

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: CS/SB 846

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Abruzzo

SUBJECT: Divers-down Warning Devices

DATE: January 29, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	Fav/CS
2.	Askey	McKay	CM	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 846 revises the requirements relating to divers-down flags and buoys. The bill defines the term “divers-down warning device” and revises the specification requirements for “divers-down flags” to expand the types of devices that divers must use to alert vessels that submerged divers are in the area.

II. Present Situation:

Diving in Florida

Florida’s coastlines, coral reefs, and springs provide a variety of dive sites and attract numerous visitors to the state each year. The waters of the state provide countless diving opportunities including shore-entry diving, wreck diving, cave diving, manatee sighting, and treasure hunting.¹ Section 327.331(1)(a), F.S., 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 apparatus.” To protect divers from collisions with boaters, all divers are required to prominently display a divers-down flag or buoy in the area in which diving occurs, other than when diving in an area customarily used for swimming only.²

¹ See generally, Visit Florida website, *Florida’s Best Diving Spots*, (Dec. 2004), available at: <http://www.visitflorida.com/en-us/articles/2004/december/42-floridas-best-diving-spots.html> (last visited January 28, 2016).

² Section 327.331(2), F.S.

Boating Accidents Involving Divers

According to the Fish and Wildlife Conservation Commission (FWC), from 2010 to 2014 there were 18 boating accidents reported to the FWC resulting in personal injuries or death involving divers or snorkelers in areas where a dive flag or buoy would be required. Of those there were:

- 6 accidents involving the diver being struck by another vessel and the dive flag was properly displayed. These accidents resulted in 7 injuries.
- 3 accidents involving the diver being struck by another vessel but a dive flag was not displayed, or not properly displayed. These accidents resulted in 1 fatality and 3 injuries.
- 9 accidents involved the diver being injured by their own vessel, either during boarding or the operator controlling the engine around them. These accidents resulted in 9 injuries.³

Florida's Diver Law

To protect divers from vessels when they are diving, s. 327.331, F.S., regulates the types of warning devices that may be used and how and when they must be displayed. A divers-down flag must meet all of the following specifications:

- The flag must be square or rectangular. If rectangular, the length must not be less than the height, or more than 25 percent longer than the height.⁴
- The flag must have a wire or other stiffener to hold it fully unfurled and extended in the absence of a wind or breeze.⁵
- The flag must consist of a divers-down symbol⁶ on each side with a white diagonal stripe that begins at the top staff-side of the flag and extends diagonally to the lower opposite corner.⁷
- The minimum size for a divers-down flag that is displayed from a vessel or structure is 20 inches by 24 inches.⁸
- The minimum size for a divers-down flag that is displayed on a buoy or float towed by the diver is 12 inches by 12 inches.⁹



Figure 1

In 2014, s. 327.331, F.S., was amended to authorize divers to use divers-down buoys.¹⁰ The term “divers-down buoy” is defined 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.”¹¹

A diver may display a divers-down flag from a vessel or from a buoy.¹² If the divers-down flag is displayed from a vessel it must be displayed from the highest point of the vessel or such other location that provides that the visibility of the divers-down flag is not obstructed in any

³ FWC, *Senate Bill 846 Agency Legislative Bill Analysis*, pg. 3 (Jan. 4, 2016) (on file with the Senate Environmental Preservation and Conservation Committee).

⁴ Section 327.331(1)(c)1., F.S.

⁵ *Id.*

⁶ *See e.g.*, Figure 1.

⁷ Section 327.331(1)(c)2., F.S.

⁸ Section 327.331(1)(c)3., F.S.

⁹ *Id.*

¹⁰ Ch. 2014-138, s. 1, Laws of Fla.

¹¹ Section 327.331(1)(b), F.S.

¹² Section 327.331, F.S.; *see also*, *Lanza v. Schriefer*, 2010 WL 2754327 (S.D. Fla. 2010) (finding that the statute does not require display of a divers-down flag on the vessel and on a buoy).

direction.¹³ A divers-down buoy may not be used or displayed onboard a vessel and must be prominently visible on the water's surface when in use.¹⁴

