



Legislative Fiscal Bureau

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January 20, 1998

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 285 and Assembly Bill 426: Boat Registration, Titling and Safety

On September 29, 1997, the Assembly Committee on Natural Resources recommended passage of Assembly Bill 426 (as amended by Assembly Amendments 1 and 2) on a vote of 10 to 0. On November 12, 1997, the Senate Committee on Agriculture and Environmental Resources recommended passage of Senate Bill 285 (as amended by Senate Amendment 1) on a vote of 3 to 2. Both AB 426 and SB 285 would: (a) require registration and titling of certain classes of nonmotorized boats; (b) make various changes to provisions related to the registration and titling of other boats; (c) alter the fee structure for the boating safety program; (d) impose an absolute sobriety requirement for certain ages of people in the operation of a motorboat; (e) extend to counties emergency powers in matters related to navigation; and (f) extend the slow-no-wake zone along shorelines on lakes.

BACKGROUND

Boat registration fees. The Department of Natural Resources (DNR) collects statutory registration fees for all motorized boats and sailboats over twelve feet in length operated on state waters. Motorized boat registration fees vary according to boat length. These fees, which are deposited in the boat registration account of the conservation fund, were last increased in 1995 Act 27 (the 1995-97 biennial budget). All boat registrations are valid for a period of up to two years, beginning on April 1 of the year in which the registration is issued and ending on March 31 of the second year after issuance. The current fees are shown in the table below.

Boat Registration Fees

Nonfleet Boats

Nonpowered Sailboat	\$10.00
Motorboats, under 16 feet	11.00
Motorboats, 16 to 26 feet	16.00
Motorboats, 26 to 40 feet	30.00
Motorboats, over 40 feet	50.00

Fleet Boats

Fleet Fee*	\$18.00
Nonpowered Sailboat	5.00
Motorboats, under 16 feet	5.50
Motorboats, 16 to 26 feet	8.00
Motorboats, 26 to 40 feet	15.00
Motorboats, over 40 feet	25.00

* The fleet fee is applied to people who own and register three or more boats, and is paid in addition to the per boat fee shown.

Persons who are not required to register their boats are given the option of voluntarily registering them for a fee of \$6.50 each.

Other sources of revenue to the boat registration account include: (a) fees paid by people enrolled in boat safety programs; (b) boat titling and lien fees; (c) 1% of the sales tax revenue the Department collects from people who have purchased boats and have not provided proof that a sales tax was paid (which is required before the boat can be registered); and (d) investment income.

Boat registration account revenues are used to fund: (a) state costs of boating law enforcement by DNR conservation wardens and of administration of boating safety programs; (b) aids to municipalities for up to 75% of the costs of local boating law enforcement, search and rescue, and safety programs; (c) a portion of the costs of the Department's licensing and registration activities; (d) a portion of the Department's administrative activities; and (e) a portion of DNR's administrative facility debt service and repair costs.

Boat registration and titling requirements. With certain exceptions, a person operating a boat in the state must have certificates of number, registration, origin and title for the boat. Certificates of number must comply with federal guidelines for the identification of boats through a uniform numbering system. Dealers are required to obtain certificates of origin when acquiring

boats from a manufacturer or importer. Titling of a boat gives the owner of the boat all property rights to that boat. The fee for an original certificate of title for a boat is \$5.

Currently, a boat is exempt from the certificate of origin and certificate of title requirements if it is: (a) exempt from certificate of number and registration requirements; (b) under 16 feet in length; (c) voluntarily registered; or (d) purchased by a nonresident who intends to title and register the boat in another state.

For DNR to issue a certificate of number or registration card, the following is required: (a) a proper application for the issuance or renewal of a certificate of number or registration; (b) a sales tax report; and (c) the payment of any sales and use tax required.

A boat is currently exempt from the registration requirements for 15 days after the registration application for the boat is submitted.

Under current law, any person who intentionally falsifies a certificate of title or who intentionally alters a hull identification number or engine serial number faces a maximum fine of \$5,000, a maximum prison term of five years, or both.

