

ELECTRIC SHOCK DROWNING (ESD):

LEGISLATIVE CONSIDERATIONS FOR THE STATE BOATING LAW ADMINISTRATOR

The following is intended as general guidance for the state boating law administrator (BLA) dealing with ESD-related legislative proposals—often introduced in the wake of a tragic event occurring in-state or in a neighboring state—or, conversely, the BLA whose agency has an interest in drafting legislation on their own initiative.

While it outlines important elements to consider when reviewing or drafting ESD-related legislation, the described practices could be adapted to address other safety issues that arise—and remediation that may be proposed—following tragic boating incidents.

For more specific information on ESD and links to key resources, go to www.nasbla.org/ESDResources.

THE SITUATION: A horrific ESD-related incident has just occurred in your state or a neighboring state and legislators are interested in drafting language (or may already have a draft package in hand) to address the issue. OR your state has identified ESD as an issue that should be addressed in legislation to maintain or enhance boating safety.

What can or should you do?

- I. Through your approved, state-specific channels or methods, identify and contact the legislators and other key parties (public, boating constituents, etc.) who have already taken up the bill, who intend to take up a bill, or who have been identified as potentials to carry the bill forward on the agency's behalf.

In the event you do not have or cannot have direct contact with legislators, especially if your agency must avoid lobbying for any particular position, stay in touch with administration officials who do have that contact.

- Establish your credibility and stake in the issue through education:
 - o *Convey general information (see identified resources for background and facts).*
 - o *Describe the prevalence of the issue in your state (from your own records).*
 - o *Identify sound, applicable legislative examples from other states; applicable standards and safety codes; and practices recommended by legitimate, expert professionals and organizations. (Note: ideally, with legislative examples, seek out states that have achieved their goals in terms of the provisions included in the legislation and who have lowered risk factors and incidents based on legislation enacted; see also section IV, on page 2 of this paper for policy and technical elements to consider in reviewing and developing ESD-related legislation.)*
- II. Establish your own position as an agency.
 - What are your goals as they relate to the proposed legislation? What are you hoping to accomplish? What are you hoping to avoid?
 - Establish your primary point of contact (a person or a group) as it relates to this project. Just make sure you are all on the same page/have consensus.

III. If time allows or if there is interest by the drafters/sponsors of the legislation, consider gathering additional input from constituents that will be impacted by potential enactment.

- Identify groups that could be impacted:
 - o *For ESD, that would include boaters, swimmers (even if they are not boaters), marinas, manufacturers, and other stakeholders.*
- Provide forums (online, in person, webinar, other formats) to discuss the suggested “fixes” and allow for feedback on details that might need additional discussion (especially “hurdles” that might be presented from some groups).

IV. Be a part of the drafting of the legislation, if possible.

- What questions should you ask of your agency in developing the content?
 - o *If there is a component of the proposed legislation that requires additional work on your agency's part, can that be accommodated? How? Will additional funding be required to complete the additional work?*
- In the case of ESD, what policy and technical elements should be considered in the drafting?
 - o *A NO-Swimming provision applying to a specified perimeter of a boat dock or marina, with inclusion in the Penalties section. ¹*
 - o *Safety inspections at intervals of a maximum of five (5) years ² of all sources of electrical supply that could result in unsafe electrical current in the water; the sources include ship-to-shore power pedestals, submersible pumps, and sewage pump-out facilities.*
 - o *Requirement for any main over current protective device, installed or replaced, that feeds a marina to have ground-fault protection not exceeding one hundred mil amperes (100mA). A ground fault protection not exceeding one hundred mil amperes (100mA) of each branch or feeder circuit would be an alternative provision. ³*
 - o *Requirement for all electrical wiring involving 110 AC or 220 AC to be installed and maintained by a holder of a valid electrician's license in accord with the most-recently adopted versions of the National Fire Protection Association's Standards for Marinas and Boatyards (NFPA 303) and the National Electric Code (NFPA 70).*
- Stay engaged and in contact with parties involved in moving the legislation through the approval process.
 - o *Things can change quickly in committee, so stay in tune with things daily if needed; you want to make sure that nothing unexpected gets thrown into the mix at the last minute.*

V. So you have legislation – now what?

- Follow-up education to constituents:
 - o *Let various groups know about the change – and if needed, the background on why it was needed. Inform the groups who were involved in providing initial input about the final outcome of their participation.*

- Consider any changes in the way that your agency does business that might need to be made:
 - o *For example, will you have to check marinas or equipment in any way as part of the legislation?*

VI. Monitor the effects of the legislation.

- Legislation is cyclical – things always seem to come back around:
 - o *Consider whether there are any measurements that you can establish from statistics at hand – pre-legislation and post-legislation – that might indicate the success or deficiencies of the implementation.*
 - o *Be prepared to present those details when needed if discussion on the topic comes up again.*

¹ Tennessee (SB 1954) and West Virginia (HB 3020) have enacted legislation with provisions that all boat dock or marina owners and operators shall install permanent safety signage with print legible at eighty feet of distance and placed to give adequate notice to persons using the boat dock or marina or swimming near the boat dock or marina of the electric shock hazard risks of the waters around the dock or marina. Both provide that “The signage shall state: ‘ELECTRIC SHOCK HAZARD RISK: NO SWIMMING WITHIN 100 YARDS OF THE BOAT DOCK.’” In Tennessee, it is a Class A misdemeanor for boat dock and marina owners to not have appropriate signage at their facilities. In West Virginia, there is no penalty for lack of signage; however a rule or regulation could be in place to deal with the violation.

Of note, however, is that the act of swimming inside such a perimeter is seldom a violation of any state law, leaving officers with no authority to remove individuals from the hazardous area.

² One (1) to three (3) years would be considered optimal.

³ Legislation is stronger and adds immediate protection statewide if all marinas replace old non-ground fault protection circuit breakers with the 100mA ground-fault device by a specified date; provisions exempting existing marinas from mandatory upgrades, but requiring the installation of the 100mA ground-fault devices for new construction or replacement still leaves open the possibility of an ESD incident.