

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 4037 Standards for Compressed Air

**SPONSOR(S):** Porter

**TIED BILLS:**                   **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	15 Y, 0 N	Holt	Schoolfield
2) Health & Human Services Committee			

### SUMMARY ANALYSIS

The bill repeals section 381.895, F.S., which requires the Department of Health (“DOH”) to set standards for compressed air, requires rule-making, requires testing of compressed air by providers, and reporting of test results to DOH. Florida is the only state that has a law governing the regulation of compressed air standards in recreational sport diving.

According to professional dive organizations, repealing this provision in Florida will not have an impact on the quality of compressed air. Currently, dive organizations are required to monitor air quality to maintain certification or membership in recreational dive associations. These private associations also require consumers to have their tanks inspected before receiving compressed air refills.

Repealing this provision will not affect the funding to any existing programs.

The bill appears to have no fiscal impact on state or local government.

The bill takes effect July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

In 1999, section 381.895, F.S., was enacted and requires the Department of Health (“DOH”) to establish by rule the maximum allowable levels for contaminants in compressed air used for recreational sport diving.<sup>1</sup> These standards must take into consideration the levels of contaminants allowed by the Grade “E” Recreational Diving Standards of the Compressed Gas Association.<sup>2</sup>

Moreover, section 381.895(3), F.S., requires any compressed air provider receiving compensation for providing compressed air for recreational sport diving to have the air tested quarterly by specified accredited laboratories.<sup>3</sup> In addition, the compressed air provider must provide DOH a copy of the quarterly test result and DOH is required to maintain a record of all results.<sup>4</sup> The compressed air provider must post a certificate certifying that the compressed air meets the standards for contaminate levels.<sup>5</sup> The certificate must be posted in a conspicuous location where it can readily be seen by any person purchasing air.<sup>6</sup>

It is a second degree misdemeanor<sup>7</sup> if:

- A compressed air provider does not receive a valid certificate that certifies that the compressed air meets the standards for contaminate levels established by DOH; and
- The certificate is not posted in a conspicuous location.<sup>8</sup>

The following entities are exempt from these requirements:

- Individuals who provide compressed air for their own use;
- Any governmental entity that owns its own compressed air source, which is used for work related to the governmental entity; or
- Any foreign registered vessel that uses a compressor to compress air for its own work-related purposes.<sup>9</sup>

Since enactment, the provision has been amended once to delete the January 1, 2000 implementation date.<sup>10</sup> Florida is the only state that has a law governing the regulation of compressed air standards in recreational diving.<sup>11</sup>

Currently, DOH maintains a database that contains thirteen years of test results from approximately 250 compressed air providers located throughout the state.<sup>12</sup> According to DOH, since 1999 none of the submitted reports<sup>13</sup> show any evidence of contamination.<sup>14</sup> Additionally, there have been no reports of injury, illness, or death associated with contaminated compressed air.<sup>15</sup>

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<sup>1</sup> This includes any compressed air that may be provided as part of a dive package of equipment rental, or dive boat charter.

<sup>2</sup> Section 381.895(1), F.S.

<sup>3</sup> The laboratory must be accredited by either the American Industrial Hygiene Association or the American Association for Laboratory Accreditation

<sup>4</sup> Section 381.895(3),(4), F.S.

<sup>5</sup> Section 381.895(3), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> A person who has been convicted of a second degree misdemeanor may be sentenced for a definite term of imprisonment not exceeding 60 days and a fine of up to \$500. See ss. 775.082(4) and 775.083(1), F.S.

<sup>8</sup> Section 381.895(5), F.S.

<sup>9</sup> Section 381.895(2), F.S.

<sup>10</sup> Chapter 2002-1, L.O.F.

<sup>11</sup> Westlaw search for state statutory provisions requiring compressed air standards for recreational diving.

<sup>12</sup> Per email correspondence with DOH staff on file with the Health & Human Services Access Subcommittee staff (October 21, 2011).

<sup>13</sup> As of November 3, 2011, the DOH has received approximately a total of 3,395 reports.

<sup>14</sup> Department of Health, Bill Analysis, Economic Statement and Fiscal Note of House Bill 4037 (October 10, 2011).

<sup>15</sup> *Id.*

DOH recommended repeal of section 381.895, F.S., in its 2008 legislative package. When the provision was enacted, DOH did not receive an appropriation to support the database, enforcement, or rule promulgation.

