

STORAGE NAME: h1073s1z.hcl

DATE: June 29, 1999

****FINAL ACTION****

****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
HEALTH CARE LICENSING & REGULATION
FINAL ANALYSIS**

BILL #: CS/HB 1073

RELATING TO: Recreational Sport Diving

SPONSOR(S): Committee on Health Care Licensing & Regulation and Representative Edwards

COMPANION BILL(S): SB 278(s)

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

- (1) HEALTH CARE LICENSING & REGULATION YEAS 9 NAYS 1
- (2) WATER & RESOURCE MANAGEMENT YEAS 11 NAYS 0
- (3) GOVERNMENTAL RULES & REGULATIONS
- (4) HEALTH & HUMAN SERVICES APPROPRIATIONS
- (5)

I. FINAL ACTION STATUS:

CS/HB 1073 died in the Governmental Rules & Regulation Committee; however, the substance of the "strike everything amendment" that was adopted in the Water & Resource Management Committee appears as section 199 of HB 2125. The effective date of this provision is January 1, 2000. HB 2125 was approved by the Governor on June 18, 1999, and was codified as chapter 99-397, Laws of Florida.

II. SUMMARY:

CS/HB 1073 requires the Department of Health to establish maximum levels of contaminants in compressed air used for recreational sport diving based on levels of contaminants allowed by the Grade "E" Recreational Diving Standards of the Compressed Gas Association. Compressed air vendors will be required to collect a sample of air from their equipment and submit it to a laboratory certified by either the American Industrial Hygiene Association or the American Association for Laboratory Accreditation. Vendors submitting samples which meet the standards established by the Department will be issued a certificate so stating. There is no funding mechanism for the department's certification.

Civil penalties not to exceed \$500 for violations of the provisions of the bill are provided. In addition, persons violating the provisions are liable for any damages resulting from the violation.

Exemptions from this legislation are provided for any government entity using a governmentally owned compressed air source for work related activities; for any person providing compressed air for their own use; and for foreign registered vessels upon which a compressor is used to provide compressed air for work related to the operation of the vessel.

The Department of Health expects first-year, non-recurring expenditures to equal \$3,010 for rule promulgation and the development of curriculum training. Continuation costs are estimated to equal \$18,010 in the second year. The bill does not provide a revenue source.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

According to the Professional Association of Diving Instructors, three individuals have died in the United States in the past nine years from unsafe compressed air. Air compressors for divers may be found at dive shops, marinas, on dive boats, and at some bait shops. It is estimated that 500 compressed air vendors are located in Florida. Compressed air is not presently required to be sampled and analyzed. Three laboratories nationwide, including one in Florida, are presently the only laboratories certified for this type of testing. The Department of Health's laboratory does not provide the services required for this type of analysis.

The Professional Association of Diving Instructors (PADI) currently requires its twenty-five Five Star facilities in Florida to test compressed air quarterly. Beginning in January of 2000, PADI will begin voluntary testing of compressed air nationwide in all affiliated shops.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 1073 would:

- o Authorize the Department of Health to establish maximum allowable levels for contaminants in compressed air that is used for recreational sport diving. In developing the standards, the department must take into consideration the levels of contaminants allowed by the Grade "E" Recreational Diving Standards of the Compressed Gas Association.
- o Require the department to test compressed air samples from each compressed air vendor in the state and issue a certificate if the air meets the standards.
- o Provide civil penalties of \$500 for violations, and provide that persons violating the provisions of the bill are liable for damages arising from those violations.
- o Provide exemptions to the compressed air standards developed by the department.
- o Provide that persons who do not have a valid certificate issued by the department as evidence of meeting compressed air standards, may not provide compressed air for recreational sport diving in this state.
- o Authorize the department to adopt rules necessary to carry out the provisions of the bill, including developing maximum allowable levels of contaminants in compressed air used for sport diving, procedures of submission of test results to the department, and procedures for issuing certificates of compliance.
- o Impose new responsibilities upon the department without providing the funds necessary to perform those responsibilities.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

Yes. This bill gives the Department of Health the authority to establish the maximum allowable levels of contaminants in compressed air being sold, the procedures for the submission of test results, and the procedures for the issuance of certificates and notices for failed tests.

In addition, the Department of Health is required to test and review samples of compressed air. If the samples meet the department's standards, the department must issue a certificate stating so.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Persons providing compressed air for recreational sport diving must submit compressed air samples to the Department of Health for contaminant levels testing. For samples passing the department's test, the person must conspicuously display a valid certificate issued by the department as evidence of meeting state standards.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

None.

- (2) what is the cost of such responsibility at the new level/agency?

None.

- (3) how is the new agency accountable to the people governed?

None.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

Possibly. The cost of testing and submitting compressed air samples may be passed on to the recreational sports diver by the compressed air vendor.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Possibly. The recreational sports divers benefitting from the provisions of compressed air testing may see some increased costs in the purchase of that air due to the testing requirements of the program.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. There are no regulations currently requiring the testing of compressed air prior to sale to recreational divers. The bill will impose new responsibilities on compressed air vendors.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

Not Applicable.

- (2) Who makes the decisions?

