



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-1173/1
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2021 SENATE BILL 46

January 28, 2021 - Introduced by Senators STAFSHOLT, TESTIN, BEWLEY, COWLES, FELZKOWSKI, MARKLEIN, NASS, STROEBEL and WANGGAARD, cosponsored by Representatives BROOKS, MURPHY, CALLAHAN, DITTRICH, EDMING, KNODL, KRUG, KUGLITSCH, MAGNAFICI, MOSES, PLUMER, ROZAR, SANFELIPPO, TAUCHEN, WICHGERS and ZIMMERMAN. Referred to Committee on Natural Resources and Energy.

AUTHORS SUBJECT TO CHANGE

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:** the presumption of riparian rights
4 on navigable waterways and required real estate disclosures.

Analysis by the Legislative Reference Bureau

Under current law, a person who owns land that abuts a navigable waterway (commonly known as a riparian owner) is afforded certain rights. In general, these rights include reasonable use of the waterway and the right to place structures such as piers in the waterway. These rights may be limited by statute and may be subject to the riparian owner acquiring necessary permits. Courts have also held that these rights may be subservient to private property rights, where one person owns land adjacent to a navigable waterway, the bed of which is owned by another person.

This bill creates a presumption that an owner of land that abuts a navigable waterway is a riparian owner and is entitled to exercise all rights afforded to a riparian owner, even if the bed of the waterway is owned in whole or in part by another. The bill provides that the exercise of riparian rights remains subject to current law requirements and riparian rights may not be exercised if prohibited by the deed to the land or another written agreement or recorded instrument.

The bill provides for reasonable restrictions on the exercise of riparian rights necessary for the operator of a hydroelectric project to comply with requirements imposed under state or federal law or a federal energy regulatory commission license. If the bed of a navigable waterway is owned by the operator of a hydroelectric

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project, the bill authorizes a riparian owner to apply to the applicable hydroelectric operator for permission to exercise a riparian right within the hydroelectric project boundaries. A hydroelectric operator may approve or deny such a request, but may deny a request only if necessary to comply with requirements imposed under state or federal law or a FERC license.

Finally, the bill requires the real estate condition and vacant land disclosure reports to include specific disclosures relating to riparian rights and ownership of a waterbody bed.

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

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

2 **30.132 Riparian rights. (1) DEFINITIONS.** In this section:

3 (a) “Commission” means the public service commission.

4 (b) “Hydroelectric operator” means an operator of a project.

5 (c) “Project” means a hydroelectric project regulated by the federal energy
6 regulatory commission or the department.

7 (d) “Project riparian” means an owner of land that abuts a navigable waterway,
8 the abutting bed of which is owned by a hydroelectric operator.

9 **(2) PRESUMPTION OF RIPARIAN RIGHTS.** An owner of land that abuts a navigable
10 waterway is presumed to be a riparian owner and is entitled to exercise all rights
11 afforded to a riparian owner, including the right to place a pier, other structures, or
12 deposits, even if the bed of the waterway is owned in whole or in part by another,
13 unless those rights are specifically prohibited by the deed to the land, written
14 agreement, or other recorded instrument. The exercise of these riparian rights is
15 subject to the requirements of this chapter and, if the waterway is within the
16 boundaries of a project, the reasonable restrictions imposed by the hydroelectric
17 operator necessary for the hydroelectric operator to comply with requirements

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1 imposed under state or federal law or a federal energy regulatory commission
2 license.

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

19 (b) *Existing structures.* Notwithstanding par. (a), a project riparian may
20 maintain a structure that was placed in a waterway within the boundaries of a
21 project prior to the effective date of this paragraph [LRB inserts date], subject to
22 the requirements of this chapter and the reasonable restrictions imposed by the
23 hydroelectric operator necessary for the hydroelectric operator to comply with
24 requirements imposed under state or federal law or a federal energy regulatory
25 commission license. A hydroelectric operator may not charge a fee related to a

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1 structure authorized under this paragraph unless a fee is provided for in an
2 agreement between the hydroelectric operator and the project riparian that existed
3 prior to the effective date of this paragraph [LRB inserts date].

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

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

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

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

18 **SECTION 3.** 709.03 (form) F18. and F19. of the statutes are created to read:

19 **709.03** (form)

F18. Are you aware of a written agreement affect-
ing riparian rights related to the property?

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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 hydroelectric operator to place a structure on the bed of the waterway.

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

3 **SECTION 5.** 709.033 (form) E17. and E18. of the statutes are created to read:
4 **709.033** (form)

E17. Are you aware of a written agreement affecting 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.

SENATE BILL 46**SECTION 6. 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), 2019 stats., or under s. 709.033 (form), 2019 stats.

SECTION 7. Initial applicability.

(1) REAL ESTATE CONDITION AND VACANT LAND DISCLOSURE REPORTS. 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 F19. and 709.033 E17. to E21. first apply to reports that are furnished on the effective date of this subsection.

SECTION 8. 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 F19. and 709.033 E17. to E21. and SECTIONS 6 (1) and 7 (1) of this act take effect on July 1, 2022.

(END)