

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 Appropriations

BILL: PCS/CS/SB 282 (184632)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Community Affairs Committee; and Senator Steube

SUBJECT: Towing and Storage Fees

DATE: April 28, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Jones</u>	<u>Miller</u>	<u>TR</u>	<u>Favorable</u>
3.	<u>Gross</u>	<u>Diez-Arguelles</u>	<u>AFT</u>	<u>Recommend: Fav/CS</u>
4.	<u>Gross</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 282 prohibits a county or municipality from imposing a fee on an authorized wrecker operator or a vehicle storage company for towing, storing, or impounding a vehicle. This prohibition does not affect the authority of a county or municipality to levy a local business tax.

The bill also prohibits a county or municipality from imposing a charge, cost, expense, fine, fee, or penalty, other than the reasonable costs of towing and storage incurred by an authorized wrecker operator, on the registered owner of a vehicle removed and impounded by an authorized wrecker operator.

In addition, the bill provides that a county or municipality may impose a reasonable fee or charge for towing and storage not to exceed maximum rates adopted by the county or municipality, if the county or municipality has caused the owner's vehicle to be towed to and impounded at a facility owned by the county or municipality.

The Revenue Estimating Conference has not estimated the fiscal impact of this bill.

The bill takes effect July 1, 2017.

II. Present Situation:

County and Municipal Wrecker Operator Systems

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.¹ 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. 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.”²

Unauthorized wrecker operators are not permitted to initiate contact with a wrecked or disabled vehicle.³ If the operator of a disabled vehicle initiates contact, an unauthorized wrecker operator must disclose in writing, before the vehicle is connected to the towing apparatus:

- His or her full name;
- His or her driver’s license number;
- That he or she is not a member of the wrecker operator system;
- That the vehicle is not being towed for the owner’s insurance company or lienholder;
- Whether he or she has an insurance policy providing \$300,000 in liability coverage and \$50,000 in on-hook cargo coverage; and
- Maximum rates for towing and storage.⁴

The unauthorized wrecker operator is also required to disclose this information in the presence of any law enforcement officer. It is a second degree misdemeanor for an unauthorized wrecker operator to initiate contact or to fail to provide required information after contact has been initiated.⁵ An unauthorized wrecker operator misrepresenting his or her status as an authorized wrecker operator commits a first degree misdemeanor.⁶ Unauthorized wrecker operators also are prohibited from monitoring police radios to determine the location of wrecked or disabled vehicles.⁷

Counties are required to establish maximum rates for the towing and storage of vehicles removed from private property, removed from the scene of an accident, or where the vehicle is towed at the request of a law enforcement officer.⁸ Municipalities are also authorized to adopt maximum rate ordinances.⁹

¹ Section 323.002(1)(c), F.S.

² Section 323.002(1), F.S.

³ Section 323.002(2)(b), F.S.

⁴ Section 323.002(2)(c), F.S.

⁵ *Id.*

⁶ Section 323.002(2)(d), F.S.

⁷ Section 323.002(2)(a), F.S.

⁸ Section 125.0103(1)(c), F.S.

⁹ Section 166.043(1)(c), F.S.

Vehicle Holds and Wrecker Operator Storage Facilities

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.¹⁰ A hold may be applied where the officer has probable cause to believe the vehicle:

- Should be seized under the Florida Contraband 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.¹¹

An officer may also apply a hold when the vehicle is impounded pursuant to ss. 316.193 or 322.34, F.S., and when the officer is complying with a court order.¹²

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.¹³

The investigating agency must inform the wrecker operator within the 5-day holding period if the agency intends to hold the vehicle for a longer period of time.¹⁴ The vehicle owner is liable for towing and storage charges for the first 5 days. If the vehicle is to be held beyond 5 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.¹⁵

Authority for Local Governments to Charge Fees

Counties and municipalities do not have authority to levy taxes, other than ad valorem taxes, except as provided by general law.¹⁶ However, local governments have authority to impose user fees or assessments by local ordinance, that authority is within the constitutional and statutory home rule powers of local governments.¹⁷ The key distinction between a tax and a fee is that fees are voluntary and benefit particular individuals in a manner not shared by other members of public.¹⁸ On the other hand, a tax is a "forced charge or imposition, operating whether we like it or not and in no sense depends on the will or contract of the one on whom it is imposed."¹⁹

¹⁰ Section 323.001(1), F.S.

¹¹ Section 323.001(4)(a)-(e), F.S.

¹² Section 323.001(4)(f)-(g), F.S.

¹³ Section 323.001(5), F.S.

¹⁴ Section 323.001(2), F.S.

¹⁵ Section 323.001(2)(a)-(b), F.S.

¹⁶ Art. VII, s. 1(a), Fla. Const.

¹⁷ *City of Boca Raton v. State*, 595 So. 2d 25, 30 (Fla. 1992).

¹⁸ *City of Miami v. Quik Cash Jewelry & Pawn, Inc.*, 811 So. 2d 756, 758 (Fla. 3rd DCA 2002).

¹⁹ *Id.* at 758-59 (citation omitted).

Usually a fee is applied for the use of a service. The fee rate is tied directly to the cost of maintaining the service. Money collected from a fee is generally not applied to uses other than to provide the service for which the fee is applied.

