

STORAGE NAME: h0533.ric.doc

DATE: February 19, 2002

**HOUSE OF REPRESENTATIVES
COUNCIL FOR READY INFRASTRUCTURE
ANALYSIS**

BILL #: HB 533

RELATING TO: Rip Current Warning Signs

SPONSOR(S): Representative Needelman

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) NATURAL RESOURCES & ENVIRONMENTAL PROTECTION YEAS 12 NAYS 0
 - (2) LOCAL GOVERNMENT & VETERANS AFFAIRS YEAS 8 NAYS 0
 - (3) COUNCIL FOR READY INFRASTRUCTURE
 - (4)
 - (5)
-

I. SUMMARY:

This bill establishes legislative intent that state agencies and local governments cooperate in efforts to develop plans for and assist in the placement of rip current warning signs along the public beaches and coastal access areas of the state. This bill creates s. 380.275, F.S., to direct the Department of Community Affairs (DCA), through the Florida Coastal Management Program (FCMP), to develop a uniform rip current warning sign for use at any public beach or coastal access point where there may be a significant threat to the public as a result of rip currents. To the extent that funding is available, the DCA is further directed to fund the placement of rip current warning signs.

The DCA is provided with rulemaking authority to implement the provisions of the bill. The state, state agencies, local governments, and local government agencies may not be held liable for injuries caused by the placement or maintenance of rip current warning signs or the failure to install or maintain rip current signs.

This bill has an indeterminate fiscal impact.

This bill takes effect on October 1, 2002.

The Committee on Local Government & Veterans Affairs adopted one amendment at its meeting on February 12, 2002. The amendment, which is traveling with the bill, provides a liability limitation. (See "AMENDMENTS OR COMMITTEE SUBSTITUTES")

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

Less Government: This bill does not support less government because it directs a state agency to create and fund a new program for the development of a uniform rip current warning sign and to encourage placement of rip current warning signs.

B. PRESENT SITUATION:

Rip Currents

A rip current is a strong, surface current of water flowing out past the surf zone that can pull even the strongest swimmer into deep water beyond the sandbar. Most drownings occur when people caught in the rip current try to swim toward shore directly against the current and become totally exhausted.

Rip currents are like rivers flowing out through the surf. They generally form as a result of wave action when waves come ashore one after another. When the waves break, the water is pushed up the slope of the shore and gravity pulls it back toward the sea. Rip currents form when the water that is pulled back to the sea forms a narrow river-like current moving away from the shore.

Rip currents can pull continuously, or can suddenly appear or intensify after a set of waves or a breach in an offshore sandbar. Longshore currents, inshore currents, and other bottom conditions can contribute to the formation of rip currents.

Death Toll From Rip Currents

Rip currents in Florida average out to be deadlier than hurricanes, tropical storms, tornadoes, severe thunderstorms, and lightning. Since 1989, an average of 23 rip current drownings have occurred annually in Florida. Volusia County leads the state with 25 deaths caused by rip currents from 1989-1996. Bay and Dade Counties each had 24 deaths during the same time period. Other counties reporting deaths from rip currents include Broward, Brevard, Duval, Escambia, Martin, Nassau, Okaloosa, Palm Beach, Pinellas, St. Johns, Santa Rosa, and Sarasota Counties.

Rip tides can occur at any time of year, but the majority of deaths occur from March through August, when the combination of a large number of swimmers and favorable wind conditions coincide. Brevard County has installed rip current warning signs along its coastline at an approximate cost of \$10,000 for 200 signs.

Florida Coastal Management Program – Current Sign Program for Marking Beach Access

In 1978, the Florida Legislature adopted the Florida Coastal Management Act, codified as chapter 380, part II, Florida Statutes. The Department of Community Affairs (DCA) Florida Coastal Management Program (FCMP) uses a variety of tools to educate and inform Floridians about coastal resources. In 1993, the FCMP funded a study to identify all of the government-owned land parcels adjacent to the Atlantic and Gulf coasts. This study laid the foundation for a 1995 FCMP-funded issue paper by the University of Florida's Center for Tourism Research and Development to examine public access to coastal sites and to develop recommendations for the state to address problems with public access.

The researchers found that only 35 percent of all access points owned by public entities were clearly marked as public beach access points. To eliminate user confusion, the study recommended the FCMP develop a standardized, easily recognizable sign that could be placed for easy reading from adjacent roads. The FCMP developed standardized beach access signs for use across the state, and has been distributing the signs to local governments free-of-charge or at low cost.

The FCMP explored a number of production and distribution options, including the possibility of having the Florida Department of Corrections manufacture the signs using state prisoners. However, the FCMP ultimately contracted with a commercial sign production facility and in November 1996, with the help of the Florida League of Cities and the Florida Association of Counties, surveyed local governments to determine their willingness to participate in a voluntary beach access sign program. The FCMP decided to implement the program, and for each interested local government entity, the FCMP agreed to supply signs free-of-charge while the local governments agreed to supply the labor and hardware necessary for sign installation.

The beach access sign program is in the second cycle of sign distribution, and more than 18 local governments participated in the first year.

Court Cases Relating to Rip Currents

Currently, there is no statute requiring the placement of rip current warning signs. Under the doctrine of common law, Florida courts have found that governmental entities have an affirmative duty to warn or protect the public in swimming areas when such entities are aware that a dangerous condition exists.

