

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 Environmental Preservation and Conservation

BILL: SB 1176

INTRODUCER: Senator Abruzzo

SUBJECT: Divers

DATE: March 20, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	Favorable
2.			CM	
3.			JU	

I. Summary:

SB 1176 gives a diver the option to display a divers-down buoy instead of a divers-down flag. The bill specifies the buoy must meet specific design and display requirements. Lastly, the bill makes conforming changes to specify that divers-down buoys are valid displays when divers are in the water.

II. Present Situation:

Diving Regulations

Florida's coastlines, coral reefs, rivers, springs, and lakes provide more dive sites and attract more visitors than any other diving destination in the county. 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. Florida's natural and artificial reefs generate \$4.4 billion in local sales per year and \$2 billion in local income per year. The reefs have an estimated asset value of \$8.5 billion.²

SCUBA (self-contained underwater breathing apparatus) diving as a recreational sport gained recognition in the mid-1950s.³ At the time, much of the equipment used was crafted on an as needed basis for personal use. The original divers-down flag, designed to warn boaters that

¹ Florida Fish and Wildlife Commission, *Senate Bill 1176 Agency Analysis*, 2 (Mar.6, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

² *Id.*

³ SCUBA Divers Travel Network, *The History of Diving: SCUBA Evolution*, http://www.sdtm.com/dive_resources/technical_articles/history-diving-scuba-evolution#.UyQtoPldV8E (last visited Mar. 15, 2014).

divers were present in the area, was created by Denzel “Doc” Dockery, and consisted of a red square with a diagonal white stripe. The red and white divers-down flag was soon distributed nationwide. Michigan became the first state to require a divers-down flag.⁴

In 1974, the Florida Legislature required all divers to display a divers-down flag in the area that diving occurs, other than an area where swimming is the primary activity, and provided a penalty for violations.⁵ The statute defined “divers-down flag” as “a flag that is either square or rectangular to approximately four units high by five units long with a one-unit diagonal stripe. The Divers Down Flag shall have a white diagonal stripe on a red background. The stripe shall begin at the top staff-side of the flag and extend diagonally to the opposite lower corner. The flag shall be free flying and shall be lowered when all divers are aboard or ashore. The minimum size shall be twelve by twelve inches.”⁶

Section 861.065, F.S., was amended in 1986 to prohibit divers or a group of divers from displaying one or more divers-down flags (except in an emergency) on a river, inlet, or navigation channel, in a manner that would be considered a navigational hazard. The law also required divers to make a reasonable effort to stay within 100 feet of the divers-down flag on rivers, inlets, and navigation channels.⁷

In 2000, s. 861.065, F.S., was renumbered as s. 327.331, F.S., and amended to provide additional specifications for the divers-down flag, including:

- The flag must be square or rectangular;
- If the flag is rectangular then the length must not be less than the height or more than 25 percent longer than the height;
- The flag must have a wire stiffener and extend in the absence of a wind or breeze;
- The flag must be red with a white diagonal stripe that begins at the top staff-side and extends diagonally to the lower opposite corner;
- The width of the stripe must be 25 percent the height of the flag;
- The minimum size for the flag on a buoy or a float towed by a diver is 12 inches by 12 inches;
- The minimum size for the flag displayed on a vessel or structure is 20 inches by 24 inches; and
- The flag must be displayed from the highest point of the vessel or other location that provides an unobstructed view of the flag.⁸

The statute provides additional safety provisions for diving including:

- Any person operating a vessel must maintain a distance of at least 100 feet from a divers-down flag when on a river, inlet, or navigation channel, or 300 feet on waters other than a river, inlet, or navigation channel;

⁴ Florida Dive Connection, *History of the Diver Down Flag*, <http://www.floridadiveconnection.com/history-of-the-diver-down-flag/> (last visited Mar. 15, 2014).

⁵ Chapter 74-377, Laws of Fla.

⁶ *Id.*

⁷ Chapter 86-34, Laws of Fla.

⁸ Chapter 2000-362, s. 7, Laws of Fla

- Divers must attempt to stay within 300 feet of the divers-down flag on waters other than rivers, inlets, or navigation channels;
- Any vessel, other than a law enforcement or rescue vessel, that is within 100 feet of a divers-down flag on a river, inlet, or navigation channel, or within 300 feet of a divers-down flag outside of a river, inlet, or navigation channel, may not proceed faster than necessary to maintain its headway and steerageway (i.e., the ability of a boat to respond to the rudder or helm);
- The divers-down flag must be lowered on the vessel once all the divers are aboard or ashore; and
- The vessel may not be operated if the flag is displayed and all the divers are aboard.⁹

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 \$50.¹⁰

Diver Accident Statistics

Accidents involving boat collisions with divers using a divers-down flags and staying within reasonable distances of the flags are not frequent occurrences. From 2009 through 2013, 13 boating accidents involving divers or snorkelers being struck by boats have been 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. A boat collision with a diver in the water is likely to result in severe injury or death to the diver because of the boat's steering/propulsion system.¹¹

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 "divers-down symbol," as used to describe the symbol on a divers-down buoy or flag, to mean "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.

⁹ *Id.*

¹⁰ *Id.* at 8.

¹¹ *Supra* note 1, at 3.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
