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: SB 348

SPONSOR: Senator Futch

SUBJECT: The placement of rip current warning signs

DATE: January 15, 2002 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bowman	Yeatman	CA	Favorable
2.			JU	
3.			AGG	
4.			AP	
5.				
6.				

I. Summary:

The bill requires that the Department of Community Affairs (department), through the Florida Coastal Management Program, develop a program to encourage the placement of rip current warning signs. The department coordinates the program, develops uniform signage, and assists in the distribution and erection of signs. The bill also limits liability for state and local governments for any injury caused by the placement or maintenance of signs or the failure to install signs as provided by the bill.

This bill creates section 380.275, Florida Statutes.

II. 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 deeper water beyond the sandbar. Most drowning occurs when people caught in the rip current try to swim toward shore directly against the current. They become totally exhausted and drown. Sometimes, would-be rescuers are also caught in the currents and drown.

Rip currents are like rivers flowing out through the surf. They generally form as a result of wave action. Sometimes a group of larger waves comes ashore one after another, in a set of waves. When these waves break, water is pushed up the slope of the shore. Gravity pulls this water back toward the sea. If it converges in a narrow river-like current moving away from shore, it forms what is known as a rip current. Rip currents may pull continuously, but they can suddenly appear or intensify after a set of waves, or when there is a breach in an offshore sandbar. Long shore

currents, inshore currents, and other bottom conditions can contribute to the formation of rip currents.

Death Toll From Rip Currents

Rip currents in Florida are, on average, more deadly than hurricanes, tropical storms, tornadoes, severe thunderstorms, and lightning. Since 1989, the number of deaths attributed to rip current drowning has averaged 23 per year, across the state. Volusia County leads the state with 25 deaths caused by rip currents from 1989-1996. Bay and Dade Counties each had 24 deaths during this time period. Numerous other deaths resulted from rip currents in Broward, Brevard, Duval, Escambia, Martin, Nassau, Okaloosa, Palm Beach, Pinellas, St. Johns, Santa Rosa, and Sarasota Counties during this time period.

Rip currents can occur at any time of the year, but the majority of deaths occur from March through August, when the combination of a large number of bathers and favorable wind conditions coincide. Many victims are tourists who are unfamiliar with surf conditions. Most of these deaths occur on unguarded beaches.

Two tragic deaths occurred in Brevard County over the past few years as a result of rip currents. James McGriff, 19 years old and a star football player at Palm Bay High School, drowned April 17, 1998, after being caught in a powerful rip current. Brian Mannix, who was 44, died June 2, 1996, after rescuing his 5-year-old nephew from strong rip currents. Brevard County has already installed rip current warning signs along its coastline. The cost was approximately $10,000 for 200 signs.

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 the Department of Community Affairs, 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 prior to initiating the project, including the possibility of the Florida Department of Corrections using state prisoners to manufacture signs. This did not prove to be a viable option and the FCMP ultimately contracted with a commercial sign production facility for the project. In November 1996, the FCMP, with the help of the League of Cities and the Florida Association of Counties, conducted a poll of local governments and municipalities regarding their willingness to participate in a voluntary beach access sign program. After getting positive responses from an adequate number of local governments, the FCMP decided to implement the sign program. For each interested local government or municipality, the FCMP agreed to supply signs free-of-charge. In turn, the local government or municipality supplied the FCMP with the number of public access points in its jurisdiction, and agreed to provide the labor and hardware necessary to install the signs. The program has proven to be quite popular, with 18 different local governments participating during the first year. The FCMP is currently in its second cycle of sign distribution.

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 380.275, F.S., to provide for a cooperative effort between the Florida Coastal Management Program (FCMP) and local governments to plan for and assist in the placement of rip current warning signs along the beaches and coastal areas of the state. The bill directs the Department of Community Affairs, through the FCMP, to develop and coordinate the rip current warning sign program.

