

State of Wisconsin



2021 Senate Bill 46

Date of enactment:
Date of publication*:

2021 WISCONSIN ACT

AN ACT *to renumber* 709.03 (form) F18. and F19. and 709.033 (form) E17. to E21.; and *to create* 30.132, 709.03 (form) F18. and F19. and 709.033 (form) E17. and E18. of the statutes; **relating to:** the presumption of riparian rights on navigable waterways and required real estate disclosures.

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

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

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

(a) "Commission" means the public service commission.

(b) "Hydroelectric operator" means an operator of a project.

(c) "Project" means a hydroelectric project regulated by the federal energy regulatory commission or the department.

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

(2) **PRESUMPTION OF RIPARIAN RIGHTS.** An owner of land that abuts a navigable waterway is presumed to be a riparian owner and is entitled to exercise all rights afforded to a riparian owner, including the right to place a pier, other structures, or deposits, even if the bed of the waterway is owned in whole or in part by another, unless those rights are specifically prohibited by the deed to the land, written agreement, or other recorded instrument. The exercise of these riparian rights is subject to the requirements of this chapter and, if the waterway is within the boundaries of a project, the reasonable restric-

tions imposed by the hydroelectric operator necessary for the hydroelectric operator to comply with requirements imposed under state or federal law or a federal energy regulatory commission license.

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

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

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

(c) *Appeal to the commission.* A project riparian whose application is denied or approved with restrictions or who is charged an unreasonable fee under this subsection

tion may appeal in writing to the commission. The commission may investigate the appeal and issue an order based on its investigation. The commission may not issue an order under this paragraph without a public hearing conducted in accordance with s. 196.26 (2).

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

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

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

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

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

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.

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

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

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.