In *Florida Department of Natural Resources v. Garcia*, the Florida Supreme Court decided that once a governmental entity chooses to operate or designate an area as a swimming area, or leads the public into believing an area is a swimming area, it assumes the duty of operating such area safely, including warning or protecting swimmers from known dangerous conditions.¹

C. EFFECT OF PROPOSED CHANGES:

This bill:

- Establishes legislative intent for the development of and placement of rip current warning signs;
- Directs the DCA, through the Florida Coastal Management Program, to direct and coordinate a rip current warning sign program;
- Provides that rip current warning signs be posted in areas posing a significant risk to the public because of rip currents;

¹ Florida Department of Natural Resources v. Garcia, 853 So.2d 72 (Fla. 2000).

- Provides that rip current warning signs may only be located where local governments have established access ways to beaches or coastal areas;
- Directs DCA to develop uniform rip current warning signs; and
- Provides immunity from liability to the state, state agencies, local governments, and local government agencies for placement or maintenance of the uniform rip current warning signs.

This bill creates s. 380.275, F.S., and establishes legislative intent that state agencies and local governments cooperate in their efforts to develop, plan for, and assist in the placement of rip current warning signs along the public beaches and coastal areas of the state. This bill establishes that rip currents pose significant threats to the public and establishes the importance of public warnings in coastal areas where rip currents occur.

This bill provides that the DCA, through the FCMP, shall direct and coordinate the rip current warning sign program. This bill provides that signs will be located in areas where local government entities have established access ways to beaches or coastal areas.

This bill provides the DCA will develop a uniform rip current warning sign for use at any public beach or along any coastal area where there may be significant threats to the public from rip currents. The DCA is authorized to establish, within available funding limits, a program to encourage the placement of rip current warning signs. This bill provides the DCA and local governments will coordinate their efforts in determining appropriation locations, distributing, and placing rip current warning signs.

This bill provides the DCA with rulemaking authority to implement the provisions of this bill. This bill provides that the state, state agencies, local governments, and local government agencies may not be held liable for injuries caused by the placement or maintenance of rip current warning signs or the failure to install or maintain rip current signs.

This bill has an effective date of October 1, 2002.

D. SECTION-BY-SECTION ANALYSIS:

Please refer to the Effect of Proposed Changes section for a description of the bill.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Expenditures by local governments are limited to funds spent to install the rip current warning.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

State funding is limited to amounts appropriated by the agency to the Florida Coastal Management Program for the rip current warning sign program. The DCA currently provides standardized beach access signs to any local government that requests them. For fiscal year 1998-1999, 313 signs cost just under \$5,000, and the agency further reduced costs by having the signs shipped directly to the requesting local government.

True costs for this program depend on the number of signs requested, the number of staff either assigned to, or hired to, implement the program. Although there is no state appropriation to the DCA to cover the costs of the rip current warning sign program, limited funds for production and distribution of the signs may be available through a federal Coastal Zone Management Award.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require municipalities or counties to spend money or to take action that requires a significant expenditure of money.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax revenues shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill authorizes the DCA to adopt the necessary program rules and forms.

C. OTHER COMMENTS:

Concerns were raised regarding liability immunity to the state, state agencies, local government, and local government agencies. Specifically, opponents to this provision argue this greatly expands current protections allowed for public entities. The sponsor has agreed to review the issue and amendments are anticipated.

There is currently no provision of statutory law that regulates or establishes guidelines with regard to the placement or maintenance of rip current warning signs. Through the doctrine of common law, the Florida Supreme Court has held state and local governmental entities have the duty to warn or protect individuals from known dangerous conditions in designated swimming areas or areas the governmental entity leads the public to believe is a swimming area.² This bill alone and as amended is not clear as to whether this common law duty is repealed or remains in effect.

If this bill, alone or as amended, were to become law, governmental entities may argue before a court that they are immune from liability for any and all injuries as a result of the failure to install or maintain rip current warning signs. If this argument is accepted, state and governmental entities will no longer have the duty to install rip current warning signs, which may result in governmental entities affirmatively deciding not to install and maintain rip current warning signs in areas where such signs are currently a common law requirement. Therefore, the result of this bill, alone or as amended, may actually discourage the placement of rip current warning signs.

D. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Local Government & Veterans Affairs adopted one amendment at its meeting on February 12, 2002. The amendment, which is traveling with the bill, provides state and local governmental entities shall not be held liable for any injury caused by placement, location, or the failure to install the rip current warning signs. However, such liability limitation is not intended to limit the responsibility imposed on such entities by other provisions of law with regard to the posting of rip current warning signs on public beaches.

VI. SIGNATURES:

COMMITTEE ON NATURAL RESOURCES & ENVIRONMENTAL PROTECTION:

Prepared by:

C. Noah McKinnon III

Staff Director:

Wayne Kiger

AS REVISED BY THE COMMITTEE ON NATURAL RESOURCES & ENVIRONMENTAL PROTECTION:

Prepared by:

C. Noah McKinnon III

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Prepared by:

Andrew S. Grayson, Esquire

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² Florida Department of Natural Resources v. Garcia, 853 So.2d 72 (Fla. 2000).

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AS FURTHER REVISED BY THE COUNCIL FOR READY INFRASTRUCTURE:

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