Currently, a motorboat less than 26 feet in length designed to carry two or more persons must have a capacity plate affixed to the boat showing the total weight of persons, motor and other articles that the boat may safely carry.

Boating safety. Under current law, DNR is required to create comprehensive courses on boating safety and operation. Such courses must be offered in cooperation with schools, private clubs and organizations, and may be offered by the Department in areas where requested and where other sponsorship is unavailable. The course material presented covers general boating laws and safety tips for the operation of all types of watercraft. The statutes require that youth between the ages of 12 and 16 take the course and obtain a certificate in order to operate a motorized boat without the supervision of an adult. The courses are open, however, to anyone wishing to enroll.

As authorized in statute, the Department may collect \$2 from each person who enrolls in the course, and DNR may authorize instructors conducting such courses to retain \$1 of the fee to defray expenses incurred to operate the program. A valid certificate issued by another state or province of Canada held by persons between the ages of ten and 16 are honored if the course content substantially meets that established by DNR.

In addition, no person operating a motorboat may allow any person to ride or sit on the gunwales, tops of seat backs or sides or on the decking over the bow of the boat while it is under way, unless the person is inboard of guards or railings on the boat to prevent passengers from falling overboard. Also, no boat can be loaded with passengers or cargo beyond its safe carrying capacity and no boat can be equipped with any motor or propulsion machinery beyond its safe power capacity.

Intoxicated boating law. Currently, no person may engage in the operation of a motorboat while under the influence of an intoxicant to a degree which renders him or her incapable of safe motorboat operation. No person may engage in the operation of a non-commercial motorboat while the person has a blood alcohol concentration of 0.1 or more. Under what is commonly known as the refusal law, a person may not refuse a lawful request by a law enforcement officer to provide samples of blood, breath or urine or submit to a chemical test if arrested for a violation of the intoxicated boating law.

Currently, a person who violates these state provisions and was previously convicted under either the state intoxicated boating or refusal laws, or local ordinances in conformity with those state laws, would be fined between \$300 and \$1,000 and imprisoned between five days and six months. A person with two prior convictions would be fined between \$600 and \$2,000 and imprisoned between 30 days and one year in the county jail. Currently, for local ordinance violations, prior convictions under either state or local intoxicated boating laws or refusal laws are not necessarily considered for sentencing purposes.

Emergency powers. The governing body of any city, village or town is empowered to declare an emergency existing within the municipality when conditions arise from war, civil disturbance, severe weather conditions or catastrophe that impair the infrastructure of the municipality. Emergency powers include the general authority to order whatever is necessary and expedient for the health, safety, welfare and good order of the municipality under the emergency and includes the power to bar, restrict or remove all unnecessary traffic from local highways. Provisions also allow the chief executive officer of a municipality to exercise by proclamation all the powers, which within the discretion of the office appear necessary and expedient for the statutory purposes, conferred upon the governing body of the municipality if the governing body is unable to meet because of the emergency. Penalties for violation of an emergency ordinance or resolution may be a forfeiture not to exceed \$100 or six months imprisonment, in default of payment of the forfeiture.

Slow-no-wake zone. Under current law, no person may operate a motorboat within 100 feet of any dock, raft, pier or buoyed restricted area on any lake in excess of the slow-no-wake speed, with certain exemptions.

SUMMARY OF BILLS

Boat registration fees. Both SB 285 and AB 426 would impose registration requirements on certain classes of nonmotorized boats. The bills differ on which particular nonmotorized boats would have to be registered. SB 285 would eliminate the registration exemption for nonmotorized boats and sailboats 12 feet or less in length. It would instead exempt from registration requirements canoes (motorized or nonmotorized) and sailboards. AB 426 would also eliminate the registration exemption for nonmotorized boats and sailboats 12 feet or less in length. It would instead exempt from registration requirements inflatable nonmotorized boats that are eight feet in length or less and sailboards.