Subsection (2) of s. 380.275, F.S., describes the rip current warning sign program as encouraging the placement of rip current warning signs in areas that pose a significant risk to the public, and that such signs may be located where the public has established an access way to the beach. The bill does not specify whether the department or the local government is ultimately responsible for erecting the rip current warning signs. The bill authorizes DCA to fund, within the limits of appropriations for this purpose, make available to local governments, and assist in the placement of rip current warning signs.

The bill imposes the following responsibilities on DCA:

· To adopt a uniform rip current warning sign to be placed at appropriate public access ways to the beaches or coastal areas.

· Within the limits of available appropriations, to establish a program to fund the placement of rip current signs where the local government has established beach access.

· To coordinate efforts to locate the appropriate locations for rip current signs, to make warning signs available for these locations, and to assist the local governing body in the distribution and erection of rip current warning signs.

In addition, subsection (5) of the bill grants the department rulemaking authority in order to implement the requirements of the bill.

Subsection (6) of 380.275, F.S., limits the liability of the state, state agencies, local government and local government agencies for the placement or maintenance of rip current warning signs or the failure to install or maintain rip current warning signs as required by the bill. This provision of the bill would probably broaden the immunity from liability that would apply to state and local governments for injuries associated with the placement and maintenance of rip current warning signs. The state waives its immunity from suit under tort only to the extent provided by s. 768.28, F.S. While the state and its agencies and subdivisions are liable for tort claims in the same manner and to the same extent as a private individual in like circumstances, the state or its subdivisions are only liable to pay a claim or a judgment by any one person up to $100,000 and $200,000 per incident.

Under cases construing the scope of the waiver of sovereign immunity granted under s. 768.28, F.S., Florida courts distinguish between actions of the government entity that can be characterized as planning level activities and activities that are characterized as operational activities. *Commercial Carrier Corp. v. Indian River County, 371 So.2d 1010 (Fla. 1979)* establishes that discretionary, judgmental, planning level decisions are immune from suit, but operational-level decisions are not. The typical example of how this rule is applied is in the case of traffic signs. Typically, the decision to locate a stop sign and the decision to build a road with a particular alignment are judgmental, planning level functions for which there is immunity, while the failure to properly maintain an existing traffic control device is an operational decision subject to suit. However, "the failure to warn of a known danger is a negligent omission at the operational level of government...," *Department of Transportation v. Neilson, 419 So.2d 1071, 1077 (Fla. 1982)*.

In a case recently decided by the *Florida Supreme Court, Florida Department of Natural Resources v. Garcia, 753 So.2d 72 (Fla. 2000)*, the court discusses 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. 5, 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 is not a dangerous condition 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 locations where rip currents are common, at beaches they manage or designate as swimming areas, could constitute negligence. *See Butler v. Sarasota County, 501 So.2d 579 (Fla. 1986)*.

The bill creates immunity from liability for any injury caused by the placement or maintenance of rip current warning signs or the failure to install or maintain rip current signs. Any liability associated with existing warning signs installed by the state or local governments either prior to the creation of this program or outside of the program, would not appear to be covered by this immunity.

The effective date of the bill is October 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:

The department will incur staff and resource costs in implementing the program. The costs to the department are dependent upon the number of signs requested and provided each year and whether the department provides funding for the distribution and erection of the signs. If department staff is involved in evaluating the locations for placement of signs, costs could increase.

The Florida Coastal Management Program ("Program") currently provides standard beach access signs to any local government that requests them. Funds for the beach access signs come from the annual federal coastal management award from the National Oceanic and Atmospheric Administration (NOAA). During fiscal year 1997-1998, the department at a unit cost of $14.95 purchased 664 signs, with the total cost just under $10,000. During fiscal year 1998-99, 313 signs were purchased at a unit price of $15.55, totaling just under $5,000. In fiscal year 2000-2001, 456 signs were purchased at a cost of approximately $8,500. These figures do not include the cost of distributing the signs to local governments. According to the department, shipping the signs directly to local governments would reduce the costs of the program and making the local governments responsible for all installation costs, including sign posts and labor. Based on the costs of purchasing signs for the beach access program, the department estimates the cost of providing signs under the proposed rip current sign program as approximately $25,000 per year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.