

2019 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB551)

For: **Rob Stafsholt (608) 266-7683** Drafter: **zwyatt**

By: **Himself** Secondary Drafters:

Date: **2/11/2020** May Contact:

Same as LRB: **s0276**

Submit via email: **YES**
 Requester's email: **Rep.Stafsholt@legis.wisconsin.gov**
 Carbon copy (CC) to: **zachary.wyatt@legis.wisconsin.gov**
elisabeth.shea@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Riparian rights and hydroelectric projects

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	zwyatt 2/11/2020	anienaja 2/11/2020			
/P1			jmurphy 2/11/2020		
/1			mbarman 2/12/2020	mbarman 2/12/2020	

FE Sent For:

<END>

30.132 Riparian rights. (1) DEFINITIONS. In this section:

- (a) "Commission" means the public service commission.
- (b) "Hydroelectric operator" means an operator of a project.
- (c) "Project riparian" shall mean an owner of land that abuts a navigable waterway and the bed of the waterway abutting the land is owned by a hydroelectric operator.
- (d) "Project" means a hydroelectric project regulated by the federal energy regulatory commission or the department.

(2) PRESUMPTION OF RIPARIAN RIGHTS. An owner of land that abuts a navigable waterway is presumed to be a riparian owner and is entitled to exercise all rights afforded to a riparian owner, including the right to place a pier, other structures, or deposits, even if the bed of the waterway is owned in whole or in part by another, unless those rights are specifically prohibited by the deed to the land, written agreement or other recorded instrument. The exercise of such rights shall be subject to the requirements of this chapter and, if the waterway is within the boundary of a project, the reasonable restrictions imposed by the hydroelectric operator necessary for the hydroelectric operator to comply with requirements imposed under state or federal law or a federal energy regulatory commission license.

(3) PROJECT RIPARIAN RIGHTS. (a) *Grandfathered structures.* Notwithstanding par. (b), a project riparian may maintain a structure in the waterway of a project that existed on or before [LRB inserts enactment date], subject to the requirements of this chapter and the reasonable restrictions imposed by the hydroelectric operator necessary for the hydroelectric operator to comply with requirements imposed under state or federal law or a federal energy regulatory commission license. A hydroelectric operator may ~~not~~ charge a fee related to a structure that is the subject of this paragraph. *only if it's in an existing agreement*

(b) *Application to exercise riparian rights.* A project riparian may apply in writing to the hydroelectric operator for permission to exercise a right afforded to a riparian owner in the waterway of a project, including the right to place a pier, other structures, or deposits, and the right to modify an existing structure authorized by sub. (a), subject to the requirements of this chapter. The hydroelectric operator shall grant or deny the application within sixty days after receiving the application. The hydroelectric operator may grant the application subject to reasonable restrictions necessary for the hydroelectric operator to comply with requirements imposed under state or federal law or a federal energy regulatory commission license. The operator may deny the application only as necessary for the hydroelectric operator to comply with requirements imposed under state or federal law or a federal energy regulatory commission license. A hydroelectric operator may ~~not~~ charge a fee related to a structure or deposit that is the subject of this paragraph. *or charges unreasonable fee*

(c) *Appeal to the commission.* If a hydroelectric operator denies a project riparian's application ^{*for administering the program*} under sub. (b) or grants such an application subject to a restriction, the project riparian may file a written appeal of the denial or restriction with the commission. The commission may investigate the appeal as it considers necessary. The commission may not issue an order based on an investigation under this subsection without a public hearing. A public hearing held under this subsection shall be conducted in accordance with s. 196.26 (2).

(d) IMMUNITY FROM LIABILITY. A hydroelectric operator ~~who permits or is required to permit the use of its property by a project riparian under this section~~ shall have no liability of any kind to any person for any injury or damage arising from the project riparian's use of the hydroelectric operator's property.

(4) EFFECT ON ENFORCEABLE INTERESTS. Nothing in this section invalidates any interest, whether designated as an easement, covenant, equitable servitude, restriction, or otherwise, which is otherwise enforceable under the laws of this state.

709.03 Residential real estate condition report form

Section 709.03 (form) F.18 of the statutes is created to read:

F. 18 Are you aware that the property abuts the bed of navigable waterway owned by a hydroelectric operator?

Under Wis. Stat. § 30.132, the owner of a property abutting the bed of a navigable waterway that is owned by a hydroelectric operator may be required ask the permission of the hydroelectric operator to place a structure on the bed of the waterway.

