

STORAGE NAME: h1591.tu.doc
DATE: February 12, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
TOURISM
ANALYSIS**

BILL #: HB 1591
RELATING TO: Public Bathing Places
SPONSOR(S): Representative(s) Maygarden
TIED BILL(S): None

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

- (1) TOURISM
 - (2) COUNCIL FOR COMPETITIVE COMMERCE
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

Section 514.045, F.S., is created to require uniformity in the size, color, numbering, and meaning of all warning and safety flags at all public bathing places at which lifeguards are on duty and such flags are displayed. When flags are displayed, the bill requires that posted notification of the meaning of the flags be placed at all designated public access points in a conspicuous location and that the signs be clearly legible. When any additional flag, not mentioned in the bill, is flown by an entity, that flag must be mentioned in the posted notification. The bill requires flags to be replaced under certain conditions.

Chapter 514, F.S., relating to public swimming and bathing facilities, pertains primarily to disease-related conditions in public bathing places and public pools, public pool construction, certification of public pool service technicians, and certification of swimming instructors and lifeguards at public swimming pools. Public bathing places and public pools are required to have a permit for operation; however, operating permits are not required for coastal or intracoastal beaches. The enforcement provisions of the chapter are based primarily on the permitting process.

The impact on state government expenditure is anticipated to be minimal but is not known at this time. The Department of Health has been requested to provide fiscal information. The Florida League of Cities has expressed concern about costs to local governments to implement the uniform system and possible costs incurred because of liability actions brought against local governments.

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"/> |

The bill requires a state agency and local governments to implement statewide uniform standards for warning flags and signage on coastal and intracoastal beaches that have lifeguards and fly flags.

B. PRESENT SITUATION:

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, required 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.

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, F.S. The Department of Community Affairs' Florida Coastal Management Program

(FCMP) uses a variety of tools to educate and inform Floridians 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'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 that the FCMP develop a standardized, easily recognizable sign that could be placed for easy reading from adjacent roads. FCMP did develop 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 had more than 18 local governments participate in the first year.

Department of Health – Responsibilities for Coastal and Intracoastal Beaches

Chapter 514, F.S., relating to public swimming and bathing facilities, pertains primarily to disease-related conditions in public bathing places and public pools, public pool construction, certification of public pool service technicians, and certification of swimming instructors and lifeguards at public swimming pools. Public bathing places and public pools are required to have a permit for operation; however, operating permits are not required for coastal or intracoastal beaches. The enforcement provisions of the chapter are based primarily on the permitting process.

The following is the definition of "public bathing place" in Chapter 514, F.S.:

...a body of water, natural or modified by humans, for swimming, diving, and recreational bathing, together with adjacent shoreline or land area, buildings, equipment, and appurtenances pertaining thereto, used by consent of the owner or owners and held out to the public by any person or public body, irrespective of whether a fee is charged for the use thereof. The bathing water areas of public bathing places include, but are not limited to, lakes, ponds, rivers, streams, artificial impoundments, and waters along the coastal and intracoastal beaches and shores of the state.

According to the Department of Health, Chapter 514, F.S., only pertains to coastal or intracoastal beaches in the testing for pathogens in the water. The rulemaking authority and enforcement mechanisms available to the department would not apply to the provisions added by this legislation.

Chapter 386, F.S., referenced in Chapter 514, F.S., contains provisions related to water quality issues and health issues related to such quality in relation to coastal and intracoastal waters.

C. EFFECT OF PROPOSED CHANGES:

Effective January 1, 2003, the bill requires uniformity in the size, color, numbering, and meaning of all warning and safety flags at all public bathing places at which lifeguards are on duty and such flags are displayed. When flags are displayed, the bill requires that posted notification of the meaning of the flags be placed at all designated public access points in a conspicuous location and that the signs be clearly legible. When any additional flag, not mentioned in the bill, is flown by an entity, that flag must be mentioned in the posted notification. The bill requires flags to be replaced under certain conditions.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

It is unknown at this time what expenditure, if any, will be caused by the legislation on the Department of Health.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The following concerns about expenditures were expressed by the Florida League of Cities. There will be some impact on local governments that do not use the same colors of flags as required by the bill. In fact, most local governments will be required to purchase new flags because of the requirement for numbers to be placed on the colored flags. There will be some impact for signage and replacement of flags. No quantifiable amount of impact on local governments has been provided.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

The impact on state government expenditure is anticipated to be minimal but is not known at this time. The Department of Health has been requested to provide fiscal information. The Florida League of Cities has expressed concern about costs to local governments to implement the uniform system and possible costs incurred because of liability actions brought against local governments.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

HB 1591 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:

HB 1591 does not reduce the authority that municipalities or counties have to raise revenues.

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

HB 1591 does not reduce the percentage of state tax revenues shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

No rule-making authority is provided in the bill. Chapter 514, F.S., provides rule-making authority for the Department of Health.

C. OTHER COMMENTS:

The bill places the requirements for this signage under the Chapter 514, F.S., which is under the oversight and enforcement by the Department of Health. The chapter pertains primarily to disease-related conditions in public bathing places and public pools, public pool construction, certification of public pool service technicians, and certification of swimming instructors and lifeguards at public swimming pools. Public bathing places and public pools are required to have a permit for operation; however, operating permits are not required for coastal or intracoastal beaches. The enforcement provisions of the chapter are based primarily on the permitting process.

According to the Department of Health, Chapter 514, F.S., only pertains to coastal or intracoastal beaches in the testing for pathogens in the water. The rulemaking authority and enforcement mechanisms available to the department would not apply to the provisions added by this legislation.

Because of the above, therefore, there is some question as to the placement of this language in this chapter, the role of the Department of Health, and how the provisions are expected to be enforced.

Another question not addressed by the bill is the notification of entities responsible for signage and warning flags and the liability for failure to adhere to the requirements in the bill.

Other legislation related to signage for rip currents, HB 533, has been heard by the Natural Resources & Environmental Protection Committee and is scheduled for hearing by the Local Government and Veterans Affairs Committee on February 12, 2002. The responsibility for implementation is with the Florida Coastal Management Program in the Department of Community Affairs.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON TOURISM:

Prepared by:

Staff Director:

Judy C. McDonald

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