

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 867 Towing, Storage, and Release of Motor Vehicles

**SPONSOR(S):** Rizo

**TIED BILLS:** IDEN./SIM. BILLS: SB 990

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee		Walsh	Keating
2) Civil Justice & Property Rights Subcommittee			
3) Commerce Committee			

**SUMMARY ANALYSIS**

A county or municipal government may contract with one or more wrecker operators to tow or remove wrecked, disabled, or abandoned vehicles from streets, highways, and accident sites. Counties must establish maximum rates for the towing of vehicles removed from private property, as well as the towing and storage of vehicles removed from the scene of an accident or from where a vehicle is towed at the request of a law enforcement officer.

When an officer has probable cause to believe that a vehicle should be seized under Florida law, was used to commit a crime, is evidence that a crime has been committed, or was involved in a traffic accident causing serious injury or death, an investigating agency may place a hold on a motor vehicle stored within a wrecker operator's storage facility for up to 5 business days. The investigating agency must inform the wrecker operator within the five-day holding period if the agency intends to hold the vehicle for a longer period.

A vehicle or vessel may be towed at the direction of an owner or lessee of real property, or their designee if the vehicle or vessel is parked on the property without permission. The towing or removal of any vehicle or vessel from private property without the consent of the registered owner or another legally authorized person in control of that vehicle or vessel is subject to strict compliance with certain conditions and restrictions.

The bill provides protections to ensure that wrecker operator companies are paid for the towing and storage charges of impounded vehicles. The bill also clarifies that a rental agreement is not sufficient to prove agency when a wrecker operator is releasing a vehicle to an owner's agent.

The bill does not appear to effect state or local government revenues or expenditures.

The bill provides an effective date of July 1, 2022.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

A county or municipal government may contract with one or more wrecker operators to tow or remove wrecked, disabled, or abandoned vehicles from streets, highways, and accident sites.<sup>1</sup> After the establishment of such contract(s), the county or municipality must create a “wrecker operator system” to apportion towing assignments between the contracted wrecker services. This apportionment may occur through the creation of geographic zones, a rotation schedule, or a combination of those methods.<sup>2</sup> Any wrecker operator that is included in the wrecker operator system is an “authorized wrecker operator” in the jurisdiction, while any wrecker operation not included is an “unauthorized wrecker operator.”<sup>3</sup>

Counties must establish maximum rates for the towing of vehicles removed from private property, as well as the towing and storage of vehicles removed from the scene of an accident or from where a vehicle is towed at the request of a law enforcement officer. Municipalities are also authorized to adopt maximum rate ordinances. If a municipality enacts an ordinance to establish towing fees, the county ordinance will not apply within the municipality.<sup>4</sup>

#### Vehicle Holds, Wrecker Operator Storage Facilities, and Liens

An investigating agency may place a hold on a motor vehicle stored within a wrecker operator’s storage facility for up to five business days.<sup>5</sup> A hold may be applied when a law enforcement officer has probable cause to believe the vehicle:

- Should be seized under the Florida Contraband and Forfeiture Act or ch. 379, F.S.;
- Was used as the means of committing a crime;
- Is evidence that tends to show a crime has been committed; or
- Was involved in a traffic accident resulting in death or personal injury.<sup>6</sup>

An officer may also apply a hold when the vehicle is impounded under s. 316.193, F.S., (relating to driving under the influence), or s. 322.34, F.S., (relating to driving with a suspended or revoked license), or when the officer is complying with a court order.<sup>7</sup> The hold must be in writing and include the name and agency of the law enforcement officer placing the hold, the date and time the hold is placed on the vehicle, a general description of the vehicle, the specific reason for the hold, the condition of the vehicle, the location where the vehicle is being held, and the name and contact information for the wrecker operator and storage facility.<sup>8</sup>

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<sup>1</sup> S. 323.002(1)(c), F.S. The definition of “vehicle” does not include a vessel or a trailer intended for the transport on land of a vessel. See s. 320.01, F.S. (defining “motor vehicle” for the purpose of issuance of motor vehicle licenses and separately defining a “marine boat trailer dealer” as a person engaged in “business of buying ... trailers specifically designed to be drawn by another vehicle and used for the transportation on land of vessels.”) *But see* s. 323.002(4)(b), F.S., which expressly authorizes a county or municipality to adopt or maintain an ordinance or rule that imposes a reasonable administrative fee or charge on the registered owner or other legally authorized person in control of a vehicle or vessel that is towed by an authorized wrecker operator, not to exceed 25 percent of the maximum towing rate, to cover the cost of enforcement, including parking enforcement, by the county or municipality when the vehicle or vessel is towed from public property. This administrative fee, if imposed and collected by an authorized wrecker operator or towing business, must be remitted to the county or municipality after it is collected.

<sup>2</sup> *Id.*

<sup>3</sup> S. 323.002(1)(a)-(b), F.S.

<sup>4</sup> Ss. 125.0103(1)(c) and 166.043(1)(c), F.S.

<sup>5</sup> S. 323.001(1), F.S.