709.03 (form) F. 18 and F. 19 of the statutes are renumbered 709.03 (form) F.19 and F. 20

Section 709.03 (form) G.3 of the statutes is amended to read:

G3. Are you aware of any agreements that bind subsequent owners of the property, such as a lease agreement, written agreement affecting riparian rights or an extension of credit from an electric cooperative?

Effective date – This section takes effect on July 1, 2020.

709.033 Vacant land disclosure report form

Section 709.033 (form) F.7 of the statutes is amended to read:

F7. Are you aware of any agreements that bind subsequent owners of the property, such as a lease agreement, written agreement affecting riparian rights or an extension of credit from an electric cooperative?

Section 709.033 (form) F.18 of the statutes is created to read:

F.18 Are you aware that the property abuts the bed of navigable waterway owned by a hydroelectric operator?

Under Wis. Stat. § 30.132, the owner of a property abutting the bed of a navigable waterway that is owned by a hydroelectric operator may be required ask the permission of the hydroelectric operator to place a structure on the bed of the waterway.

709.033 (form) F. 18 and F. 19 of the statutes are renumbered 709.033 (form) F.19 and F. 20

Effective date – This section takes effect on July 1, 2020.



INSERT

LRBs0271(?) / P1
ZDW:... *AMM*
LR FFK

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT,
TO ASSEMBLY BILL 551**

Gen.

1 **AN ACT ...; relating to:** riparian rights.

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

2 **SECTION 1.** 30.132 of the statutes is created to read:

3 ~~30.132~~ **Riparian rights.** (1) DEFINITIONS. In this section: (a) "Commission"
4 means the public service commission.

5 (b) "Hydroelectric operator" means an operator of a project.

6 (c) "Project riparian" means an owner of land that abuts a navigable waterway,
7 the abutting bed of which is owned by a hydroelectric operator.

8 (d) "Project" means a hydroelectric project regulated by the federal energy
9 regulatory commission or the department.

10 **(2) PRESUMPTION OF RIPARIAN RIGHTS.** An owner of land that abuts a navigable
11 waterway is presumed to be a riparian owner and is entitled to exercise all rights

1 afforded to a riparian owner, including the right to place a pier, other structures, or
2 deposits, even if the bed of the waterway is owned in whole or in part by another,
3 unless those rights are specifically prohibited by the deed to the land, written
4 agreement, or other recorded instrument. The exercise of these riparian rights is
5 subject to the requirements of this chapter and, if the waterway is within the
6 boundaries of a project, the reasonable restrictions imposed by the hydroelectric
7 operator necessary for the hydroelectric operator to comply with requirements
8 imposed under state or federal law or a federal energy regulatory commission
9 license.

10 **(3) PROJECT RIPARIAN RIGHTS.** (a) *Application to exercise riparian rights.* A
11 project riparian may make written application to the applicable hydroelectric
12 operator for permission to exercise a riparian right in a waterway within the
13 boundaries of a project, including the right to place a pier or other structures or
14 deposits and the right to modify an existing structure authorized under par. (b),
15 subject to the requirements of this chapter. The hydroelectric operator shall approve
16 or deny an application under this paragraph no later than 60 days after receiving the
17 application. The hydroelectric operator may deny an application under this
18 paragraph only if necessary for the hydroelectric operator to comply with
19 requirements imposed under state or federal law or a federal energy regulatory
20 commission license but may approve the application subject to reasonable
21 restrictions necessary for the hydroelectric operator to comply with requirements
22 imposed under state or federal law or a federal energy regulatory commission
23 license. The hydroelectric operator may charge an applicant a reasonable fee to cover
24 the hydroelectric operator's administrative costs related to a structure or deposit
25 that is approved under this paragraph.

1 (b) *Existing structures.* Notwithstanding par. (a), a project riparian may
2 maintain a structure that was placed in a waterway within the boundaries of a
3 project prior to the effective date of this paragraph [LRB inserts date], subject to
4 the requirements of this chapter and the reasonable restrictions imposed by the
5 hydroelectric operator necessary for the hydroelectric operator to comply with
6 requirements imposed under state or federal law or a federal energy regulatory
7 commission license. A hydroelectric operator may not charge a fee related to a
8 structure authorized under this paragraph unless a fee is provided for in an
9 agreement between the hydroelectric operator and the project riparian owner that
10 existed prior to the effective date of this paragraph [LRB inserts date].

