

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: HB 1049

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Raschein and others

116 Y's

0 N's

**COMPANION
BILLS:** CS/SB 1176

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 1049 passed the House on April 11, 2014, and subsequently passed the Senate on April 24, 2014. Recreational diving is enjoyed 12 months of the year in Florida and has proven to be an economic benefit to the state. Florida provides many unique and exclusive opportunities for diving, including the only natural living coral reef in North America off the coast of South Florida and the Florida Keys. These unique features of Florida have made the state one of the most popular dive destinations for divers around the world for decades.

Current law requires divers to display a "divers-down flag," a square or rectangular red flag with a white stripe, in the area where the diving occurs. Divers are required to conduct their diving activities within a certain distance to the flag, and vessels are required maintain a certain distance from the flags in most instances. Any violation of the law results in a noncriminal infraction punishable by a \$50 civil penalty and a requirement that the person appears before the county court. Vessel operators receive knowledge of the divers-down flag requirements from boater education and safety courses, as diver safety is a required component of these courses.

The bill amends current law to give divers the option to display a "divers-down buoy" instead of a divers-down flag that contains the same universal divers-down symbol. Under the bill, a diver must display either the divers-down flag or the divers-down buoy, or both, when diving. The bill also requires boater education and safety courses to include a component regarding divers-down buoys, along with the divers-down flag component required in current law.

The bill does not appear to have a fiscal impact on state or local government.

The bill was approved by the Governor on June 13, 2014, ch. 2014-138, L.O.F., and will become effective on July 1, 2014.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Recreational diving is enjoyed 12 months of the year in Florida and has proven to be an economic benefit to the state. Florida provides many unique and exclusive opportunities for diving, including the only natural living coral reef in North America off the coast of South Florida and the Florida Keys. These unique features of Florida have made the state one of the most popular dive destinations for divers around the world for decades.¹

Section 327.331, F.S., requires divers to prominently display a “divers-down flag,” a square or rectangular red flag with a diagonal white stripe,² in the area where the diving occurs.³ Divers are required to make “reasonable efforts” to stay within 100 feet of the flag on rivers, inlets, and navigational channels, and vessels are required to maintain a distance of at least 100 feet from any such flag.⁴ On all waters that are not rivers, inlets, or navigational channels, this “100 feet requirement” becomes a 300 feet requirement.⁵ Additionally, vessels (other than law enforcement vessels) that do encroach upon the 100- or 300-foot “restricted area” must proceed “no faster than is necessary to maintain headway and steerageway.”⁶ Divers are required to display the divers-down flag in a manner that does not “unreasonably constitute a navigational hazard,” except in case of emergency,⁷ and they must lower the flag once all divers are aboard or ashore.⁸

Any violation of this section results in a noncriminal infraction (insofar as it does not violate s. 327.33, F.S., relating to reckless and careless operation of a vessel) punishable as provided in s. 327.73, F.S.⁹ Pursuant to that section, a person cited for violating the divers-down flag requirements must appear before the county court and pay a \$50 civil penalty.

To facilitate compliance with s. 327.331, F.S., 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 the divers-down flag requirements in s. 327.331, F.S.¹⁰

Violations of the divers-down flag laws are relatively infrequent. In fiscal year 2012-13, only 225 violations of divers-down flag-related rules occurred. Incidents involving a boat colliding with a diver who is using a divers-down flag and staying within reasonable distance of the flag are also infrequent. Between 2009 and 2013, only 13 boating accidents were reported in which a diver or a snorkeler was struck by a boat and visibility of a divers-down flag may have been a contributing factor. These accidents resulted in 2 deaths and 13 major injuries.¹¹

¹ Florida Fish and Wildlife Conservation Commission analysis, on file with staff.

² s. 327.331(1)(c), F.S. The size of the flag varies, dependent on whether it is displayed from a vessel (in which case it shall be at least 20 inches by 24 inches) or a buoy or float towed by the diver (12 inches by 12 inches). s. 327.331(1)(c)4., F.S.

³ s. 327.331(2), F.S.

⁴ s. 327.331(4), F.S.

⁵ s. 327.331(5), F.S.

⁶ s. 327.331(6), F.S.

⁷ s. 327.331(3), F.S.

⁸ s. 327.331(7), F.S.

⁹ s. 327.331(8), F.S.

¹⁰ s. 327.395(3), F.S.

¹¹ *Id.*

Effect of Proposed Changes

Section 1.

The bill amends s. 327.331, F.S., to allow a “divers-down buoy” to be displayed in the area in which diving occurs in place of a divers-down flag (though they may not be displayed onboard a vessel, unlike divers-down flags). Thus, divers may choose whether to display a divers-down flag, a divers-down buoy, or both when they engage in diving activities.

The bill defines a 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.” The bill also creates a definition for “divers-down symbol” that is the same as the rectangular or square red symbol with a white diagonal stripe that is required on divers-down flags under current law. To accommodate the new “divers-down symbol” definition proposed by this bill, “divers-down flag” is redefined as a flag that “must consist of a divers-down symbol on each side.” Accordingly, the bill requires a diver to display a divers-down symbol either on a flag or buoy in order to be in compliance with the section. In certain situations, the use of a divers-down buoy on the water may be more visible to passing boaters than a flag displayed on a diver’s boat.

Section 2.

The bill amends s. 327.395, F.S., to include a component on divers-down buoys (in addition to the component regarding divers-down flags required under current law) within boater education and boater safety courses.

Section 3.

The bill makes a conforming change to s. 327.73, F.S., pertaining to noncriminal infractions, to specify that s. 327.331, F.S., relates to divers-down buoys in addition to divers-down flags.

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:

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.

D. FISCAL COMMENTS:

None.