACT 204

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

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

SECTION 1. 25.29 (1) (c) of the statutes is amended to read:

25.29 (1) (c) For fiscal year 1992–93, and for each fiscal year thereafter, an amount equal to the estimated motorboat gas tax payment multiplied by 1.4. The Except for fiscal years 2007–08, 2008–09, and 2009–10, the estimated motorboat gas tax payment is calculated by multiplying the number of motorboats registered under s. 30.52 on January 1 of the previous fiscal year by 50 gallons and multiplying that product by the excise tax imposed under s. 78.01 (1) on April 1 of the previous fiscal year. For fiscal years 2007–08, 2008–09, and 2009–10, the estimated motorboat gas tax payment is calculated by multiplying the number of motorboats registered under s. 30.52 on January 1 of the previous fiscal year by 50.5 gallons and multiplying that product by the excise tax imposed under s. 78.01 (1) on April 1 of the previous fiscal year.

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

30.03 (4) (am) In determining an appropriate remedy for a violation under this chapter relating to a pier or

wharf, the department may not order the removal of a pier or wharf unless the department considers all reasonable alternatives offered by the department and the owner of the pier or wharf relating to the location, design, construction, and installation of the pier or wharf.

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

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

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

* Section 991.11, WISCONSIN STATUTES 2005–06 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

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

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

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

(c) If the riparian owner or owners of a property described in par. (a) are eligible and propose to place a pier or wharf with the number of boat slips specified in par. (a), the riparian owner or owners shall apply to the department for an individual permit under s. 30.208 authorizing the configuration of the pier or wharf unless the configuration is authorized by the department under a general permit under s. 30.206 (1g). The department may not deny the permit on the basis of the number of slips proposed by the riparian owner or owners if the number of slips proposed does not exceed the number allowed under par. (a). A riparian owner or owners who apply for a permit under this paragraph shall be presumed to be entitled to the number of slips allowed under par. (a).

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

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

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

1. The pier or wharf is not more than 8 feet wide as measured across the shortest horizontal distance of any portion of the pier or wharf surface, except that a pier may have an area as a loading platform that is more than 8 feet wide if the platform is located at the lakeward end of the pier, or located at the end of the pier that extends into a

stream, does not have more than 300 square feet in surface area, and meets the following width requirements:

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

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

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

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

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

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

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

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

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

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

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

1. Repair and maintain the exempt structure without obtaining a permit from the department under this section unless the owner enlarges the structure.

2. If the exempt structure is a pier or wharf, relocate or reconfigure the pier or wharf if the riparian owner does not enlarge the pier or wharf, the riparian owner registered the pier or wharf with the department under par. (b) 3. and, before relocating or reconfiguring the pier or wharf, the riparian owner registers the reconfigured or relocated pier or wharf with the department under this subdivision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The department may 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. The rules may establish reasonable conditions to implement the criteria under par. (c) 1. to 3. The rules may not prohibit the issuance of individual permits for solid piers used for private or commercial purposes.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 19. Fiscal changes.

(1) WATER RESOURCES MANAGEMENT — LAKE, RIVER, AND INVASIVE SPECIES MANAGEMENT. In the schedule

under section 20.005 (3) of the statutes for the appropriation to the department of natural resources under section 20.370 (4) (aq) of the statutes, as affected by the acts of 2007, the dollar amount is increased by \$130,000 for fiscal year 2007–08 to increase funding for administration of activities related to permitting and exemption determinations for piers, wharves, and related structures under sections 30.12 (1g), (1j), (1k), and (3m), 30.13, and 30.206 (1g) of the statutes, as affected by this act.

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

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