

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1472

SPONSOR: Comprehensive Planning, Local and Military Affairs and Senator Clary

SUBJECT: Placement of Uniform Warning and Safety Flags on Public Beaches

DATE: February 26, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bowman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
2.	<u>                    </u>	<u>                    </u>	<u>NR</u>	<u>                    </u>
3.	<u>                    </u>	<u>                    </u>	<u>AGG</u>	<u>                    </u>
4.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>
5.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
6.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

## I. Summary:

The committee substitute (CS) establishes that it is the Legislature’s intent that state agencies and local governments cooperate in efforts to develop plans for and assist in the display of uniform safety flags and warning signs at all public beaches along the coast at which flags are displayed and lifeguards are on duty, and in the placement of uniform notification signs indicating the meaning of flags displayed. Section 380.276, F.S., is created to direct the Department of Community Affairs (DCA), through the Florida Coastal Management Program, to develop a program for the display of uniform safety and warning flags and the placement of uniform notification signs. To the extent that funding is available, DCA is directed to fund the program and its implementation.

The department is provided with rulemaking authority to implement the provisions of the bill.

The state, state agencies, local governments and local governmental agencies cannot be held liable for injuries caused by the reasonable placement or location of safety and warning flags nor for the reasonable placement of notification signs for the meaning of flags displayed.

This bill creates section 380.276, of the Florida Statutes.

## II. Present Situation:

### *Florida Coastal Management Program -- Current Sign Program For Marking Beach Access Points*

In 1978, the Florida Legislature adopted the Florida Coastal Management Act; codified as chapter 380, part II, Florida Statutes. The Florida Coastal Management Program (FCMP), under

the auspices of DCA, uses a variety of tools to educate, inform, and involve Floridians in decisions about coastal resources. In 1993, the Florida Coastal Management Program 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, Center for Tourism Research and Development to examine public access to the Florida Coast and to develop recommendations for the state to address problems with public access.

Using the information obtained in 1993, the researchers surveyed each government-owned land parcel for its access characteristics and concluded that of all the access points owned by public entities, only 35 percent were clearly marked as public beach access points. The study concluded that residents and tourists often experience confusion when they encounter legitimate public access points that are inaccurately marked as private or simply do not appear to be publicly used areas. The study recommended that the FCMP work to develop a standardized, easily recognizable sign that could be placed so that it can be read from adjacent roads. As a result, the FCMP designed and developed a standard beach access sign for use across the state, with the goal of distributing them to local governments free or at a 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 had more than 18 local governments participate in the first year.

#### *Use of Warning Flags and Signage*

There is no set standard for uniformity of warning flags and signage on public beaches in Florida or in the country. Colors and signage of flags appearing on public beaches varies from state to state and from county to county. For example, in some areas of Florida a blue flag is flown to indicate that all is clear and in other areas of the state it means to be careful that sharks, jelly fish, etc., have been spotted in the water.

According to the Florida Beach Patrol Chief's Association, the majority of the state uses green to indicate calm water, yellow to indicate that the surf is rough and could create dangerous conditions, and red to indicate hazardous conditions. The greatest inconsistency in use is in the area from Panama City through Apalachicola. This organization strongly supports the need for uniformity in the use of flags to promote the protection of the public. At the same time, they state that flags should not be flown in areas where there are no ocean lifeguards to observe the conditions and be able to change the flags when conditions change.

The only national organization involved with certification of municipal and county agencies responsible for ocean lifeguards, is the United States Lifesaving Association (USLA). This organization is seeking to have a national uniform flag system. In May 2002, the organization

will be meeting to consider such a recommendation and will, if passed, require the agencies it certifies to use the system it endorses. Examples of municipalities and counties in Florida certified by this organization are as follows: Boca Raton; Clearwater, Deerfield Beach, Fernandina Beach, City of Jacksonville, Palm Beach County, Palm Beach, Pompano Beach, Atlantic Beach, Brevard County, Cape Canaveral, Delray Beach, Gulf Islands National Seashore, Hollywood Beach, Lantana, and Sarasota County.

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### **III. Effect of Proposed Changes:**

The bill charges DCA, through the Florida Coastal Management Program, with operating a uniform warning and safety flag program. The purpose of the program is to encourage the display of uniform warning and safety flags at coastal public beaches where warning and safety flags are displayed and lifeguards are on duty.

The uniform warning and safety flag program is to provide:

- A standard size, shape, color and definition for each warning and safety flag;
- That uniform notification signs be posted in a conspicuous location, at all designated public access points, and be clearly visible;
- That such notification signs explain the meaning of each of the warning and safety flags;
- That flags incorporate a number to accommodate persons who are colorblind;
- That flags not specifically defined by DCA must be identified by the entity displaying the flags;
- Guidelines for the periodic replacement of flags.

DCA is required to coordinate implementation of the program with local governments and the Florida Beach Patrol Chiefs Association. In addition, DCA is granted rulemaking authority to administer the program.

The bill also provides that the state, state agencies, local governments, and local government agencies cannot be held liable for any injury caused by the: 1) reasonable placement or location of uniform warning and safety flags, or 2) the failure to install uniform warning and safety flags, or 3) posted uniform notification signs as provided by s. 380.276, F.S.

The effective date of the bill is July 1, 2002.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

Local governments will incur the cost of purchasing flags that meet the requirements of the bill and for signage explaining the meaning of the warning flags.

Implementation of the program by DCA is based on the availability of funds. The costs of this program depend on the number of flags and signs requested, the number of staff either assigned to, or hired to, implement the program. Although there is no state appropriation to the department to cover the costs of the program, limited funds for the production of the flags and signs and their distribution may be available through a federal Coastal Zone Management Award.

In addition, the department will incur administrative costs in adopting rules setting forth uniform flag and notification sign requirements.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides that the state, state agencies and local governments are not liable for any injury caused by the reasonable placement or location of uniform warning and safety flags or reasonably posted uniform notification signs or the failure to install such flags or signs.

It is uncertain how this provision will be interpreted. The critical language is “any injury caused by the reasonable placement or location” of the uniform warning and safety flags or notification signs. It could be argued that the governmental entity only receives immunity from injuries actually *caused* by the flag or sign (e.g. an injury caused by walking into the sign, tripping over the sign, etc.) as opposed to injuries caused by dangerous conditions rip tides that arise after a person reads the flag or the sign and decides to swim in the face of such warning.

In a case decided by the Florida Supreme Court, *Florida Department of Natural Resources v. Garcia*, 753 So.2d 72 (Fla. 2000), the court discussed the state’s liability for injuries in bodies of water. Generally, a government entity operating a public swimming area has the same operational-level duty to invitees as a private landowner--the duty to keep the premises in a reasonably safe condition and to warn the public of any dangerous conditions of which it knew or should have known. *Id* at p. 75, citing *Avallone v. Board of County Commissioners*, 493 So.2d 1002 (Fla. 1986). This duty of care is considered an operational-level function for which the state waives sovereign immunity. While the presence of a rip current, sharks etc. are not dangerous conditions made by a state or local government, there could be factual scenarios where the failure of a state or local government to warn the public of dangerous conditions, at beaches they manage or designate as swimming areas, or hold out to the public as swimming areas, could constitute negligence. *See Butler v. Sarasota County*, 501 So.2d 579 (Fla. 1986).

#### **VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

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