

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 Judiciary

BILL: CS/SB 1176

INTRODUCER: Judiciary Committee and Senator Abruzzo

SUBJECT: Divers

DATE: April 8, 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>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1176 authorizes divers to display a divers-down buoy instead of a divers-down flag when diving. The bill specifies design and display requirements for a divers-down buoy but prohibits the use or display of the divers-down buoy onboard a vessel. Similarly, the current requirements for vessel operators and divers when a divers-down flag is used will apply when a divers-down buoy is used.

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 year-round diving opportunities that include shore-entry diving, wreck diving, cave diving, spear fishing, and treasure hunting. According to the Florida Fish and Wildlife Commission, Florida is home to more divers, dive stores, and dive boats than any other destination sought by divers. It is estimated that the diving industry generates billions of dollars in local sales and income and provides thousands of full-time and part-time jobs.¹

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 facemask and snorkel or underwater breathing

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

apparatus.”² 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. 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

Recreational diving is not regulated by the U.S. Coast Guard (USCG). However, a USCG licensed master of a commercial vessel that transports divers or passengers is responsible for vessel and passenger safety and administrative action may be taken against an operator if his or her unsafe actions or decisions lead to an injury or fatality.³ The USCG does require the alpha flag to be flown on small vessels engaged in diving activities since the vessel’s ability to maneuver is limited. In sports diving, the divers are typically free swimming but displaying the divers-down flag is recommended.⁴

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 divers-down 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 when diving in rivers, inlets, and navigational channels. The divers-down flag must be lowered when no divers are in the water and a vessel may not display a divers-down flag when no divers are in the water.

Vessel operators must 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

² Section 327.331(1)(a), F.S.

³ 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 April 4, 2014).

⁴ USCG Boating Safety Information, 9, available at: http://www.uscg.mil/d1/prevention/NavInfo/navinfo/documents/B-Boating_Safety.PDF (last visited April 4, 2014).

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.

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 \$50.⁵ 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 2012-2013.⁶

Diver Accident Statistics

From 2009 through 2013, 13 boating accidents were reported that involved divers or snorkelers being struck by boats where the visibility of a diver down flag may have been a contributing factor. These accidents involved two fatalities and 11 injuries requiring more treatment than basic first aid.⁷ 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 three or 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.

⁵ See ss. 327.331(8) and 327.33(1)(u), F.S.

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

⁷ *Id.*

C. Trust Funds Restrictions:

None.

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 Substantial Changes:

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

CS by Judiciary on April 8, 2014:

The committee substitute revises the definition of “divers-down buoy” to permit the device to have either three or four flat sides. The original bill required the device to have four flat sides.

B. Amendments:

None.

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