



## Piers in Navigable Waters

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The navigable waters of Wisconsin are held in trust, under the public trust doctrine, by the state for the benefit of the public. With limited exceptions, all lakes, streams, sloughs, bayous, and marsh outlets that are wholly or partly within the state, are considered “navigable” for purposes of the public trust doctrine if they are “navigable in fact.”<sup>1</sup>

A riparian property owner—a person who owns the shoreline along a navigable water—is entitled to certain rights as a riparian, limited by the public trust doctrine.<sup>2</sup> To ensure that both public rights and riparian rights are protected, the Legislature has delegated to the Department of Natural Resources (DNR) the authority to issue permits for various activities in and near navigable waters.

This issue brief provides an overview of the permits available under ch. 30, Stats., with specific focus on the placement of piers in a navigable water.

### PERMITS FOR ACTIVITIES IN NAVIGABLE WATERS

Subchapter II of ch. 30, Stats., relates to navigable waters and navigation, generally. Under its provisions, a person generally must obtain a permit from DNR before conducting any of the following activities relating to navigable waters: placing a structure or deposit, including a pier; constructing or maintaining a bridge or culvert in, on, or over water; withdrawing water from a lake or stream; enlarging or protecting a waterway; changing a stream course; or removing material from the bed of a water body.<sup>3</sup>

A **general permit** allows the DNR to issue a statewide permit for certain activities with conditions that it deems appropriate to protect the public and the rights of other riparian owners.<sup>4</sup> An **individual permit** requires the property owner to seek authorization for his or her specific structure or deposit.<sup>5</sup>

If an activity is neither authorized under a general permit nor explicitly exempted from regulation, an individual permit typically must be obtained. An individual permit may contain conditions or restrictions specific to the proposed activity. DNR may issue an individual permit only to a riparian owner, and only a riparian owner may act under a general permit.<sup>6</sup>

### PIERS

Among the most frequently asked questions about navigable waters is whether a pier may be placed or expanded and, if so, whether a permit is required. As described more fully below, state law controls the size and configuration of piers that may be placed by riparian owners without a permit, allows an owner to seek a permit for a larger pier, and addresses piers that were placed prior to the enactment of pier restrictions.

### Permit Issuance

Under state law, a permit is generally required to deposit or place any material or structure, including a pier, on the bed of a navigable water where no bulkhead line<sup>7</sup> has been established or beyond an established bulkhead line. Where a pier is not exempt from the permit requirement, and where a general permit is not available, state law directs DNR to issue an individual permit to a riparian owner if DNR finds that the pier: (1) will not materially obstruct navigation; (2) will not interfere with the public rights in navigable waters; and (3) will not materially reduce the flood flow capacity of a stream.<sup>8</sup>

### Permit Exemptions

A riparian owner may place a pier in a navigable water without a permit pursuant to certain exemptions.<sup>9</sup>

Under one exemption, a pier may be placed if it is not located in an area of special natural resource interest,<sup>10</sup> does not interfere with the riparian rights of other riparian owners, and meets certain size requirements. Specifically, the pier must: (1) be no more than six feet wide; (2) extend no further than the point where the water is three feet at its maximum depth as measured at summer low levels, or out to the point where there is adequate depth for mooring a boat or using a boat hoist or boat lift, whichever is farthest from the shoreline; and (3) not have more than two boat slips for the first 50 feet of shoreline frontage, plus one additional boat slip for each additional 50 feet of frontage. Such a pier may have an area as a loading platform that is more than six feet wide if the surface area of the platform does not exceed 200 square feet.<sup>11</sup>

Another exemption applies to placing a pier on larger lakes with dwellings or commercial structures. Specifically, on a lake that is more than 50 acres, a riparian owner or owners whose property has either more than three dwellings or commercial structures may place a pier without a permit if the pier has the smaller of either: (1) four boat slips for the first 50 feet of shoreline, and no more than two boat slips for each additional 50 feet; or (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. If a riparian owner wishes to place a pier with boat slips in excess of these limits, the owner may apply for an individual permit.<sup>12</sup>

## Pier Previously in Existence

Certain piers that were placed before April 17, 2012, are also exempt from permit requirements. However, this exemption does not apply if the pier interferes with the rights of other riparian owners or if DNR notified the owner before August 1, 2012, that the pier is detrimental to the public interest. The owner of such a pier may repair, maintain, relocate, or reconfigure it, provided that activity does not enlarge the pier.<sup>13</sup>

## Standards for Construction of Pier Without a Permit

A separate provision of ch. 30, Stats., contains general standards that could allow a riparian owner to construct a pier in a navigable waterway without the need to apply for a DNR permit. Under that provision, the pier must meet certain conditions, including that it not interfere with public rights in navigable waters, not extend beyond any pierhead line<sup>14</sup> established by a municipality, not violate any municipal ordinance regulating pier construction and location, and allow the free movement of water underneath and in a manner which will not cause the formation of land upon the bed of the waterway.<sup>15</sup>

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<sup>1</sup> Wis. Const. art. IX, s. 1; s. 30.10(1) and (2), Stats. The Wisconsin Supreme Court has interpreted “navigable in fact” relatively broadly, to include any water body that is “capable of floating any boat, skiff, or canoe, of the shallowest draft used for recreational purposes.” [*Meunch v. Public Service Commission*, 261 Wis. 492, 506 (1952).]

<sup>2</sup> Among other rights, Wisconsin courts have recognized a riparian owner’s right to construct a pier or similar structure in the waters next to their property, subject to restriction by statute. [See *R. W. Docks & Slips v. DNR*, 2001 WI 73, ¶ 20.] Additionally, such right may be subject to the property rights of a private party who owns the bed of a water body upon which the pier would be placed, as is the case with certain flowages. [*Movrich v. Lobermeier*, 2018 WI 9, ¶ 55.]

<sup>3</sup> ss. 30.12, 30.132, 30.18, 30.19, 30.195, and 30.20, Stats.

<sup>4</sup> ss. 30.12(3) and 30.206, Stats.

<sup>5</sup> ss. 30.12(3m) and 30.208, Stats.

<sup>6</sup> ss. 30.12(1) and (3) and 30.206, Stats.

<sup>7</sup> A bulkhead line is a shoreline established by a local government, with the approval of DNR, which may or may not track the natural shoreline. [s. 30.11, Stats.; *State v. McFarren*, 62 Wis. 2d 492, 498 (1974).]

<sup>8</sup> s. 30.12(3m)(c), Stats.

<sup>9</sup> Generally, see DNR, [Pier, Dock, or Wharf Exemption Checklist #5](#), (June 2019); DNR, [Pier Planner](#), Pub. FH 017 (Aug. 2012).

<sup>10</sup> An “area of special natural resource interest” means certain areas or waters granted special status by law, such as a trout stream, a national wild and scenic river, or a state natural area. [s. 30.01(1am), Stats.]

<sup>11</sup> s. 30.12(1g)(f), Stats. DNR nevertheless may require a permit in lieu of this exemption if DNR conducts an investigation, visits the site, and determines that conditions specific to the site require restrictions to prevent: (a) significant adverse impacts to the public; (b) environmental pollution; or (c) material injury to riparian rights of any riparian owner. [s. 30.12(2m), Stats.]

<sup>12</sup> s. 30.12(1j), Stats.

<sup>13</sup> s. 30.12(1k) Stats.

<sup>14</sup> A local government may establish a pierhead line to create uniformity in pier length. [s. 30.13(3)(a), Stats.; s. NR 326.03(9), Wis. Adm. Code.]

<sup>15</sup> s. 30.13(1) and (2), Stats.