



# WISCONSIN LAKES

*We Speak for Lakes!*

PO Box 7723 / Madison WI 53707  
608.661.4313  
info@wisconsinlakes.org

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SB46 seeks to provide waterfront property owners on a navigable waterway who do not own the lakebed adjacent to their property a right to place a pier, other structures, or deposits on that lakebed. Certain restrictions to that right would apply if the property abuts lakebed owned by a hydroelectric operator.

Wisconsin Lakes is currently unopposed but neutral on this bill. We would consider supporting the measure if the bill was amended such that exercise of riparian rights would not damage existing conservation structures (such as a fish habitat restoration project) installed by the private lakebed property owner.

The bill asks the Legislature to resolve a tension that has existed in Wisconsin property law since before Wisconsin became a state, but which only recently came to light because of a legal dispute between property owners. The tension pits the presumptive right of a riparian to place structures such as a pier in navigable water off their property against the fundamental right of any private property owner to keep others off their property. In the *Movrich v Lobermeier* case which this bill seeks to overturn, the WI Supreme Court held in favor of the general private property right over the presumptive riparian right.

Wisconsin Lakes is a statewide non-profit conservation organization of waterfront property owners, lake users, lake associations, and lake districts who in turn represent over 80,000 citizens and property owners. For over 20 years, Wisconsin Lakes has been a powerful bipartisan advocate for the conservation, protection, and restoration of Wisconsin's lake resources.

We are generally supportive and protective of riparian rights. However, any legislation that takes a portion of a fundamental property right away from a private landowner, even if the land owned is simply lakebed, should not be undertaken lightly. As our membership contains proponents of both sides of this issue and as we are primarily a conservation organization we are not taking a formal position on this legislation as written.

That said, we do have some comments and a suggestion we believe would improve the bill.

First, it should be noted that this is not solely a bill about placing "piers." The right conveyed to a waterfront property owner would allow them to place other structures and deposits on someone else's lakebed and the bill does not define or limit what that means. For instance, could the riparian place dredge tailings on the other private landowner's lakebed?

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What can actually occur on the privately held lakebed is an especially important question to Wisconsin Lakes if it damages, covers, or limits the effectiveness of existing improvements to the lakebed designed for conservation purposes. For instance, dredge fill or even a pier placement over a fish habitat restoration project could not only damage the lake environment, it could also destroy an investment on the part of the private lakebed owner. In some cases, those damaged conservation improvements might have been partially funded by state surface water grant funds. Unless the pier, structure, or deposit would be prohibited or not qualify for some other permit, the bill provides no recourse for the private lakebed property owner to prevent this damage to their, or in some cases the state's, investment.

Fortunately, Wisconsin Lakes sees a fairly simple solution to this problem. While continuing to recognize the right of the waterfront property owner to exercise their riparian rights to place a pier, other structure, or deposits, a condition could be added that the riparian rights may only be exercised in a way that prevents damage to any existing conservation structures on the lakebed. Conversely, a riparian should still be allowed to maintain existing structures placed prior to the passage of the bill.

This new condition would not even be as restrictive as the limitation on the riparian rights in the case of a hydroelectric project as contemplated by the bill. It is a reasonable balancing, in our opinion, of the rights of the waterfront property owner and the private owner of the lakebed, no matter who that owner happens to be.

Wisconsin Lakes would consider supporting the bill with the addition of this condition.