Both bills are similar in the following ways regarding the registration of nonmotorized boats. Under both, the two-year registration fee for nonmotorized boats would be set at \$10. Owners exempt from the registration requirement would still be given the option of paying a fee of \$6.50 to voluntarily register. Both bills would allow a person owning three or more nonmotorized boats to pay a fleet rate of \$25 for the registration of these boats instead of the per boat fee of \$10.

Boat registration and titling requirements. Both bills would provide the following:

- subject motorboats less than 16 feet in length to certificate of title and certificate of origin requirements.
- increase the exemption period for registration requirements from 15 to 60 days after an application is submitted.
- prohibit persons from intentionally falsifying an application for a certificate of number or registration or a certificate of number or registration card, with a maximum forfeiture of \$50 for the first offense and a maximum forfeiture of \$100 for a second or subsequent conviction within one year.
- allow a boat manufacturer or dealer to pay a fee of \$50 for the issuance or renewal of a certificate of number. (The certification stickers, decals and identification numbers could still be attached to removable signs to be temporarily mounted or attached on a dealer or manufacturer's boat while the boat is being operated.)
- prohibit persons from manufacturing a hull identification number that the person knows to be false to be placed on a boat that is manufactured after November 1, 1972, or from placing such a number on a boat. The penalty would be the same as that provided for falsifying an application for a certificate of title or certificate of title (a fine of not more than \$5,000, imprisonment of not more than five years or both). For such actions, the defendant could be tried in: (a) the defendant's county of residence at the time the complaint is filed, (b) the county where the defendant purchased the boat if purchased from a dealer, or (c) the county where the DNR received the application.
- require a person applying for registration of a federally documented vessel to submit as part of the application a copy of the front and back of the current federal certificate of documentation for the vessel.
- allow DNR to require any information determined to be necessary (in addition to the application, fee, sales tax report and sales tax payment) for the issuance of a certificate of number or registration.
- specify that the purchaser of the boat shall complete the sales tax information required by DNR unless the seller of the boat is a manufacturer or dealer who has agreed to do so on

behalf of the purchaser, in which case the manufacturer or dealer would then be required to complete the sales tax information.

- specify that, if an owner of a boat transfers all or part of the owner's interest in the boat, the owner would be required to give the current certificate of number card, registration card and certificate of title if required to the new owner, and that if the owner does not possess any of those certificates, the owner would be required to provide DNR any documentation or information the Department determines to be necessary to effect the transfer of ownership.

- limit the capacity plate requirement to motorboats that are 20 feet of length or less (rather than 26 feet currently).

Boating safety. Both bills would alter provisions related to the boating safety course by requiring DNR to specify in rule the fee for the course and the amount of the fee that may be retained by instructors. The bills would provide that a certificate from the boating safety course would be valid for life unless revoked by a court for a violation of boating operation or intoxication laws, violations under the juvenile justice code related to the unsafe use of a boat, or in connection with the commission of a homicide or causing of an injury by intoxicated use of a motorboat. Any person violating a boating operation law would be required to obtain a certificate of satisfactory completion of the boating safety course. The bills would provide that a valid certificate issued by another state or a province of Canada would be honored if the course content substantially meets that established by DNR, regardless of the person's age.

In addition, the bills would clarify that the operator of a motorboat (in addition to other persons on the boat) could not ride or sit on the gunwales, tops of seat backs or sides or on the decking over the bow of the boat while it is under way. The bills would also clarify that no person can operate, and no owner of a boat can allow a person to operate, a boat loaded beyond its safe carrying capacity. It would also be specified under both bills that no person may sell, equip or operate a boat, and no owner may allow a person to operate a boat, with any motor or propulsion machinery beyond its safe power capacity.

Intoxicated boating law. Both bills would prohibit a person under the age of 19 from the operation of a motorboat while he or she has a detectable blood alcohol concentration (more than 0.0). A person who violates this provision or a local ordinance in conformity with the provision would forfeit \$50. Similar standards for evidence and admissibility of chemical tests for alcohol concentration would be established in both bills for the violation of this absolute sobriety requirement for motorboats as exist in current law for snowmobiles, all-terrain vehicles (ATVs) and motor vehicles.

