

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 681 Divers-down Warning Devices

SPONSOR(S): Trumbull

TIED BILLS: **IDEN./SIM. BILLS:** SB 846

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Highway & Waterway Safety Subcommittee	11 Y, 0 N, As CS	Whittaker	Smith
2) Economic Affairs Committee	13 Y, 0 N	Whittaker	Pitts

SUMMARY ANALYSIS

To caution nearby boaters, Florida law requires all divers¹ to prominently display a “divers-down” flag or buoy when in the water unless they are in an area customarily only used for swimming.² The divers-down flag or buoy must meet certain size and display requirements.

The bill revises definitions and requirements for the use and display of “divers-down buoy”, “divers-down flag”, and “divers-down symbol” and creates a new term of “divers-down warning device”.

The term “*divers-down warning device*,” is defined as a divers-down flag, buoy, or other similar warning device that:

- 1) Contains a divers-down symbol that is at least 12 inches by 12 inches in dimension when displayed from the water or at least 20 by 24 inches in dimension when displayed from a vessel; and
- 2) Is 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.

Conforming provisions to changes made are also provided in the bill.

The bill has no fiscal impact on state funds.

The bill provides an effective date of July 1, 2016.

¹ Section 327.331(1)(a), F.S. defines “diver” as a person who is wholly or partially submerged in the waters of the state and is equipped with a face mask and snorkel or underwater breathing apparatus.

² s. 327.331(2), F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Divers-Down Symbol, Flag, and Buoy

Section 327.331, F.,S., provides regulations for divers and requires the use of a divers-down flag or buoy anytime a diver is wholly or partially submerged in state waters and is equipped with a face mask and snorkel or an underwater breathing apparatus.

This section provides the following definitions and requirements:

- "Diver" means a person who is wholly or partially submerged in the waters of the state and is equipped with a face mask and snorkel or underwater breathing apparatus.
- "Divers-down buoy" means 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.
- "Divers-down flag" means a flag that meets 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. The flag must have a wire or other stiffener to hold it fully unfurled and extended in the absence of a wind or breeze.
 - The flag must consist of a divers-down symbol 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.
 - The minimum size for any divers-down flag displayed on a buoy or float towed by the diver is 12 inches by 12 inches. The minimum size for any divers-down flag displayed from a vessel or structure is 20 inches by 24 inches.
 - Any divers-down flag displayed from a vessel must be displayed from the highest point of the vessel or such other location which provides that the visibility of the divers-down flag is not obstructed in any direction.
- "Divers-down symbol" means 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.
- "Underwater breathing apparatus" means any apparatus, whether self-contained or connected to a distant source of air or other gas, whereby a person wholly or partially submerged in water is enabled to obtain or reuse air or any other gas or gases for breathing without returning to the surface of the water.

Displaying a Divers-Down Flag or Buoy

All divers must prominently display a divers-down flag or buoy in the area in which the diving occurs, other than when diving in an area customarily used only for swimming.³ Any divers-down flag displayed from a vessel must be displayed from the highest point of the vessel or a location which provides visibility of the divers-down flag, unobstructed, in any direction.⁴ A divers-down buoy may not be used or displayed onboard a vessel.⁵ A diver or group of divers may not display one or more divers-down flags or buoys on a river, inlet, or navigation channel, except in case of emergency, in a manner which shall unreasonably constitute a navigational hazard.⁶

Requirements for Boaters and Divers

³ s. 327.331(2), F.S.

⁴ s. 327.331(1)(c)4, F.S.

⁵ s. 327.331(2), F.S.

⁶ s. 327.332(3), F.S.

Divers are required to make reasonable efforts to stay within 100 feet of a divers-down flag or buoy on rivers, inlets, and navigational channels, and vessels are required to maintain a distance of at least 100 feet from any divers-down flag or buoy.⁷ On all waters that are not rivers, inlets, or navigational channels, this “100 feet requirement” becomes a 300 feet requirement.⁸ Additionally, vessels (other than law enforcement vessels or rescue vessel) that do approach within the 100 or 300 foot requirement from a divers-down flag or buoy must proceed “no faster than is necessary to maintain headway and steerageway”.⁹

A divers-down flag or buoy may not be displayed once all divers are aboard or ashore.¹⁰

Any violation of the diver-down requirements results in a noncriminal infraction (insofar as it does not violate s. 327.33, F.S., relating to reckless or careless operation of a vessel) punishable as provided in s. 327.73, F.S.¹¹ Pursuant to that section, a person cited for violating the divers-down flag or buoy requirements must appear before the county court and pay a \$50 civil penalty.

To facilitate compliance with the regulations by persons operating vessels, boater education and boater safety courses must include a component regarding diving vessels, awareness of divers in the water, divers-down flags and buoys, and the divers-down flag requirements in s. 327.331, F.S.¹²

Diving Statistics

From 2010 to 2014 there were 18 reportable boating accidents which involved 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.¹³

Proposed Changes

Section 1 amends s. 327.331, F.S., to include the term “divers-down warning device,” which is defined as a divers-down flag, buoy, or other similar warning device that:

- 1) Contains a divers-down symbol that is at least 12 inches by 12 inches in dimension when displayed from the water or at least 20 by 24 inches in dimension when displayed from a vessel; and
- 2) Is 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.

Section 2 amends s. 327.395(3), F.S., conforming provision to changes made by the bill.

Section 3 amends s. 327.73(1)(u), F.S., relating to noncriminal infractions, by replacing divers-down flags and buoys with divers-down warning devices.

Section 4 reenacts s. 327.33(1), F.S., related to the reckless or careless operation of a vessel.

⁷ s. 327.331(4), F.S.

⁸ s. 327.331(5), F.S.

⁹ s. 327.331(6), F.S.

¹⁰ s. 327.331(7), F.S.

¹¹ s. 327.331(8), F.S.

¹² s. 327.395(3), F.S.

¹³ Email from the Florida Fish and Wildlife Commission on file with the Economic Affairs Committee (December 21, 2015)

B. SECTION DIRECTORY:

- Section 1** Amends s. 327.331, F.S., revising the definitions of the terms “Divers-down buoy,” “Divers-down flag,” and “Divers-down symbol”; defining the term “divers-down warning device”; expanding the types of indicators or devices allowed to be used to signal the presence of submerged divers; specifying requirements for divers-down warning devices.
- Section 2** Amends s. 327.395, F.S., conforming provisions to changes made by the bill.
- Section 3** Amends s. 327.73, F.S., conforming provisions to changes made by the bill.
- Section 4** Reenacts s. 327.33(1), F.S., relating to reckless or careless operation of a vessel, to incorporate the amendment made to s. 327.331, F.S.
- Section 5** Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None
2. Expenditures:
None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None
2. Expenditures:
None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 13, 2016, The Highway and Waterway Safety Subcommittee adopted one amendment to HB 681 and reported the bill favorably as a committee substitute. The amendment:

- Provides some technical changes and replaces the words “is necessary to maintain headway and steerageway” with the phrase “idle-speed, no wake”.

This analysis is drafted to the committee substitute as reported by the Highway and Waterway Safety Subcommittee.