11 (c) *Appeal to the commission.* A project riparian whose application is denied
12 or approved with restrictions or who is charged an unreasonable fee under this
13 subsection may appeal in writing to the commission. The commission may
14 investigate the appeal and issue an order based on its investigation. The commission
15 may not issue an order under this paragraph without a public hearing conducted in
16 accordance with s. 196.26 (2).

17 (d) *Immunity from liability.* A hydroelectric operator is not liable to any person
18 for any injury or damage arising from a project riparian's use of the hydroelectric
19 operator's property as provided in this section.

20 (4) EFFECT ON ENFORCEABLE INTERESTS. Nothing in this section invalidates any
21 interest, whether designated as an easement, covenant, equitable servitude,
22 restriction, or otherwise, which is otherwise enforceable under the laws of this state.

2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0271/Plins

FFK:...

INS

B SECTION 1. 709.03 (form) F18. and F19 of the statutes are created to read:

709.03 (form) - plain
F18. Are you aware of a written agreement affect-
ing riparian rights related to the property?

F19. Are you aware that the property abuts the bed
of ^a navigable waterway that is owned by a
hydroelectric operator?

Under Wis. Stat. s. 30.132, the owner of a
property abutting the bed of a navigable
waterway that is owned by a hydroelectric
operator, as defined in s. 30.132 (1) (b), may
be required ^{to} ask the permission of the hydro-
electric operator to place a structure on the
bed of the waterway.

SECTION 2. 709.03 (form) F18. and F19. of the statutes are renumbered 709.03
(form) F20. and F21.

B SECTION 3. 709.033 (form) E17. and E18. of the statutes are created to read:

709.033 (form) - plain
E17. Are you aware of a written agreement affect-
ing riparian rights related to the property?

E18. Are you aware that the property abuts the bed of ^a navigable waterway that is owned by a hydroelectric operator?

Under Wis. Stat. s. 30.132, the owner of a property abutting the bed of a navigable waterway that is owned by a hydroelectric operator, as defined in s. 30.132 (1) (b), may be required ^{to} ask the permission of the hydroelectric operator to place a structure on the bed of the waterway.

SECTION 4. 709.033 (form) E17. to E21. of the statutes are renumbered 709.033 (form) E19. to E23.

SECTION 5. Nonstatutory provisions.

(1) REAL ESTATE CONDITION AND VACANT LAND DISCLOSURE REPORTS. Notwithstanding s. 709.035, a property owner who furnished to a prospective buyer of the property an original or amended report before the effective date of this subsection need only submit an amended report with respect to the information required under s. 709.03 (form), 2017 stats., or ^{by} s. 709.033 (form), 2017 stats.

SECTION 6. Initial applicability.

(1) REAL ESTATE CONDITION AND VACANT LAND DISCLOSURE REPORTS. The creation of ss. 709.03 (form) F18. and ^F 19. and 709.033 (form) E17. and E18. and the renumbering of ss. 709.03 (form) ^F 18. and ^F 19. and 709.033 E17. to E21. first apply to reports that are furnished on the effective date of this subsection.

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

(1) REAL ESTATE DISCLOSURE FORMS. The creation of ss. 709.03 (form) F18. and F19 and 709.033 (form) E17. and E18. and the renumbering of ss. 709.03 (form) F18, and 19. and 709.033 E17. to E21. and SECTIONS 5 and 6 of this act take effect on July 1, 2020.



State of Wisconsin
2019 - 2020 LEGISLATURE

①

LRBs0271/PT
ZDW&FFK:amn

No
change

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT ,
TO ASSEMBLY BILL 551**

1 **AN ACT** *to renumber* 709.03 (form) F18. and F19. and 709.033 (form) E17. to
2 E21.; and *to create* 30.132, 709.03 (form) F18. and F19. and 709.033 (form)
3 E17. and E18. of the statutes; **relating to:** riparian rights.

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

4 **SECTION 1.** 30.132 of the statutes is created to read:

5 **30.132 Riparian rights.** (1) **DEFINITIONS.** In this section:

6 (a) "Commission" means the public service commission.

7 (b) "Hydroelectric operator" means an operator of a project.

8 (c) "Project riparian" means an owner of land that abuts a navigable waterway,
9 the abutting bed of which is owned by a hydroelectric operator.

10 (d) "Project" means a hydroelectric project regulated by the federal energy
11 regulatory commission or the department.

1 and F19. and 709.033 E17. to E21. and SECTIONS 6 (1) and 7 (1) of this act take effect
2 on July 1, 2020.

3 (END)