The dive industry considers it a self-regulating body<sup>16</sup> and has mechanisms in place to ensure customers have quality compressed air.<sup>17</sup> According to professional organizations in the field, repealing this provision in Florida will not have an impact on current business practices. Currently, dive shops are required to monitor air quality to maintain certification or membership in worldwide recreational dive associations. Consumers will still be required to have their tanks inspected by dive shops or instructors, as this is an industry-mandated requirement.<sup>18</sup>

There are three major organizations that engage in recreational diving training and certification: Professional Association of Diving Instructors (PADI), National Association of Underwater Instructors (NAUI), and Scuba Schools International (SSI).<sup>19</sup> According to NAUI, these three organizations represent 90 percent of the recreational diving market for training certification and professional association memberships worldwide. Many recreational dive operations hold certifications and/or memberships with all three organizations. This practice tends to make them more marketable to consumers who are seeking certain types of dive certifications.<sup>20</sup>

According to the Professional Association of Diving Instructors (PADI)<sup>21</sup>, members of their organization are required to constantly maintain Compressed Gas Association, Grade “E” Recreational Diving Compressed Air Standards. If a member does not meet these standards their membership is revoked. PADI posts a list of all expelled members online.<sup>22</sup> According to PADI, many dive operations are starting to utilize a constant air quality monitoring devices, which self-monitor compressed air quality and just need to be calibrated every 90 days.<sup>23</sup>

The National Association of Underwater Instructors (NAUI)<sup>24</sup>, requires certified businesses to provide medical grade compressed air, which NAUI considers a community standard. Dive operations that receive certification from NAUI are required to have their air checked and tested by an accredited nationally recognized lab every two years and the test results must be posted and available for consumers to view. According to NAUI, they have sales representatives that interact with dive shop owners multiple times a year. When NAUI salesmen are on site they are required to check compliance with NAUI policies. If a dive operator is not in compliance it will lose their NAUI certification. NAUI posts a list of all suspended and revoked certifications online.<sup>25</sup>

## Effect of Proposed Changes

The bill repeals section 381.895, F.S., which requires DOH to set standards for compressed air, requires rule-making, requires testing of compressed air by providers, and reporting of test results to DOH. Repealing this provision will not affect funding to any existing programs.

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<sup>16</sup> “PADI has worked very hard over the years to keep the scuba diving industry as free from legislation as possible.” See Professional Association of Diving Instructors, History of PADI, available at: <http://www.padi.com/scuba/about-padi/PADI-history/default.aspx> (last viewed October 21, 2011).

<sup>17</sup> Department of Health, Bill Analysis, Economic Statement and Fiscal Note of House Bill 4037 (October 10, 2011); telephone conversation with staff with the Professional Association of Diving Instructors and the National Association of Underwater Instructors (October 21, 2011).

<sup>18</sup> Per telephone conversation with staff with the Professional Association of Diving Instructors and the National Association of Underwater Instructors (October 21, 2011).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> PADI represents approximately 125 dive operations located throughout Florida.

<sup>22</sup> Professional Association of Diving Instructors, Quality Management: Consumer Alerts, available at: <http://www.padi.com/scuba/about-padi/quality-management/consumer-alerts/default.aspx> (last viewed October 21, 2011).

<sup>23</sup> Per email correspondence with Professional Association of Diving Instructors staff on file with Health & Human Services Access Subcommittee staff (October 21, 2011).

<sup>24</sup> NAUI represents approximately 120 dive operations located throughout Florida.

<sup>25</sup> National Association of Underwater Instructors Worldwide, Quality and Ethics: Revoked and Suspended Memberships, available at: [http://www.naui.org/quality\\_assurance.aspx](http://www.naui.org/quality_assurance.aspx) (last viewed October 21, 2011).

**B. SECTION DIRECTORY:**

**Section 1.** Repeals s. 381.895, F.S., relating to standards for compressed air used for recreational diving.

**Section 2.** Provides an effective date of July 1, 2012.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

Not applicable.

2. Expenditures:

Not applicable.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

Not applicable.

2. Expenditures:

Not applicable.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Compressed air providers submit quarterly test results to DOH by various methods. Some providers have authorized the lab to send the results directly to DOH while others utilize fax or mail. As a result, compressed air providers may save on the cost of postage for mailing test results to DOH.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

No rule-making authority required to implement the provisions of the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.