Not Applicable.

- (3) Are private alternatives permitted?

Not Applicable.

- (4) Are families required to participate in a program?

Not Applicable.

- (5) Are families penalized for not participating in a program?

Not Applicable.

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

Not Applicable.

(2) service providers?

Not Applicable.

(3) government employees/agencies?

Not Applicable.

D. STATUTE(S) AFFECTED:

None.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Requires the Department of Health to establish maximum allowable levels for contaminants in compressed air used for recreational sport diving; provides for contaminant testing; provides for exemptions; requires compressed air vendors to display valid certificates received from the department; and provides for penalties. The department is also authorized to adopt rules to implement the provisions of the bill.

Section 2. Provides an effective date of January 1, 2000.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Expenditures:	1999-00
Department of Health	
Rule promulgation and form development for 90 hours @ \$17 per hour	\$1,530
Development of training curriculum for 40 hours @ \$37 per hour	<u>\$1,480</u>
Total Non-recurring Expenditures	\$3,010

2. Recurring Effects:

Expenditures:	1999-00	2000-01
Department of Health		
Processing Certificates @ \$30 each facility/year for 4 analyses per year	\$15,000	\$15,450

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Expenditures:		
Department of Health	\$18,010	\$15,450
Revenues:		
Department of Health	\$0	\$0

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

According to the Department of Health, the total cost to the regulated community, compressed air vendors, would be approximately \$160,000 (\$80 sample fee x 4 times per year x 500 facilities = \$160,000). This fee is based on the fees paid by those businesses who currently have compressed air samples tested on a voluntary basis. It is possible that fees for testing compressed air samples will be lower simply due to the volume of tests being performed.

As mentioned above, recreational sports divers may see increased costs in certain equipment rentals to pay for the costs of testing.

2. Direct Private Sector Benefits:

Certificates issued by the department will only assure that the compressed air was safe at the time it was sampled. Benefits to recreational sport divers are unclear.

The laboratories in the United States that are certified to perform these tests should see a substantial financial benefit due to this legislation.

3. Effects on Competition, Private Enterprise and Employment Markets:

Should a business fail to provide satisfactory air, it may be forced to close as it could not meet certification requirements. It is possible more laboratories will open to take advantage of this market.

D. FISCAL COMMENTS:

The Department of Health will perform new responsibilities under the provisions of the bill but will not receive any additional funding to pay for the costs of implementing the new responsibilities.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

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

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

VI. COMMENTS:

The department has suggested amendments to correct the following problems:

- ◆ The legislation does not allow the department to charge fees to recover the costs of administering the program (suggest a fee not to exceed \$50 per year for each premises).
- ◆ Vendors who receive compensation for providing compressed air may attempt to circumnavigate the sampling requirement by providing compressed air *free* to individuals who rent scuba tanks.
- ◆ Quarterly sampling does not provide a significantly increased level of safety to the consumer over semi-annual sampling. Semi-annual sampling would cut costs to vendors and to the department in half.

Comments of the House Committee on Water & Resource Management:

The Department of Health will see a fiscal impact due to the new responsibilities assigned to the department in this bill. Although the CS/SB 278 contains authority for the department to establish fees to implement the bill, a proposed amendment to the Senate bill may delete the funding mechanism.

It should be noted that while quarterly testing of compressed air tanks may be appropriate, there could be a 2-3 week delay between the day the air is tested and when certification is received. In addition, because the sample is being taken from one tank on any given day, there is no guarantee that the air in all of the other tanks will meet the quality standards being established by the department. Further, although CS/HB 1073 provides that valid certificates issued by the Department of Health must be conspicuously displayed, no inspection mechanism for enforcement is provided.

Finally, CS/HB 1073 provides that only persons providing compressed air for compensation for recreational sport diving must test air quarterly. Some concerns have been expressed that vendors may attempt to circumvent the air testing process by providing free air when offering certain dive packages for sale.

It is expected that the House sponsor will offer an amendment to CS/HB 1073 to address some of the issues.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 23, 1999, the Health Care Licensing & Regulation Committee adopted a strike everything amendment and the bill passed as a committee substitute (CS). The original bill required the Department of Health to:

- ◆ Test the level of contaminants that is used for recreational sport diving.
- ◆ Provide a container to the compressed air vendors to collect a sample of air from their equipment.
- ◆ Analyze the sample

Committee on Water and Resource Management

On April 21, 1999, the Water & Resource Management Committee unanimously adopted a strike everything amendment which provided for the following:

- ◆ Establishment of allowable maximum levels of contamination in compressed air used for recreational sport diving by the Department of Health;
- ◆ Quarterly testing of compressed air by a laboratory accredited by the American Industrial Hygiene Association or the American Association for Laboratory Accreditation with results submitted to the Department of Health;

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- ◆ Posting of the certificate of compliance issued by the accredited lab in a conspicuous location for easy observance by the public;
- ◆ Misdemeanor penalties for failure to comply with the provisions of the bill.
- ◆ Elimination of fiscal impact on the Department of Health.

The amendment was not incorporated into the CS/HB 1073 and is traveling with the bill.

VIII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

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