<sup>6</sup> S. 323.001(4)(a)-(e), F.S.

<sup>7</sup> S. 323.001(4)(f)-(g), F.S.

<sup>8</sup> S. 323.001(5), F.S.

The investigating agency must inform the wrecker operator within the five-day holding period if the agency intends to hold the vehicle for a longer period.<sup>9</sup> The vehicle owner is liable for towing and storage charges for the first five days. If the vehicle is held beyond five days, the investigating agency may choose to have the vehicle stored at a designated impound lot or to pay for storage at the wrecker operator's storage facility.<sup>10</sup>

A wrecker operator or other person engaged in the business of transporting vehicles or vessels who recovers, removes, or stores a vehicle or vessel possesses a lien on the vehicle or vessel for a reasonable towing fee and storage fee if the vehicle or vessel is removed upon instructions from:

- The owner of the vehicle or vessel;
- The owner, lessor, or authorized person acting on behalf of the owner/lessor of property on which the vehicle or vessel is wrongly parked (as long as the removal is performed according to s. 715.07, F.S.);
- The landlord or authorized person acting on behalf of a landlord, when the vehicle or vessel remains on the property after the expiration of tenancy and the removal is performed pursuant to enforcing a lien pursuant to s. 83.806, F.S., or for the removal of property left after a lease is vacated under s. 715.104, F.S.; or
- Any law enforcement agency.<sup>11</sup>

### Recovery of a Vehicle or Vessel from a Towing-Storage Operator

Pursuant to s. 713.78(10), F.S., towing and storage operators must permit vehicle or vessel owners, lienholders, insurance company representatives, or agents to inspect a towed vehicle or vessel and release to that person all personal property that was not affixed when the vehicle or vessel came into the custody of the towing or storage operator.<sup>12</sup> The authorization of agency must be documented in an original writing acknowledged by the owner before a notary public or someone authorized to administer oaths. However, this subsection does not provide guidance on how an interested party may take possession of the vehicle or vessel once it has been towed or stored.

Whoever violates these inspection provisions is guilty of a third-degree felony which is punishable by a fine that does not exceed \$5,000<sup>13</sup> and a term of imprisonment that does not exceed five years.<sup>14</sup>

### Towing from Private Property

A vehicle or vessel may be towed at the direction of an owner or lessee of real property, or their designee if the vehicle or vessel is parked on the property without permission.<sup>15</sup> A person regularly engaged in the business of towing vehicles or vessels must conduct the tow. The towing or removal of any vehicle or vessel from private property without the consent of the registered owner or another legally authorized person in control of that vehicle or vessel is subject to strict compliance with certain conditions and restrictions. These conditions and restrictions include:<sup>16</sup>

- Any towed or removed vehicle or vessel must be stored at a site within a specified distance of the point of removal.<sup>17</sup>

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<sup>9</sup> S. 323.001(2), F.S.

<sup>10</sup> S. 323.001(2)(a)-(b), F.S.

<sup>11</sup> S. 713.78(2), F.S.

<sup>12</sup> S. 713.78(10), F.S.

<sup>13</sup> S. 775.083(1)(c), F.S.

<sup>14</sup> S. 775.082(3)(e), F.S.

<sup>15</sup> S. 715.07(2), F.S.

<sup>16</sup> S. 715.07(2)(a), F.S.

<sup>17</sup> S. 715.07(2)(a), F.S. The vehicle or vessel must be stored within a 10-mile radius of the removal point in a county with a population of at least 500,000 and within a 15-mile radius of the removal point in a county with a population of fewer than 500,000. If no towing business operates within the given area, these radiuses are extended to 20 miles (for a county with a population of at least 500,000) and 30 miles (for a county with a population of fewer than 500,000). The site must be open from 8 am to 6 pm when the towing business is in operation and must post a telephone number where the operator

- The towing company must notify local law enforcement, within 30 minutes of completing the tow, of the storage site; the time the vehicle or vessel was towed; and the make, model, color, and license plate number of the vehicle or description and registration number of the vessel. The towing truck operator is required to record the name of the law enforcement officer who received the information in the operator's trip record.
- The owner of a vehicle or vessel must be allowed to redeem the vehicle or vessel from the towing company if the owner seeks the return of the vehicle or vessel before the tow has occurred. The towing company may charge a reasonable service fee of up to one-half of the posted towing rate for the return of the vehicle or vessel and may tow the vehicle or vessel if the owner is unable to pay the fee after a reasonable opportunity.
- A towing company may not pay or accept money in exchange for the privilege of towing or removing vehicles or vessels from a particular location.
- If the towing company requires the owner of a vehicle to pay the costs of towing and storage before redemption, the towing company must file and keep on record its rate schedule with the local law enforcement agency and post the rate schedule at the storage site.
- Trucks and wreckers used by the towing company must have the name, address, and telephone number of the company printed on both sides of the vehicle in contrasting letters. The name of the towing company must be in 3-inch or taller permanently affixed letters, while the address and telephone number must be in 1-inch or taller permanently affixed letters.
- The towing company must exercise reasonable care when entering a vehicle or vessel to remove it. The towing company is liable for any damage to the vehicle caused by failure to exercise reasonable care.
- The vehicle or vessel must be released to its owner within one hour after request. The owner maintains a right to inspect the vehicle or vessel, and the towing company operation may not require a release or waiver of damages to be signed as a condition of returning the vehicle. The towing company operator must issue a detailed, single receipt to the owner of the vehicle or vessel.

