



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2007 Wisconsin Act 204
[2007 Assembly Bill 297]

Regulation of Piers and Wharves

2007 Wisconsin Act 204 makes a variety of changes to the statutes related to piers and wharves, primarily those statutes that relate to permit requirements or exemptions from permit requirements. The Act allows a pier, which under the prior statutes was limited to six feet wide, an additional exemption from the permit requirement, to allow a loading platform that is not more than eight feet wide. On lakes that are 50 acres or more, the riparian owner of property with three or more dwelling units, or on which there is a commercial structure, may place a pier or wharf with more boat slips than are otherwise allowed without a permit. The Act contains a new permit exemption for piers and wharves that do not meet the general size requirements for a pier and that were placed on the bed of a navigable water on or before February 6, 2004. The Act contains additional provisions related to Department of Natural Resources (DNR) decision-making, promulgation of administrative rules, and issuance of permits.

[Note: This Act Memo contains a description of the contents of 2007 Wisconsin Act 204, which modifies some of the statutes related to regulation of structures in navigable waters, primarily piers and wharves. There are a number of other statutes related to piers and wharves that are not affected by Act 204, and this Act Memo does not comprehensively describe those other statutes. Further, Wisconsin law related to piers and wharves includes a Governor's executive order and a number of administrative rules that have been promulgated by the DNR. Any person who wishes to construct or maintain a pier or wharf should consult all sources of information and law on this subject and, if necessary, consult with DNR staff and private legal counsel.]

Piers and Wharves – Permit Exemption Prior to Act 204

Section 30.12, Stats., as a general rule, requires a riparian owner to obtain a permit in order to place a structure in navigable waters. This statute includes exemptions from the permit requirement for a number of specific structures. One of the exemptions, created in the 2003 Legislative Session, is for piers and wharves that meet all of the following requirements:

- Is not more than six feet wide.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

- Extends no farther than to a point where the water is three feet at its maximum depth or where there is adequate depth for mooring a boat, whichever is farther from the shoreline. (The Act changes “closer to” to “farther from” the shoreline, which reflects legislative intent when this exemption was created in 2003 Wisconsin Act 118.)
- Has no more than two boat slips for the first 50 feet of the riparian owner’s shoreline footage and no more than one additional boat slip for each additional 50 feet of shoreline.
- Is located in an area other than an area of special natural resource interest, as defined in the statutes.
- Does not interfere with the riparian rights of other riparian owners.

Additional Exemption for Piers Loading Platforms

The Act retains the exemption from the requirement to obtain a permit for piers or wharves that meet the standards described in the previous part of this Memo. The Act expands the exemption for a pier (but not a wharf) to allow a loading platform at the end of the pier that is perpendicular to the pier, is located on either or both sides of the pier, and is no more than eight feet wide.

Piers and Wharves – Additional Boat Slips

Additional Boat Slips Based on Lake Size and Use of Property

The Act authorizes a riparian owner of property that is adjacent to a lake to have additional boat slips if the pier or wharf meets all of the basic requirements under the prior statutes for an exempt pier or wharf as well as additional requirements created by the Act. The additional requirements are that the riparian property must have three or more dwelling units or must have a structure for commercial use, and the property must be adjacent to a lake of 50 acres or more. Riparian property that meets these requirements may have boat slips up to the lesser of the following numbers:

- Four boat slips for the first 50 feet of shoreline footage and no more than two boat slips for each additional 50 feet of shoreline footage; or
- One boat slip for each dwelling unit plus additional boat slips that are open to the public and used for transient docking of boats for less than 24 hours.

The additional boat slips under this provision may be placed if the riparian owner applies to the DNR for an individual permit under s. 30.208, Stats., to authorize the configuration of the pier or wharf. In lieu of individual permits, DNR may issue one or more general permits for the configuration of these piers or wharves. DNR may not deny an individual permit application on the basis of the number of boat slips if the number of boat slips does not exceed the maximum number described above. In the permitting process, the riparian owner is presumed to be entitled to the number of slips allowed under this statute. The DNR may promulgate rules to implement this provision, subject to the limits on current DNR rule-making authority for exempt activities in navigable waters.

Individual Permit for a Greater Number of Boat Slips

The Act prohibits DNR, in general, from refusing to allow an application for an individual permit for a pier or wharf with a number of boat slips that exceeds the statutory exemption or the

presumptive additional number of slips described in the preceding part of this Memo. The DNR is required to issue an individual permit if the pier or wharf meets the conditions for issuance of an individual permit. The DNR may deny an individual permit application under this provision if the number of requested boat slips exceeds one boat slip per dwelling unit with additional boat slips for transient use and the property is adjacent to a lake of 50 acres or more and has three or more dwelling units.

