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**STATEMENT IN OPPOSITION TO  
2001 ASSEMBLY BILL 602**

**ASSEMBLY NATURAL RESOURCES COMMITTEE  
December 5, 2001**

The Wisconsin Association of Lakes opposes Assembly Bill 602, because we believe the bill is an inadequate response to the need to reform Wisconsin's system of regulating piers and related structures. WAL does agree with Representative Gunderson and others that the current regulatory system does not adequately insure a consistent application of understandable standards for piers. Reform is needed to ensure that the placement of piers is governed by standards that can be better understood by the regulated public and to ensure that these standards are more uniformly applied to comparable waterfront sites.

WAL would welcome efforts by the Legislature to seriously address these concerns. But we do not believe that AB-602 makes headway in that direction. Instead, this bill grandfathers every pier in Wisconsin, regardless of its impact on public interests. Then it throws out the baby, the bathwater and the basin, by immediately voiding all current pier regulations and giving DNR broad authority to write new emergency rules.

The stakes in this debate are increasingly high. From the point of view of the public, piers are privileged intrusions on public property. From the perspective of owners of riparian land, the reasonable right to place piers in adjoining navigable waters has been long recognized. And the economic value of piers is significant. There are documented sales of boat slips ranging up to \$70,000.

The public and private interests collide when piers are placed, because they are located not on the owner's property but on lakebed owned by the public. The public's interest in our lakes and streams is the crown jewel of our public estate in Wisconsin. Its value makes the current budget deficit look like small change. Cases over a century and a half have recognized that the public's interest in waters includes navigation, water quality, habitat for plants and animals, hunting and fishing, and the protection of natural scenic beauty. The Legislature has a high duty to protect these assets.

Historically, the Legislature has delegated responsibility to DNR to administer pier permits but has provided only the very general statutory standards of ss. 30.12 and 30.13. Those sections prohibit the placement of piers that are materially

obstruct navigation or are detrimental to the "public interest in navigable waters". In order to determine whether a pier can be placed, the department is required to evaluate its expected impacts on navigation and the other elements of the public's interest in water. This is not an easy task, as specific sites vary greatly in their suitability for pier placement.

Under the current regulatory scheme, the vast majority of piers are placed without permits under s.30.13. These piers are not reviewed by DNR or any other state or local agency. Whether these piers meet the statutory standards only becomes an issue when a complaint is filed and investigated by DNR. This system provides a low cost system for regulation, with a relatively modest staff and administrative costs. But it is a hit or miss proposition. For that reason, the use of a broad "grandfather" clause does not seem appropriate. Our association is also concerned about the effect of the broad grandfather clause in this bill on piers that were placed in the past but whose consistency with state law is the subject of pending litigation, including the "Dockominium" litigation in which the Court of Appeals recently ruled that the sale of boat slips violates the public trust interest in the water.

A small number of marinas, multiple slip private piers and other piers of unusual size do require permits under s. 30.12. The determination as to whether these piers meet the statutory requirements is conducted by WDNR based on NR 326 and substantial amounts of guidance developed from case law and historic practice. Given the broad statutory standards, this is not a simple proposition.

Generally speaking, the current regulatory system is based on a case-by-case analysis of particular piers on specific sites. This makes some sense, as the thousands of miles of shoreline sites vary widely in their suitability for different types of piers and related structures. Sites with significant habitat values (such as fish spawning areas) should be treated differently from other sites. A pier length that is entirely suitable to one site may directly obstruct navigation if it were placed on another site.

But this case-by-case system presents problems. In particular it does not adequately assure consistency - the uniform application of standards to comparable sites. It also requires a high level of field staff experience and training. And it makes the law very difficult to understand, even for experienced practitioners.

For these reasons, some favor the development of more decisive quantitative standards. If you own so many feet of frontage you can build such and such a pier. This approach also has its problems, chiefly resulting from its failure to address the wide variation in riparian lands upon which piers may be proposed.

I do not think these problems make pier law reform

impossible. But effective reform that adequately protects the public's interest in our lakes and streams and addresses the problems stemming from the current system will require real work. The stakes are high and promise to get higher with spiraling waterfront land values and recreational boating. WAL would happily commit to work on this issue with other interested groups. But we oppose AB 602 because it doesn't acknowledge the need to roll up our sleeves and get to work. Instead it simply throws the ball back to DNR, without the Legislature providing any better direction than the current statutes provide.

We would urge the Committee to consider legislation to really reform pier regulation by establishing a Special Legislative Council Committee or another body to address these issues in a systematic way. Make sure the Committee includes representation from all affected interests. Set a deadline for the Committee to develop a proposal to fix this problem. If representatives of the interests directly involved in the placement, use and regulation of piers can't develop a satisfactory system, consider this bill again. But please do not adopt this proposal without first making a legitimate attempt to solve the problem the right way.

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