Both bills would provide that the same penalties that apply to violations of the state intoxicated boating law would be extended to local ordinances in conformity with state law. Thus, all prior offenses of either state or local intoxicated boating law would be taken into consideration for any current violation of either state or local law.

Emergency powers. Both bills would extend the emergency powers of municipalities to include counties, but only in matters that apply to a navigable water or that portion of a navigable water located in the county. The powers of the county would include the power to bar, restrict and remove all unnecessary boats from the navigable water, or part thereof. An ordinance, resolution or proclamation enacted or declared by a county for a navigable water under emergency powers would be required to be promptly posted and filed with the Department of Natural Resources. The DNR Secretary would have the authority to suspend such an ordinance, resolution or proclamation.

Slow-no-wake speed. Both bills would extend the 100 foot slow-no-wake restrictions to the operation of a motorboat within any shoreline on any lake.

Effective dates. The provisions related to registration of nonmotorized boats, titling of motorized boats and certificates of number for boats owned by dealers and manufacturers would take effect on the April 1 after publication. The changes to the boating safety program would take effect on the first day of the 12th month beginning after publication. The provisions dealing with the slow-no-wake speed near shorelines, the absolute sobriety requirement for persons under the age of 19, and registration of federally documented vessels would take effect on the first day of the third month beginning after publication. The remaining changes to boat registration, titling, and safety requirements, the provisions allowing revocation of the boating safety certificate, and the extension of emergency powers to counties in navigational matters would take effect on the day after publication.

SUMMARY OF AMENDMENTS

Senate Bill 285 Amendments

Senate Amendment 1 to SB 285 was adopted by the Senate Committee on Agriculture and Environmental Resources on a vote of 5 to 0. SA 1 would remove all the provisions from the bill that deal with registration and titling of nonmotorized boats, thus maintaining current law with respect to boat registration fees.

SA 1 to SB 285 would also extend the absolute sobriety requirements to persons under the legal drinking age (currently 21), rather than only to those under the age of 19.

The amendment would also provide additional penalties for third and subsequent violations of the intoxicated boating law within five years of an arrest for a violation. A person who was convicted three times previously would be fined between \$600 and \$2,000 and imprisoned for between 60 days to one year in county jail. A person convicted four or more times would be fined between \$600 and \$2,000 and be imprisoned for between six months to a year in county jail. As under current law, convictions arising out of the same incident or occurrence would be counted as one previous conviction for sentencing purposes.

SA 1 to SB 285 was introduced on November 19, 1997, and would restore the absolute sobriety requirements to only those under the age 19.

SA 2 to SB 285 was introduced on November 19, 1997, and would remove from the bill the extension of the 100 foot slow-no-wake restrictions to the operation of a motorboat within any shoreline on any lake.

SA 3 to SB 285 was introduced on November 19, 1997, and would provide that any person violating the 100 foot slow-no-wake restrictions would forfeit not more than \$250 for the first offense, and not more than \$1,000 for the second or subsequent offenses. (Under current law, the penalty for such a violation is \$50 for the first offense and \$100 for second and subsequent offenses within a year.) The forfeiture provisions in SA 3 would apply to offenses committed on the effective date of the subsection (the day after publication), but offenses committed prior to that date could be counted as prior offenses for sentencing purposes.

SA 4 to SB 285 was introduced on November 19, 1997, and would remove from the bill all provisions extending to counties emergency powers in matters related to navigation.

SA 5 to SB 285 was introduced on November 19, 1997, and would remove from the bill the extension of the 100 foot slow-no-wake restrictions to the operation of a motorboat within any shoreline on any lake. SA 5 would instead extend the 100 foot slow-no-wake restrictions to the operation of a personal watercraft within the shoreline of any lake. (Under current law, the slow-no-wake provisions apply to the operation of a personal watercraft within 100 feet of any other boat.)