Administrative Fees Related to Towing and Storage

Some municipalities charge administrative fees when a vehicle is towed in connection with certain misdemeanors or felonies. The City of Sarasota seizes the vehicle of those arrested for crimes related to drugs or prostitution.²⁰ The registered owner of the vehicle is then given two options:

- The registered owner may request a hearing where the city must show by a preponderance of the evidence that the vehicle was used to facilitate the commission of an act of prostitution or any violation of ch. 893, F.S., the Florida Comprehensive Drug Abuse Prevention and Control Act. The owner may post a bond equal to the civil penalty (\$500), hearing costs (\$50), and towing and storage fees (\$125 plus \$25 per day) to receive the vehicle back pending the outcome of the hearing, or the owner may leave the vehicle in impound, incurring additional fees.
- The registered owner may waive the right to a hearing and pay the civil penalty (\$500).

If the registered owner of the vehicle is unable to pay the administrative penalty within 35 days, the city disposes of the vehicle. The same process and rate structure is employed by the City of Bradenton.²¹

Other municipalities have enacted ordinances charging an administrative fee for any vehicle impoundment associated with an arrest. For example, the City of Sweetwater imposes an “impoundment administrative fee” on all vehicles seized incident to an arrest. The fee is \$500 if the impoundment stems from a felony arrest and \$250 if the impoundment stems from a misdemeanor.²²

The City of Winter Springs imposes an administrative fee for impoundment arising from 12 offenses enumerated in the authorizing ordinance, ranging from prostitution to dumping litter weighing more than 15 pounds.²³ The registered owner may request a hearing, accruing additional storage fees either pending the hearing or posting a bond equal to the amount of the administrative fee (\$550). If the registered owner waives the right to a hearing, the administrative fee is reduced to \$250. These fees are payable to the city but are collected by towing companies.²⁴

²⁰ Sarasota Police Department, *Vehicle Seizure Program*, available at <http://www.sarasotapd.org/vehicle-seizure-program/> (last visited Mar. 29, 2017).

²¹ Bradenton, FL Code of Ordinances, ch. 54, art. IV (2013).

²² Sweetwater, FL Code of Ordinances, ch. 42-1, s. 42.1(c) (2013).

²³ City of Winter Springs, Ordinance No. 2016-01 (effective October 23, 2016).

²⁴ Florida House of Representatives, *House Bill 193 Staff Analysis*, (Feb. 22, 2017) at p. 7, Winter Springs Police, Notice of Right to Hearing Form, available at <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0193c.TIS.DOCX&DocumentType=Analysis&BillNumber=0193&Session=2017> (last visited April 10, 2017).

III. Effect of Proposed Changes:

The bill prohibit a county or municipality from imposing a fee on an authorized wrecker operator or a vehicle storage company for towing, storing, or impounding a vehicle. This prohibition does not affect the authority of a county or municipality to levy a local business tax.

The bill also prohibits a county or municipality from imposing a charge, cost, expense, fine, fee, or penalty, other than the reasonable costs of towing and storage incurred by an authorized wrecker operator, on the registered owner or lienholder of a vehicle removed and impounded by an authorized wrecker operator.

In addition, the bill provides that a county or municipality may impose a reasonable fee or charge for towing and storage expenses, not to exceed the maximum rates approved by ordinance or rule under ss. 125.0103 or 166.043, F.S., on the legal owner of a vehicle if a county or municipal law enforcement officer has caused the owner's vehicle to be towed to and impounded at a facility owned by the county or municipality.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Art. VII, s. 18(b) of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that counties or municipalities have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2017-2018 is \$2 million or less.^{25,26,27}

The Revenue Estimating Conference has not estimated the fiscal impact of this bill. If the bill reduces the authority that counties and municipalities have to raise revenue by more than an insignificant amount, the mandates provision may apply and require a two-thirds vote of the membership in the Senate.

B. Public Records/Open Meetings Issues:

None.

²⁵ FLA. CONST. art. VII, s. 18(d).

²⁶ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited April 5, 2017).

²⁷ Based on the Demographic Estimating Conference's population adopted on February 13, 2017. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited April 5, 2017).

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

The Revenue Estimating Conference has not estimated the fiscal impact of this bill.

B. Private Sector Impact:

If counties and municipalities can no longer impose certain fees on vehicle owners, there is likely to be a positive benefit to certain citizens.

C. Government Sector Impact:

There is likely to be a negative fiscal impact on local governments, to the extent they are using fees connected to towing as a revenue source.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 323.002 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.)

Recommended CS/CS by Appropriations Subcommittee on Finance and Tax on April 13, 2017:

The committee substitute prohibits a county or municipality from imposing a fee on an authorized wrecker operator or a vehicle storage company for towing, storing, or impounding a vehicle. This prohibition does not affect the authority of a county or municipality to levy a local business tax.

CS by Community Affairs on March 22, 2017:

Provides that a county or municipality may not adopt or maintain an ordinance or rule that imposes a charge, cost, expense, fine, fee or penalty other than the reasonable costs of towing and storage incurred by an authorized wrecker operator, on the registered owner of a vehicle removed and impounded by an authorized wrecker operator. However,

a county or municipality may impose a reasonable fee or charge for towing and storage not to exceed maximum rates if the county or municipality has caused the owner's vehicle to be towed to and impounded at a facility owned by the county or municipality.

B. Amendments:

None.