

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 282

INTRODUCER: Senator Artiles

SUBJECT: Towing and Storage Fees

DATE: March 21, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	<b>Pre-meeting</b>
2.			TR	
3.			AFT	
4.			AP	

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**I. Summary:**

SB 282 prohibits a county or municipality from enacting a rule or ordinance that imposes a fee or charge on authorized wrecker operators or vehicle storage companies for towing, storing, or impounding a vehicle in certain situations. The bill does not prohibit a county or municipality from levying a local business tax. It also does not affect the ability of a county or municipality to impose a reasonable fee or charge on the legal owner of a vehicle if a county or municipality has caused the owner's vehicle to be towed to and impounded at a facility owned by the county or municipality.

**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.<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. 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>2</sup>

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<sup>1</sup> Section 323.002(1)(c), F.S.

<sup>2</sup> Section 323.002(1)(a)-(b), F.S.

Unauthorized wrecker operators are not permitted to initiate contact with a wrecked or disabled vehicle.<sup>3</sup> 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:

- Their full name;
- Driver's license number;
- That they are not a member of the wrecker operator system;
- That the vehicle is not being towed for the owner's insurance company or lienholder;
- Whether they have an insurance policy providing \$300,000 in liability coverage and \$50,000 in on-hook cargo coverage; and
- Maximum rates for towing and storage.<sup>4</sup>

The unauthorized wrecker operator is also required to disclose this information to any law enforcement officer present.<sup>5</sup> 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. An unauthorized wrecker operator misrepresenting his or her status as an authorized wrecker operator commits a first degree misdemeanor.<sup>6</sup> Unauthorized wrecker operators also are prohibited from monitoring police radios to determine the location of wrecked or disabled vehicles.<sup>7</sup>

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.<sup>8</sup> Municipalities are also authorized to adopt maximum rate ordinances.<sup>9</sup>

### **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.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> The hold must be in writing and include:

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<sup>3</sup> Section 323.002(2)(b), F.S.

<sup>4</sup> Section 323.002(2)(c), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Section 323.002(2)(d), F.S.

<sup>7</sup> Section 323.002(2)(a), F.S.

<sup>8</sup> Section 125.0103(1)(c), F.S.

<sup>9</sup> Section 166.043(1)(c), F.S.

<sup>10</sup> Section 323.001(1), F.S.

<sup>11</sup> Section 323.001(4)(a)-(e), F.S.

<sup>12</sup> Section 323.001(4)(f)-(g), F.S.

- 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>13</sup>

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.<sup>14</sup> 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.<sup>15</sup>

### **Authority for Local Governments to Charge Fees**

Counties and cities do not have authority to levy taxes, other than ad valorem taxes, except as provided by general law.<sup>16</sup> However, local governments possess the authority to impose user fees or assessments by local ordinance; as such, authority is within the constitutional and statutory home rule powers of local governments.<sup>17</sup> The key distinction between a tax and a fee is that fees are voluntary and benefit particular individuals in a manner not shared by others in the public.<sup>18</sup> 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.”<sup>19</sup> 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.<sup>20</sup> 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

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<sup>13</sup> Section 323.001(5), F.S.

<sup>14</sup> Section 323.001(2), F.S.

<sup>15</sup> Section 323.001(2)(a)-(b), F.S.

<sup>16</sup> Art. VII, s. 1(a), Fla. Const.

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

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

<sup>19</sup> *Id.* at 758-59.

<sup>20</sup> Sarasota Police Department, *Vehicle Seizure Program*, available at <http://www.sarasotapd.org/vehicle-seizure-program/> (last accessed Jan. 31, 2017).

(\$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.<sup>21</sup>

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.<sup>22</sup>

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.<sup>23</sup> 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 hearing, the administrative fee is reduced to \$250. These fees are payable to the city but are collected by towing companies.<sup>24</sup>

By contract, some municipalities require wrecker services to pay a monthly fee for serving as authorized wrecker operators. For example, the contract between the City of Sarasota and a wrecker operator requires the operator to pay the city \$10,151 per month for “the opportunity to provide” wrecker services, as well as \$500 for each impounded vehicle sold by the wrecker service.<sup>25</sup>

### III. Effect of Proposed Changes:

The bill prohibits a county or municipality from enacting an ordinance that would impose a fee or charge on an authorized wrecker operator or a vehicle storage company for towing, storing, or impounding a vehicle. This prohibition applies to and includes, but is not limited to, situations where:

- The county or municipality contacts the wrecker operator or the vehicle storage company to provide such services.

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<sup>21</sup> Bradenton, FL Code of Ordinances, ch. 54, art. IV (2016).

<sup>22</sup> Sweetwater, FL Code of Ordinances, ch. 42-1, s. 42.1(c) (2017).

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

<sup>24</sup> Florida House of Representatives, *House Bill 193 Staff Analysis* (Feb. 22, 2017) Winter Springs, FL Notice of Right to Hearing Form available at

<http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=h0193c.TIS.DOCX&DocumentType=Analysis&BillNumber=0193&Session=2017>.

<sup>25</sup> Florida House of Representatives, *House Bill 193 Staff Analysis* (Feb. 22, 2017) Agreement for Wrecker Towing and Storage Services, City of Sarasota and J&G WFR, Inc. dba Direct Towing Form available at

<http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=h0193c.TIS.DOCX&DocumentType=Analysis&BillNumber=0193&Session=2017>.

- A county or municipal law enforcement officer causes a vehicle to be towed, stored, or impounded after an accident or after the vehicle has become disabled.
- A vehicle is towed, stored, or impounded as a result of the commission or attempted commission of a crime or misdemeanor.
- A county or municipal law enforcement officer causes a vehicle to be towed, stored, or impounded when the owner or operator is incapacitated.
- A vehicle is towed at the request of a person who is not a law enforcement officer or at the request of a person as set forth in s. 715.07(2), F.S.

The bill does not affect a county or municipality's authority to levy a reasonable business tax under ss. 205.0315, 205.033, or 205.0535, F.S. The bill also does not affect the county or municipality's ability to impose a reasonable fee or charge, not exceeding maximum rates, on the legal owner of a vehicle if a county or municipal law enforcement officer has caused the owner's vehicle to be towed and impounded at a facility owned by the county.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Article VII, s. 18(b) of the Florida Constitution requires a two-thirds vote of the membership of each house of the Legislature in order to enact a general law that reduces the authority of municipalities and counties to raise revenues in the aggregate. The bill may reduce the authority of counties and municipalities to raise revenues because it would eliminate their ability to collect fees via ordinances on wrecker operators or vehicle storage companies. Article VII, s. 18(d) of the Florida Constitution provides an exemption if the law is determined to have an insignificant fiscal impact of less than \$2 million. No fiscal estimate is currently available.

If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

##### **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:**

If counties and municipalities can no longer impose certain fees on wrecker operators and vehicle storage companies, there is likely to be a positive benefit to these private entities.

**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 the following sections of the Florida Statutes: 125.01047 and 166.04465.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.