Assembly Bill 426 Amendments

Assembly Amendment 1 to AB 426 was adopted by the Assembly Committee on Natural Resources on a vote of 9 to 1. AA 1 would remove all the provisions that deal with registration of nonmotorized boats, maintaining current law.

Assembly Amendment 2 to AB 426 was adopted on a vote of 10 to 0 and would provide the same additional penalties for multiple violations of the intoxicated boating law beyond the first three convictions as SA 1 to SB 285 would.

Differences between bills as amended by the standing committees

Two differences remain between SB 285 as amended by SA 1 and AB 426 as amended by AA 1 and AA 2.

Absolute sobriety. SB 285, as amended by SA 1, would impose the absolute sobriety requirement on persons under the legal drinking age. AB 426 would impose the requirement on persons under the age of 19.

Titling of motorized boats. SB 285, as amended by SA 1, would retain the exemption from certificate of origin and certificate of title requirements for boats under 16 feet. AB 426, however, would repeal the titling exemption for motorized boats under 16 feet, but maintain the exemption for nonmotorized boats regardless of length.

FISCAL EFFECT

Registration

As originally introduced, both SB 285 and AB 426 would have increased revenues to the boat registration account of the conservation fund, given that more boats would be required to be registered. Under AB 426, all nonmotorized boats over eight feet in length would have to be registered. Approximately \$1.6 million annually would be generated by these requirements. DNR estimated that \$1.1 million and 15 positions would be needed in registration and enforcement to handle the initial increase in registrations, given that an entire class of boats would have to be registered for the first time in a relatively short span of time. For ongoing registration and enforcement, DNR estimated \$830,000 and eight positions annually would be needed.

As originally introduced, SB 285 would require all nonmotorized boats except canoes and sailboards to be registered. Approximately \$360,000 in new revenue would be raised annually. The Department estimated that \$370,000 and eight positions would be required for the initial increase in registrations under SB 285 and that \$180,000 and 2.5 positions would be needed annually for ongoing registration tasks.

Neither AB 426 nor SB 285 would provide any additional funding or positions for DNR to implement the registration requirements.

As amended by the standing committees, the expanded registration provisions in both SB 285 and AB 426 would be removed from the bill. As a result, the additional revenue would not accrue to the boat registration account and additional funding and staffing would not be needed to implement these provisions.

Titling

AB 426 would require that all motorboats under 16 feet in length be titled. Approximately 300,000 motorboats would need to be titled under this provision. At \$5 per title, approximately \$1.5 million would be generated for the boat registration account in one-time revenue. DNR estimates that ongoing revenue from the retitling of existing boats and initial titling of new boats would be approximately \$100,000 annually.

To implement the titling requirements, the Department estimates that seven positions, \$200,000 in salary costs and \$100,000 in supplies and services costs would be needed for initial

titling activities. For ongoing titling, DNR estimates that one position, \$28,400 in salary costs and \$37,000 in supplies and services costs would be needed. Given the current costs and staffing for DNR's licensing activities and funding and staffing provided for previous changes in registration and titling requirements, such an estimate does not seem unreasonable.

SB 285 as amended maintains current law with respect to requirements and exemptions for certificates of title and thus has no fiscal effect.

Law Enforcement

The other changes to boating safety requirements and the intoxicated boating law would affect state and local law enforcement boating patrols. DNR assumes that state law enforcement would be able to enforce the various changes within its current appropriations. The Department of Transportation, through the Chemical Test Section of the Division of the State Patrol, supports DNR in its enforcement efforts on the intoxicated boating law. Currently, DOT estimates that the cost of providing this support to enforce all intoxicated boating, snowmobile and all-terrain vehicle laws is \$6,000 annually. DOT's fiscal estimate indicates that the bill would increase these costs by \$6,000. However, given that only 22 absolute sobriety citations have been issued between 1989 and 1995 to snowmobile and all-terrain vehicle operators, while the total number of alcohol citations issued by DNR over the same period is 3,386, it is likely that the fiscal effect on the State Patrol would be insignificant.

