



To: Members, Wisconsin State Assembly

From: Tom Larson, Executive Vice President

Date: May 10, 2021

Re: SB 46/AB 37 – Restoring the Right to Place a Pier on Flowages

The Wisconsin REALTORS® Association (WRA) supports SB 46/AB 37, legislation seeking to clarify that all waterfront property owners, even those with land abutting flowages and artificial waterways, have the right to place a pier subject to the regulations in Chapter 30 of the Wisconsin Statutes.

Background – For over 140 years, Wisconsin law has recognized that owners of waterfront property have riparian rights, including the right to place a pier. See *Cohn v. Wausau Boom Co.*, 47 Wis. 314, 322, 2 N.W. 546 (1879). In 1959, the Wisconsin Legislature codified this right of waterfront property owners to place a pier. See Wis. Stat. § 30.13(1). In recent years, the legislature has further protected this right from permit requirements and enforcement actions if certain conditions are met. See Wis. Stat. §§ 30.12(1g)(f) and 30.12(1k).

In 2018, the Wisconsin Supreme Court, in *Movrich v. Lobermeier*, 2018 WI 9, ¶3, 379 Wis. 2d 269, 905 N.W.2d 807, declared that some waterfront property owners do not have a right to place a pier. Specifically, the Court held that owners of waterfront property along flowages and artificial waterways do not have the right to place a pier. *Id.* Because the lake beds of flowages and artificial waterways are privately owned, the Court reasoned that the owners of the lake beds can prohibit any pier from touching the bed or floating above it. *Movrich*, at ¶55.

Potential Impacts of Case – The *Movrich* case will likely have far-reaching impacts, possibly impacting a large number of waterfront property owners and businesses. Consider the following:

- **Thousands of waterfront property owners are impacted** -- The Court’s ruling applies to all flowages and potentially other “man-made” waterbodies in Wisconsin.
 - According to the Wisconsin DNR’s website, Wisconsin has approximately 260 flowages.<http://dnr.wi.gov/lakes/lakepages/Results.aspx?location=ANY&page=ANY&name=flowage&letter=ANY>.
 - Thousands of lakes in Wisconsin are considered “man-made” resulting from either the artificial raising of water levels or the damming of rivers and streams, including large water bodies such as Lake Koshkonong, Lake Wisconsin, and the various “chain of lakes” in areas like Minocqua and Eagle River.
- **All piers are prohibited, including floating piers** -- The Court’s ruling applies broadly to (a) all piers, even floating piers, (b) existing piers that have been placed for decades, and (c)

waterfront property that has been assessed for property tax purposes as having pier rights for years. Because of the Court's ruling, affected property owners may now be forced to either remove their pier or pay several hundred dollars for "dock license fee" to keep their existing pier.

- **Affected waterfront property owners have made significant investments in piers and watercraft** -- Affected property owners have invested thousands of dollars on piers, boats and other recreational vehicles with the expectation they could be used to directly access the water from their property. Waterfront businesses such as restaurants, marinas and gas stations rely exclusively on customers who access their businesses by boat. These businesses have invested thousands of dollars on piers, decks, retaining walls, and other improvements to their property to attract these boating customers to their businesses.

SB 46/AB 37 does the following:

- **Restores the presumption of riparian rights for waterfront property owners**, unless those rights are specifically prohibited by the deed to the land, written agreement, or other recorded instrument. The riparian rights are subject to federal law, state law, or a federal energy regulatory commission (FERC) license.
- With respect to flowage beds owned by hydroelectric utilities, SB 46/AB 37 contains the following provisions:
 - Existing piers and structures are grandfathered. No fees can be charged unless the fee was authorized as part of an existing agreement.
 - New piers and structures must receive authorization from hydroelectric utilities, but authorization can be denied only if the placement of the structure would violate federal or state law, or invalidate a FERC license. A reasonable fee can be charged, but only in an amount necessary to administer the FERC license program. Fees can be appealed to the PSC.
 - A hydroelectric utility is immune from liability if someone gets hurt on the riparian's structure.
- **New disclosures are added to the Real Estate Condition Report/Vacant Land Condition Report** to make prospective buyers aware of the limited riparian rights possessed by waterfront property owners along flowages with beds owned by hydroelectric utilities.

We respectfully request that you support AB 37/SB 46. Please contact us at (608) 241-2047 if you have any questions about this legislation.