



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2005 Assembly Bill 850

**Senate Substitute Amendment 1
and Senate Amendment 1 to
Senate Substitute Amendment
1, as Amended by Assembly
Amendments 1 and 2**

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This Amendment Memo contains a detailed summary of the contents of Senate Substitute Amendment 1 to 2005 Assembly Bill 850, relating to the regulation of piers and wharves, and of Senate Amendment 1 to Senate Substitute Amendment 1 and Assembly Amendments 1 and 2 to Senate Substitute Amendment 1.

SENATE SUBSTITUTE AMENDMENT 1

Exempt Piers and Wharves – No Permit Required

Current law requires a riparian owner to obtain a permit for a structure that is placed in navigable waters. Current law has specific exemptions from the permit requirement, including an exemption for piers and wharves that meet criteria in the statute. A pier or wharf that meets these criteria is exempt from the permit requirement no matter when the pier or wharf was constructed.

Under current law, this exemption applies to a pier or wharf that meets all of the following requirements:

- Is not more than six feet wide.
- 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 substitute amendment changes “closer to” to “farther from” the shoreline, which reflects legislative intent 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.
- Does not interfere with the riparian rights of other riparian owners.

The substitute amendment retains the exemption from the requirement to obtain a permit for piers or wharves that meet the standards described above. The substitute amendment expands the exemption for a pier (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 substitute amendment authorizes a riparian owner of property adjacent to a lake who meets all of the conditions for an exempt pier or wharf to place a pier or wharf that has additional boat slips based on the use of the property and the size of the lake. To qualify for additional boat slips, 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 conditions 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.

To qualify for the additional boat slips under this provision, the riparian owner must apply to the Department of Natural Resources (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 general permits for 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 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 substitute amendment 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 item. The DNR may deny a 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 substitute amendment creates a number of provisions relating to piers or wharves that were placed on or before February 6, 2004. These piers and wharves are referred to as “grandfathered piers and wharves” in this memorandum.

Exempt Grandfathered Piers and Wharves

The substitute amendment creates a new statutory exemption from the requirement to obtain a permit for certain grandfathered piers and wharves. In particular, 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 within 36 months after the effective date of the legislation. DNR may not charge a fee for the registration. The owner may 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 substitute amendment 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 exempt piers and wharves under the current statutes.

Large Grandfathered Piers and Wharves

If a grandfathered pier or wharf is too large to 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 substitute amendment, the department must base its decision to issue the permit on the permit conditions in prior law before the enactment of 2003 Wisconsin Act 118 (the “Jobs Creation Act”). The department may not charge a fee for issuing these permits.

Prohibition on Enforcement Actions

The substitute amendment 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 on the effective date of the legislation.

Repair, Maintenance, Replacement, Relocation and Reconfiguration

The substitute amendment 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 substitute amendment 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 substitute amendment 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.

Other Provisions in Substitute Amendment

The substitute amendment has the following provisions in addition to the provisions related to permit exemptions 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 2006-07, 2007-08, and 2008-09, the motorboat gas tax estimate is modified by adding 0.5 gallons per boat to the formula. This is estimated to generate an additional \$130,000 per fiscal year for transfer to the Conservation Fund from the Transportation Fund. The substitute amendment appropriates \$130,000 for fiscal year 2006-07 to provide funding to DNR for administration of activities related to permits and exemptions for piers, wharves, and related structures.

SENATE AMENDMENT 1 TO SENATE SUBSTITUTE AMENDMENT 1

Senate Amendment 1 to Senate Substitute Amendment 1 modifies the permitting process for large grandfathered piers and wharves that do not qualify for the statutory exemption. Under the substitute amendment, the burden is on the permit applicant to show that the application for an individual permit for one of those piers or wharves meets applicable conditions for issuing the permit (i.e., those conditions in prior law before the enactment of 2003 Wisconsin Act 118). Under the amendment, the burden is shifted, and DNR must issue such a permit unless the department demonstrates that the application does not meet one or more of these permit conditions.

ASSEMBLY AMENDMENT 1 TO SENATE SUBSTITUTE AMENDMENT 1

Assembly Amendment 1 to Senate Substitute Amendment 1 deletes the funding and appropriation in the substitute amendment described above.

ASSEMBLY AMENDMENT 2 TO SENATE SUBSTITUTE AMENDMENT 1

Assembly Amendment 2 to Senate Substitute Amendment 1 modifies the criteria for a grandfathered pier or wharf* to be exempt from the permit requirement.

The following table compares these criteria under Assembly Amendment 2 and Senate Substitute Amendment 1:

| <i>Pier or Wharf Requirement</i> | <i>Senate Substitute Amendment 1</i> | <i>Assembly Amendment 2</i> |
|--|---|--|
| Width of the pier or wharf | Not more than eight feet wide (other than the loading platform). | No maximum width requirement. |
| Size of the platform or deck | A pier may have a loading platform that exceeds eight feet in width, if the platform does not exceed 300 square feet in surface area, and meets the following width requirement: <ul style="list-style-type: none">• If the surface area is 200 square feet or less, the platform may have any width.• If the surface area is between 200 and 300 square feet, the platform may not be more than 10 feet wide. | A pier or wharf may have a deck or loading platform with a surface area up to 300 square feet. |
| Location of the platform or deck | The loading platform must be at the lakeward end of the pier or at the end of the pier that extends into a stream. | No location requirement for the deck or loading platform. |
| Effect of the pier or wharf on riparian rights of others | The pier or wharf may not interfere with the riparian rights of other riparian owners. | The pier or wharf may not interfere with the riparian rights of adjacent property owners. |

Assembly Amendment 2 does not change other provisions in the substitute amendment relating to exempt grandfathered piers and wharves, including the requirement that to obtain this permit

* As noted above, this Amendment Memo refers to a pier or wharf that was placed on or before February 6, 2004 as a grandfathered pier or wharf.

exemption the owner of a grandfathered pier or wharf must register it with the DNR within 36 months after the effective date of the legislation.

Legislative History

The Assembly Natural Resources Committee recommended passage of the bill as amended on December 13, 2005 by a vote of Ayes, 9; Noes, 5.

Representative Albers offered Assembly Amendment 1 to Assembly Substitute Amendment 1 which was adopted by the Assembly by a voice vote. The Assembly adopted Assembly Substitute Amendment 1 by a voice vote and passed the bill, as amended, by a vote of Ayes, 58; Noes, 34; Paired, 4.

On March 8, the Senate Natural Resources and Transportation Committee introduced and recommended adoption of Senate Substitute Amendment 1 by a vote of Ayes, 5; Noes, 0, and recommended passage of Assembly Bill 850, as amended, by a vote of Ayes, 5; Noes, 0.

Senators Stepp, Kedzie, and Schultz offered Senate Amendment 1 on March 9, 2006. The Senate adopted Senate Amendment 1 and Senate Substitute Amendment 1 on separate voice votes on March 9, 2006. The Senate also concurred in Assembly Bill 850, as amended, that day by a vote of Ayes, 30; Noes, 3.

Representative Gard offered Assembly Amendments 1 and 2 on April 25, 2006. The Assembly adopted Assembly Amendment 1 by a vote of Ayes, 58; Noes, 34, and adopted Assembly Amendment 2 by a vote of Ayes, 58; Noes, 35, and concurred in Senate Substitute Amendment 1, as amended, by a vote of Ayes, 60; Noes, 33, on April 25, 2006.

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