In fiscal notes submitted by the Public Defender and the Department of Justice, officials indicate that the provisions under the bill would have an insignificant impact on their operating costs. The District Attorneys submitted a fiscal note indicating that the cost to them would depend on the number of cases that occur as a result of the bill's provisions. While the exact number of cases that will result is unknown, it is not expected that it would be large enough to have a significant impact on the overall costs to District Attorneys. Neither bill would provide additional funding or positions to any agency for law enforcement purposes.

Boating Safety Course

Both bills would allow DNR to set in rule the fee for the boating safety course and the amount of the fee that can be retained by course instructors. The current fee is set in statute at \$2, and course instructors are statutorily allowed to keep \$1 of that fee to defray expenses incurred. However, under current practice, DNR generally charges \$5 for the course, and allows instructors to keep \$2.50 of that amount. Department staff indicate that their intent would be to set in rule a course fee consistent with current practice. Therefore, this provision is not expected to have a significant fiscal effect. (In 1996-97, \$5,900 in revenue was deposited in the boat registration account from the course fees.)

Summary

In summary, under both bills, as amended, there would be no costs or revenues associated with the registration of nonmotorized boats and no significant costs associated with the enforcement efforts related to boating safety and the intoxicated boating law or the changes to the boating safety course fee structure. Under AB 426, as amended, the titling requirements would generate approximately \$1.5 million in one-time revenue (\$100,000 annually) and associated one-time costs would be \$300,000 (\$65,000 annually). Assuming enactment after April 1, 1998, the fiscal effect would be primarily realized in the 1999-2001 biennium as the titling provisions would take effect on April 1, 1999. Thus, funding of \$50,000 could be provided in 1998-99 to allow the Department to begin titling activities in the current biennium. The Department indicates that it would not be able to implement the titling provision on a uniform basis if the requirement were effective on April 1, 1998. AB 426 does not appropriate funding or provide new positions to DNR. If funding were not provided, the Department would have to reallocate base resources to implement the provisions or seek expenditure and position authority through separate legislation or the s. 13.10 process.

Prepared by: Russ Kava

TALKING POINTS**Amendment to Section 61 of Senate Bill 285**

The Port of Milwaukee and City of Milwaukee oppose any effort which would transfer their authority under emergency powers to county or state government.

According to Legislative Council Staff Scientist John Stolzenberg's January 9th memo, Section 61 of SB 285 would "preclude(s) a city, village or town from barring, restricting or removing all unnecessary boats from part or all of a navigable water during an emergency, irrespective of whether a county has exercised its emergency powers for the emergency."

Fortunately, the DNR admits that its intent is not to interfere with municipal home rule. They wish to redraft this section so that municipalities would still be allowed to exercise their emergency powers. They only wish to add counties to the list of governments which have this authority.

1) What would happen if a dispute were to arise between the City and County?

DNR staff suggest that the Secretary of the DNR would have the ultimate authority to resolve any disputes. Emergency situations in which public safety is at risk require timely responses. Why force the Port of Milwaukee to wait until the DNR Secretary can be contacted over a dispute? Passing this provision will create a problem which does not currently exist.

2) Milwaukee County Government has neither the expertise or experience to order commercial vessels out of the Port of Milwaukee. These waters have historically been under the exclusive jurisdiction of the Port of Milwaukee. The City of Milwaukee is extremely concerned about any change in state law which would allow either the county or state to interfere with the flow of trade through the Port.

3) The DNR has drafted Section 61 to fix a problem which is a statewide concern, but one that does not exist in Milwaukee County. There are no examples of an instance in which the City of Milwaukee or Port of Milwaukee has failed to appropriately exercise its authority. The current law the Port of Milwaukee operates under isn't broke, so let's not fix it. Let's exempt the City of Milwaukee and Port of Milwaukee from this provision.

4) The Port of Milwaukee has exclusive jurisdiction over these waters. Giving the county emergency powers would increase the complexity of the regulations and protocols which currently exist between the federal government and the Port. No one knows how the county would exercise its newly granted powers. This uncertainty is very unsettling. Has anyone from Milwaukee County asked the DNR for this authority? Do they have any interest or ability to take this new responsibility on? Then why are would we want to do this?