Additionally, a vehicle or vessel may not be towed without consent of its owner, except from property appurtenant to a single-family residence, unless a notice is posted which states the area in which that vehicle or vessel is parked is reserved or otherwise unavailable for unauthorized vehicles or that the vehicle or vessel is subject to being removed at the owner's or operator's expense and the notice meets the following requirements:<sup>18</sup>

- The notice is placed prominently at each driveway access or curb cut, within five feet from the public right-of-way line. If the property has no curbs or access barriers, signs must be posted at least once every 25 feet of lot frontage.
- The notice must indicate, in not less than 2-inch high, light-reflective letters on a contrasting background, that unauthorized vehicles will be towed away at the owner's expense and contain the words "tow-away zone" in letters not less than 4 inches high.
- The notice must provide the name and telephone number of the towing company.
- The sign containing the notices must be permanently installed in such a way that the words "tow-away zone" is between three and six feet above ground level and the sign must have been continuously maintained on the property for not less than 24 hours before the towing of any vehicle or vessel.
- Local governments may also require permitting and inspection of signage before any towing is authorized.
- A business with 20 or fewer parking spaces may satisfy the requirement by prominently displaying a sign stating "Reserved Parking for Customers Only Unauthorized Vehicles or Vessels Will be Towed Away At the Owner's Expense" in not less than 4-inch high, light-reflective letters on a contrasting background.

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of the site can be reached when the site is closed. Upon receipt of a telephoned request to open the site and redeem a vehicle or vessel, the operator must return to the site within one hour.

- A property owner towing or removing vessels from real property must post a notice, consistent with the requirements in the statute which apply to vehicles,<sup>19</sup> that unauthorized vehicles or vessels will be towed away at the owners' expense.

A vehicle or vessel may be towed even in the absence of a tow-away zone sign if the vehicle or vessel is parked in such a way that it restricts the normal operation of a business or restricts access to a private driveway and the business owner or lessee requests the tow.<sup>20</sup>

### **Effect of the Bill**

The bill provides protections to ensure that wrecker operator companies are paid for the towing and storage charges of impounded vehicles and clarifies that a rental agreement is not sufficient to prove agency when releasing a vehicle to an owner's agent.

The bill clarifies that an investigating agency may have a wrecker operator tow a vehicle directly to the investigating agency's storage facility. If an investigating agency tows a vehicle directly to the agency's storage facility, the bill requires that, prior to releasing the vehicle to the owner or lienholder, the investigating agency must obtain proof of payment by the owner or lienholder of the vehicle of the towing and storage charges incurred by the wrecker operator. If an investigating agency does not obtain such proof of payment prior to releasing the vehicle, the investigating agency must pay the wrecker operator such towing and storage charges within 60 days after the vehicle is released.

Under the bill, an investigating agency that places a hold on an impounded vehicle beyond 5 days, excluding holidays and weekends, has the vehicle removed to a designated impound lot, and releases the vehicle to the owner or lienholder without obtaining proof of payment of the towing and storage charges incurred by the wrecker operator must pay the wrecker operator such charges within 60 days after the vehicle is released.

The bill requires that payment to a wrecker operator for accrued towing and storage charges by an investigating agency pursuant to a judicial finding that there is no probable cause to continue impoundment must be paid by the investigating agency within 60 days after the judicial finding.

The bill provides that for the purposes of a wrecker operator releasing a vehicle to the owner's agent, a rental agreement is insufficient to convey agency. A rental car company must appoint a person its agent by notarized writing.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 323.001, F.S., relating to wrecker operator storage facilities; vehicle holds.

**Section 2:** Amends s. 713.78, F.S., relating to liens for recovering, towing, or storing vehicles and vessels.

**Section 3:** Amends s. 715.07, F.S., relating to vehicles or vessels parked on private property; towing.

**Section 4:** Provides an effective date of July 1, 2022.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

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<sup>19</sup> These requirements are contained in s. 715.07(2)(a), F.S.

<sup>20</sup> S. 715.07(2)(a), F.S.

2. Expenditures:  
None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:  
None.
2. Expenditures:  
None. See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may help ensure wrecker operators recover towing and storage fees.

**D. FISCAL COMMENTS:**

Under the bill, an investigating law enforcement agency may be required to pay the towing and storage charges of an impounded vehicle if the agency fails to obtain proof of payment prior to releasing the vehicle to the owner or lienholder.

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:  
Not applicable.

**B. RULE-MAKING AUTHORITY:**

The bill does require or authorize rulemaking.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill and the existing statute the bill would amend use the term "investigating agency" without providing a definition of the term.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

Not applicable.