On rivers, inlets, and navigation channels, divers are required to make a reasonable effort to stay within 100 feet of a divers-down flag or buoy and a person operating a vessel must make a reasonable effort to maintain a distance of at least 100 feet from a divers-down flag or buoy.¹⁵ On all waters other than rivers, inlets, and navigation channels, divers must make a reasonable effort to stay within 300 feet of a divers-down flag or buoy and a person operating a vessel must make a reasonable effort to maintain a distance of at least 300 feet from any divers-down flag or buoy.¹⁶ If a vessel, other than a law enforcement vessel or rescue vessel, approaches within 100 feet of divers-down flag or buoy on a river, inlet, or navigation channel, or within 300 feet of a divers-down flag or buoy on waters other than a river, inlet, or navigation channel, the person operating the vessel must proceed no faster than is necessary to maintain headway and steerageway.¹⁷

FWC-approved boater education or safety courses are required to include a component regarding diving vessels, awareness of divers in the water, divers-down flags and buoys, and the requirements of s. 327.331, F.S.¹⁸ A violation relating to divers-down flags and buoys, except for a violation rising to the level of reckless or careless operation of a vessel, is a noncriminal infraction.¹⁹ The civil penalty for a noncriminal infraction is \$50.²⁰

III. Effect of Proposed Changes:

CS/SB 846 amends s. 327.331, F.S., to define the term “divers-down warning device” to include divers-down flags, buoys, or other similar warning devices. This new term will provide divers with additional choices for signaling to boaters that there are divers in the water while remaining compliant with Florida law. The bill replaces the term “flag or buoy” with “warning device.” A “divers-down warning device” must:

- Contain a divers-down symbol that is at least 12 inches by 12 inches in dimension when displayed from the water or is at least 20 by 24 inches when displayed from a vessel;
- Be designed for, and used by, divers and dive vessels as a means to notify nearby boaters of the presence of a diver in the waters of the immediate area; and
- Be prominently visible when in use.

Additionally, the bill revises the specification requirements for “divers-down flags.” The bill clarifies that the “divers-down symbol” may be displayed on each face of the flag, rather than on each side. The bill authorizes “divers-down flags” to have more than one white diagonal stripe. However, if there are multiple stripes, the bill requires that all stripes be oriented in the same direction. Instead of requiring the flag to have a wire or other stiffener, the bill authorizes the

¹³ Section 327.331(1)(c), F.S.

¹⁴ Section 327.331(2), F.S.

¹⁵ Section 327.331(4), F.S.

¹⁶ Section 327.331(5), F.S.

¹⁷ Section 327.331(6), F.S.

¹⁸ Section 327.395(3), F.S.

¹⁹ Section 327.73, F.S.

²⁰ *Id.*

flag to be otherwise constructed to ensure that the flag remains fully unfurled and extended in absence of a wind or breeze.

While the bill retains the size requirements for divers-down symbols that are displayed on the water (12 inches by 12 inches), the bill removes the requirement that buoys or floats used to display a divers-down flag be towed by the diver.

The bill requires a divers-down warning device that is displayed from a vessel to be displayed from the highest point of the vessel or another location that ensures that the visibility of the divers-down warning device is not obstructed from any direction.

The bill amends ss. 327.395 and 327.73, F.S., to replace the term “divers-down flags and buoys” with “divers-down warning devices.”

The bill reenacts s. 327.33(1), F.S., relating to the reckless or careless operation of a vessel, to incorporate the amendments made to s. 327.331, F.S.

The bill takes effect July 1, 2016.

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:

As the bill expands the types of devices that may be used to satisfy Florida’s diver laws, businesses manufacturing or selling devices that were not previously authorized may experience an indeterminate increase in revenue from the sales of such devices. Alternatively, businesses that only manufacture devices that were previously authorized may experience an indeterminate decrease in sales and revenue from increased competition for device sales. The bill does not impose any additional requirements on

divers, it only expands the types of devices that may be used and, therefore, the bill does not have an impact on consumers.

C. **Government Sector Impact:**

The Fish and Wildlife Conservation Commission (FWC) will have to update and print boating safety and educational materials to incorporate divers-down warning devices, but FWC anticipates that these costs are expected to be minimal and can be absorbed with existing resources.²¹

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, 327.73.

This bill reenacts section 327.33 of the Florida Statutes.

IX. Additional Information:

A. **Committee Substitute – Statement of Changes:**

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

CS by Environmental Preservation and Conservation on January 20, 2016:

The CS clarifies that a divers-down warning device displayed from a vessel must be displayed from the highest point of the vessel or another location that ensures that the visibility of the divers-down warning device is not obstructed from any direction.

B. **Amendments:**

None.

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

²¹ FWC, *Senate Bill 846 Agency Legislative Bill Analysis*, pg. 5 (Jan. 4, 2016) (on file with the Senate Environmental Preservation and Conservation Committee).