Note: All waters in the city of Milwaukee are under the jurisdiction of the Port of Milwaukee.



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone (608) 266-1304
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TO: Julia
Sen. Burke's
Office

DATE: January 9, 1998
TO: SENATOR ALICE CLAUSING
FROM: John Stolzenberg, Staff Scientist
SUBJECT: Provisions on County Emergency Powers in 1997 Senate Bill 285, Relating to Boating Laws

A. INTRODUCTION

This memorandum was prepared at the request of a member of your staff. The memorandum addresses the effects of the county emergency powers provisions in 1997 Senate Bill 285, relating to boating laws, on the emergency powers of cities, villages and towns. The memorandum was requested in response to differing interpretations of these effects by William G. Engfer, Boating Law Administrator, Department of Natural Resources (DNR), and myself.

The attachment to the memorandum contains the text of the treatment of s. 66.325, relating to local government emergency powers, by Senate Bill 285.

B. LEGISLATIVE COUNCIL STAFF SUMMARY OF SENATE BILL 285 PROVISIONS

The November 7, 1997 Legislative Council Staff memorandum to Members of the Senate Committee on Agriculture and Environmental Resources, entitled *1997 Senate Bill 285, Relating to Boating Laws, as Affected by Senate Amendment* (LRBa0912/1), to 1997 Senate Bill 285, contained the following description of the county emergency powers provisions in Senate Bill 285 (emphasis added for purposes of this memorandum):

Current law authorizes the governing body of any city, village or town to declare, by ordinance or resolution, an emergency existing within the city, village or town for reasons including a flood, heavy snowstorm, disaster and other conditions which impair vital facilities such as transportation, food or fuel supplies. Once declared, the governing body may order, by ordinance or resolution, whatever is necessary and expedient for the health, safety, welfare and good order of the city, village or town during the

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emergency. This emergency power includes the authority to bar, restrict or remove all unnecessary traffic from local highways.

The Bill provides similar emergency powers to counties with respect to a navigable water or portions of a navigable water that is located in the county. These emergency powers include the power of the county to bar, restrict or remove all unnecessary boats from a navigable water. *The Bill excludes from the emergency powers of a city, village or town the powers conferred on a county by the Bill* [Emphasis added.] The Bill also requires that any ordinance, resolution or proclamation enacted or declared by a county in an emergency for a navigable water must be prominently posted and filed with the DNR. The Secretary of Natural Resources may suspend the ordinance, resolution or proclamation.

C. DEPARTMENT OF NATURAL RESOURCES' INTENT

According to Mr. Engfer, the DNR intended that the county emergency powers authorized in Senate Bill 285 would establish that: (1) if a county had not exercised its authority to bar, restrict or remove unnecessary boats from a navigable water within its jurisdictions during an emergency, then a city, village or town in the county could; and (2) if a county did exercise its emergency powers on a navigable water, this action would override any actions taken by a city, village or town in an emergency on the same waters. Mr. Engfer also indicated his understanding that this intent was part of the DNR's drafting instructions for Senate Bill 285 and, thus, his assumption that the text of Senate Bill 285 reflected this intent.

D. COMMENTS

The basis of the emphasized sentence in the description of Senate Bill 285, given in the second section of the memorandum, is the text of s. 66.325 (2m) (a) as affected by Senate Bill 285. Paragraph (a) states that "The emergency power of a city, village or town includes . . . but does not include the powers conferred on a county under this subsection." (See the treatment of s. 66.325 (2m) (a) by Senate Bill 285 in the attachment.) The reference at the end of this sentence to "powers conferred on a county under this subsection" includes s. 66.325 (2m) (b), created by Senate Bill 285, which states:

The powers of a county under sub. (1) include without limitation because of enumeration the power to bar, restrict and remove all unnecessary boats from the navigable water, or part thereof.