Grandfathered Piers or Wharves and Related Structures

The Act creates a number of provisions relating to piers or wharves that were placed on or before February 6, 2004 (which is the effective date of the preceding statutory changes related to piers and wharves) and that do not qualify for an exemption as described in the first part of this Memo. These piers and wharves are referred to as “grandfathered piers and wharves” in this Memo.

Exempt Grandfathered Piers and Wharves

The Act creates a new statutory exemption from the requirement to obtain a permit for certain grandfathered piers and wharves. An exempt grandfathered pier or wharf:

- May not be more than eight feet wide.
- May have a platform at the end of the pier (not wharf) that is 200 square feet or less or, if it is from 200 to 300 square feet, is no more than 10 feet wide.
- May not interfere with the riparian rights of any other riparian owner.

To obtain this exemption, the owner of a grandfathered pier or wharf must register it with the DNR by April 1, 2011. DNR may not charge a fee for the registration. The owner may (but is not required to) record this registration with the Register of Deeds for the county where the pier is located, upon payment of the standard recording fee to the Register of Deeds.

The Act authorizes the DNR to enter property to inspect a pier or wharf for purposes of determining whether an exemption from permit requirements for a grandfathered pier is appropriate. This new authority is the same inspection authority as for other exempt piers and wharves under the statutes.

Large Grandfathered Piers and Wharves

If a grandfathered pier or wharf does not qualify for the above exemption, the owner of the pier or wharf must apply to DNR for an individual permit in order to retain the pier or wharf. Under the Act, the department must base its decision to issue the permit on the permit conditions for constructing a wharf or pier without a permit in s. 30.13 (1), Stats. The department has the burden of demonstrating that one or more of the statutory conditions have not been met. The department may not charge a fee for issuing these permits.

Prohibition on Enforcement Actions

The Act prohibits DNR from taking enforcement action against a riparian owner who has a permit or written authorization from DNR for a structure (a pier, wharf, boat shelter, boat hoist, or boat lift) in navigable waters issued prior to February 6, 2004, if the structure complies with the permit or

written authorization. However, DNR may continue an enforcement action that is pending on February 6, 2004 and has not been resolved by April 14, 2008, the effective date of the legislation.

Repair, Maintenance, Replacement, Relocation, and Reconfiguration

The Act allows the owner to repair, maintain, or replace an exempt grandfathered pier or wharf or a structure that is exempt from enforcement, but the owner may not enlarge the structure. The riparian owner may also relocate or reconfigure a grandfathered pier or wharf if the owner registers the reconfigured or relocated pier or wharf, and the DNR does not object to the relocation or reconfiguration. The Act prohibits DNR from objecting to a minor relocation or reconfiguration. If the DNR objects to the relocation or reconfiguration, the riparian owner may continue to maintain the pier or wharf in the original location and configuration.

De Novo Review

The Act provides that any decision of the DNR against the riparian owner who claims an exemption for a grandfathered structure under the above provisions is subject to a trial de novo (in which the court will take new evidence instead of confining itself to a review of the record of the administrative hearing).

Other Provisions of Act 204

The Act has the following provisions in addition to the provisions related to permit exemptions, grandfathered structures, and boat slips.

Solid Piers

The DNR may not prohibit by rule issuance of a permit for private or commercial solid piers on outlying waters (the Great Lakes and certain connected harbors and rivers). The DNR may promulgate rules that limit the issuance of those permits and that establish conditions for the permits.

Consideration of Alternatives

The DNR may not order removal of a pier or wharf in an enforcement action and may not deny an individual permit for a pier or wharf unless the DNR considers all alternatives to the location, design, construction, or installation of the pier or wharf that are proposed by the DNR and by the riparian owner.

Funding and Appropriation

For fiscal years 2007-08, 2008-09, and 2009-10, the motorboat gas tax estimate is modified by adding 0.5 gallons per boat to the formula. The fiscal estimate for Assembly Bill 297 states that the formula change will generate an additional \$136,000 per fiscal year for transfer to the Conservation Fund from the Transportation Fund. The Act appropriates \$130,000 for fiscal year 2007-08 to provide funding to DNR for administration of activities related to permits and exemptions for piers, wharves, and related structures.

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