

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 1176

INTRODUCER: Senator Abruzzo

SUBJECT: Divers

DATE: March 28, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gudeman</u>	<u>Uchino</u>	<u>EP</u>	Favorable
2.	<u>Askey</u>	<u>Hrdlicka</u>	<u>CM</u>	Favorable
3.	_____	_____	<u>JU</u>	_____

I. Summary:

SB 1176 authorizes divers to display a divers-down buoy instead of a divers-down flag in the area that diving occurs. The bill specifies design and display requirements for a divers-down buoy. Current requirements related to the use of and response of vessels to a divers-down flag to also apply to a divers-down buoy.

II. Present Situation:

Diving in Florida

Florida's coastlines, coral reefs, rivers, springs, and lakes provide more dive sites and attract more visitors than any other diving destination in the country. The state waters provide diving opportunities that include shore diving, wreck diving, cave diving, spear fishing, and treasure hunting. Florida's unique reef habitats are the only natural living coral reef in North America.¹ Since the 1980s, efforts have been made to preserve the reefs for recreational and educational use. The state has also provided numerous artificial reefs created by sinking steel ships and structures. A 2001 report for southeast Florida found that Florida's natural and artificial reefs generated \$4.4 billion in local sales per year and \$2 billion in local income per year. The reefs had an estimated asset value of \$8.5 billion.²

Current state law defines a diver as "any person who is wholly or partially submerged in the waters of the state and is equipped with a face mask and snorkel or underwater breathing apparatus."³ Divers in North America commonly use a sport diver flag, or "divers-down flag," when diving and it is generally recognized as a red flag with a solid, diagonal white stripe.

¹ Florida Fish and Wildlife Commission, *Senate Bill 1176 Agency Analysis*, 2 (March 6, 2014).

² Florida Fish and Wildlife Commission, *Senate Bill 1176 Agency Analysis*, 2 (March 6, 2014).

³ Section 327.331(1)(a), F.S.

Additionally the “alpha flag” is an internationally recognized flag flown on vessels during diving operations. The alpha flag is blue and white, and has a different pattern than the sport diver flag.

Diving Regulation

Currently, recreational diving is not regulated by the U.S. Coast Guard (USCG). The USCG licensed master of a commercial vessel transporting divers or passengers is responsible for vessel and passenger safety and administrative action can be taken against an operator if his or her unsafe actions or decisions lead to an injury or fatality.⁴ The USCG does require the alpha flag to be flown when divers are attached to a vessel, since the vessel’s ability to maneuver is limited. However in sport diving, the divers are typically free swimming and displaying the divers-down flag is recommended.⁵

Florida regulates the display of a divers-down flag in s. 327.331, F.S. The divers-down flag must meet the following specifications:

- The flag must be a square or rectangular. If the flag is rectangular the length must not be less than the height, or more than 25 percent longer than the height;
- The flag must have a wire or stiffener to hold the flag extended in the absence of wind;
- The flag must be red with a diagonal white stripe that begins at the top staff-side of the flag and extends diagonally to the lower opposite corner. The width of the stripe must be 25 percent of the height of the flag;
- The minimum size of a flag displayed from a vessel or structure must be 20 inches by 24 inches;
- The minimum size of a flag displayed from a buoy or float towed by a diver is 12 inches by 12 inches; and
- Any divers-down flag displayed from a vessel must be displayed from the highest point of the vessel or other location where the visibility of the divers-down flag is not obstructed in any direction.

Divers must prominently display the divers-down flag in the area when diving occurs, but not if the area is customarily used for swimmers only. Except in an emergency, divers may not display one or more divers-down flags on a river, inlet, or navigation channel in a way that presents a navigational hazard. Divers are required to make reasonable efforts to stay within 100 feet of the divers-down flag. The divers-down flag must be lowered when no divers are in the water and the operation of a vessel displaying a divers-down flag with no divers in the water is prohibited.

Vessels are to make reasonable efforts to stay at least 100 feet away from a divers-down flag in rivers, inlets, and navigation channels, and at least 300 feet away in other waters. Any vessel that is not a rescue or law enforcement vessel entering within those distances must slow to the minimum necessary speed to maintain headway and steerage.

⁴ USCG Marine Safety Advisory, *Recommendations for Recreational Diving Operations Occurring from Commercial Passenger Vessels* (June 21, 2012) Available at: <http://www.capca.net/PDF/RecDivingAdvisory01-12.pdf> (last visited March 26, 2014).

⁵ USCG Boating Safety Information, 9, available at: http://www.uscg.mil/d1/prevention/NavInfo/navinfo/documents/B-Boating_Safety.PDF (last visited March 26, 2014).

The statute provides that a violation of these provisions, unless the violation is considered reckless or careless operation of a vessel, is a noncriminal infraction, punishable by a civil penalty of \$50.⁶ The Florida Fish and Wildlife Commission reported that the number of divers-down flag related citations was 343 in Fiscal Year 2010-2011, 329 in Fiscal Year 2011-2012, and 225 in Fiscal Year 2012-2013.⁷

Driver Accident Statistics

From 2009 through 2013, 13 boating accidents involving divers or snorkelers being struck by boats were reported where visibility of a diver down flag may have been a contributing factor. These accidents resulted in two fatalities and 11 injuries requiring more treatment than basic first aid.⁸ A boat collision with a diver in the water is likely to result in severe injury or death to the diver because the diver is likely to contact the boat's steering and propulsion system.

III. Effect of Proposed Changes:

Section 1 amends s. 327.331, F.S., providing divers with the option of using a divers-down buoy instead of a divers-down flag. It defines "divers-down buoy" as a "buoyant device, other than a vessel, which displays a divers-down symbol of at least 12 inches by 12 inches on four flat sides, which is prominently visible on the water's surface when in use." The bill specifies the divers-down buoy may not be used or displayed onboard.

In addition, the bill defines the "divers-down symbol," to be used on a divers-down buoy or flag, to be "a rectangular or square red symbol with a white diagonal stripe. If rectangular, the length must not be less than the height or more than 25 percent longer than the height. The width of the stripe must be 25 percent of the height of the symbol."

Sections 2 and 3 amend ss. 327.395 and 327.73, F.S., respectively, providing conforming changes to incorporate the divers-down buoy into existing regulations for the divers-down flag.

Section 4 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁶ See ss. 327.331(8) and 327.33(1)(u), F.S.

⁷ Florida Fish and Wildlife Commission, *Senate Bill 1176 Agency Analysis*, 3 (March 6, 2014).

⁸ Florida Fish and Wildlife Commission, *Senate Bill 1176 Agency Analysis*, 3 (March 6, 2014).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Because the bill only adds an additional method divers may use to comply with the requirement to display a symbol when they are participating in diving activities, the bill does not require divers to purchase additional items to continue diving activities. The bill may provide a financial benefit to private companies that manufacture buoys by expanding the market to divers who must display a symbol when they are diving.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.331, 327.395, and 327.73.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.