Thus, Senate Bill 285, as drafted, clearly precludes a city, village or town from barring, restricting or removing all unnecessary boats from part or all of a navigable water during an emergency, irrespective of whether a county has exercised its emergency powers for the emergency.

If you would like Senate Bill 285 to conform to the DNR's intent, as stated in the third section of the memorandum, then it would be necessary to amend Senate Bill 285. An example

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of an appropriate amendment would be to amend page 18, line 16, by inserting after "subsection" the phrase "if the county in which the city, village or town is located has exercised the powers conferred on the county under this section."

In addition, in the course of discussing the county emergency powers provisions in Senate Bill 285 with Mary Gibson-Glass, the attorney at the Legislative Reference Bureau who drafted Senate Bill 285, two desirable technical amendments to these provisions were identified. These amendments are as follows:

1. Page 18, line 16: delete "subsection" and substitute "section".
2. Page 19, line 5: delete "or (2)" and substitute ", (2) or (2m)".

If you have any questions on any of the information set forth in this memorandum, please feel free to direct them to me at the Legislative Council Staff offices.

JES:jt:kjf:wu

Attachment

ATTACHMENT**TREATMENT OF SECTION 66.325, RELATING TO LOCAL GOVERNMENT
EMERGENCY POWERS, BY 1997 SENATE BILL 285**

[Underscored text indicates text added by Senate Bill 285; text stricken through is deleted by Senate Bill 285.]

66.325 Emergency powers. (1) Notwithstanding any other provision of law to the contrary, the governing body of any city, village ~~or~~, town ~~or~~ county is empowered to declare, by ordinance or resolution, an emergency existing within the city, village ~~or~~, town ~~or~~ county whenever conditions arise by reason of war, conflagration, flood, heavy snow storm, blizzard, catastrophe, disaster, riot or civil commotion, acts of God, and including conditions, without limitation because of enumeration, which impair transportation, food or fuel supplies, medical care, fire, health or police protection or other vital facilities of the city, village ~~or~~, town ~~or~~ county. The period of the emergency shall be limited by the ordinance or resolution to the time during which the emergency conditions exist or are likely to exist.

(2) The emergency power of the governing body conferred under sub. (1) includes the general authority to order, by ordinance or resolution, whatever is necessary and expedient for the health, safety, welfare and good order of the city, village ~~or~~, town ~~or~~ county in the emergency and, The powers of a county under sub. (1) and this subsection only apply to a navigable water or a portion of a navigable water that is located in the county.

(2m)(a) The emergency power of a city, village or town includes without limitation because of enumeration the power to bar, restrict or remove all unnecessary traffic, both vehicular and pedestrian, from the local highways, notwithstanding any provision of chs. 341 to 349 or any other provisions of law but does not include the powers conferred on a county under this subsection.

(b) The powers of a county under sub. (1) include without limitation because of enumeration the power to bar, restrict and remove all unnecessary boats from the navigable water, or part thereof.

(c) The governing body of the city, village ~~or~~, town ~~or~~ county may provide penalties for violation of any emergency ordinance or resolution not to exceed a \$100 forfeiture or, in default of payment of the forfeiture, 6 months' imprisonment for each separate offense.

(3) If, because of the emergency conditions, the governing body of the city, village ~~or~~, town ~~or~~ county is unable to meet with promptness, the chief executive officer or acting chief executive officer of any city, village ~~or~~, town ~~or~~ county shall exercise by proclamation all of the powers conferred upon the governing body under sub. (1) or (2) which within the discretion of the officer appear necessary and expedient for the purposes herein set forth. The proclamation shall be subject to ratification, alteration, modification or repeal by the governing body as soon as that body can meet, but the subsequent action taken by the governing body shall not affect the prior validity of the proclamation.

(4) An ordinance, resolution or proclamation enacted or declared by a county for a navigable water under this section shall be prominently posted and shall also be filed with the department of natural resources. The secretary of natural resources may suspend such an ordinance, resolution or proclamation.

Compiled by:

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