

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 Community Affairs

BILL: SB 1792

INTRODUCER: Senator Gruters

SUBJECT: Towing and Immobilizing of Vehicles and Vessels

DATE: March 25, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Yeatman	CA	Pre-meeting
2.			IS	
3.			RC	

I. Summary:

SB 1792 requires a county or municipality to establish maximum rates for the towing and storage of vessels, as well as placing a cap on the maximum rate for immobilizing a vessel. The bill prohibits a county or municipality from enacting a rule or ordinance that imposes a fee or charge on an authorized wrecker operator, a towing business, or a vehicle immobilization service. The bill does not impact the ability of a county or municipality to impose a reasonable administrative fee on the registered owner or other legally authorized person in control of a vehicle or vessel, or the lienholder of a vehicle or vessel to cover the cost of enforcement actions on public property. The bill provides that an authorized wrecker operator, a towing business, or vehicle immobilization service may impose and collect the administrative fee and is only required to remit the fee to the county or municipality after it has been collected.

The bill prohibits counties and municipalities from adopting or enforcing ordinances or rules that impose additional fees on the registered owner or lienholder of a vehicle or vessel when the vehicle or vessel is towed by an authorized wrecker operator. The bill provides that the reasonable administrative fee or charge imposed by the county or municipality must be included as part of the lien on the vehicle or vessel by the towing operator. The bill creates s. 715.08, F.S., regarding vehicle immobilization services.

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

¹ Section 323.002(1)(c), F.S. The definition of “vehicle” does not include a vessel or trailer intended for the transport on land of a vessel. *See* s. 320.01(20), F.S. (defining “motor vehicle” for the purpose of issuance of motor vehicle licenses and

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.² 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.”³

Unauthorized wrecker operators are not permitted to initiate contact with the owner or operator of a wrecked or disabled vehicle.⁴ If the owner or operator initiates contact, the unauthorized wrecker operator must disclose in writing, before the vehicle is connected to the towing apparatus:

- His or her full name;
- Driver 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 or operator’s insurance company or lienholder;
- Whether he or she has an insurance policy providing at least \$300,000 in liability coverage and \$50,000 in on-hook cargo coverage; and
- The maximum charges for towing and storage.⁵

The unauthorized wrecker operator must disclose this information to the owner or operator in the presence of a law enforcement officer if an officer is present at the scene of the accident.⁶ 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.⁷ An unauthorized wrecker operator misrepresenting his or her status as an authorized wrecker operator commits a first degree misdemeanor.⁸ In either instance, the unauthorized wrecker operator’s wrecker, tow truck, or other motor vehicle used during the offense may be immediately removed and impounded.⁹ Unauthorized wrecker operators also are prohibited from monitoring police radios to determine the location of wrecked or disabled vehicles.¹⁰

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 where the 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

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.”)

² Section 323.002(1)(c), F.S.

³ Section 323.002(1)(a)-(b), F.S.

⁴ Section 323.002(2)(b), F.S.

⁵ Section 323.002(2)(c), F.S.

⁶ *Id.*

⁷ *Id.*

⁸ Section 323.002(2)(d), F.S.

⁹ Section 323.002(2)(c) and (d), F.S.

¹⁰ Section 323.002(2)(a), F.S.

towing fees, the county ordinance will not apply within the municipality.¹¹ A county or municipality may not establish rates, including a maximum rate, for the towing of vessels.¹²

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.¹³ A hold may be applied where the officer has probable cause to believe the vehicle:

- Should be seized under the Florida Contraband Forfeiture Act¹⁴ or ch. 379, F.S.;¹⁵
- 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.¹⁶

An officer may also apply a hold when the vehicle is impounded pursuant to ss. 316.193 (driving under the influence) or 322.34 (driving while license suspended, revoked, canceled, or disqualified), F.S., and when the officer is complying with a court order.¹⁷ 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 (including its color, make, model, body style, and year; VIN (Vehicle Identification Number); registration license plate number, state, year; and validation sticker number, state and year), the specific reason for placing the hold, the condition of the vehicle, the location where the vehicle is being held, and the name, address, and telephone number of the wrecker operator and storage facility.¹⁸

The investigating agency must inform the wrecker operator in writing within the five day holding period if the agency intends to hold the vehicle for a longer period of time.¹⁹ The vehicle owner is liable for towing and storage charges for the first five days. If the vehicle will be 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.²⁰

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;

¹¹ Sections 125.0103(1)(c) and 166.043(1)(c), F.S.

¹² Compare 125.0103(1)(c), F.S., (requiring a county to establish maximum rates for towing of vehicles) with s. 715.07, F.S. (towing of vehicles or vessels parked on private property).

¹³ Section 323.001(1), F.S.

¹⁴ Sections 932.701-932.7062, F.S.

¹⁵ Chapter 379, F.S., includes multiple instances when a vehicle or vessel may be forfeited due to unlawful acts committed with such vehicle or vessel concerning fish and wildlife conservation.

¹⁶ Section 323.001(4)(a)-(e), F.S.

¹⁷ Section 323.001(4)(f)-(g), F.S.

¹⁸ Section 323.001(5), F.S.

¹⁹ Section 323.001(2), F.S.

²⁰ Section 323.001(2)(a)-(b), F.S.

- The owner, lessor, or authorized person acting on behalf of the owner or lessor of property on which the vehicle or vessel is wrongly parked (as long as the removal is performed in compliance with 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 ss. 83.806 or 715.104, F.S.); or
- Any law enforcement agency.²¹

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.²² 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.²³ 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.²⁴ 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.”²⁵ Usually a fee is applied for the use of a service and is tied directly to the cost of maintaining the service. Money collected from a fee is not applied to uses other than to provide the service for which the fee is applied. An administrative fee for towing and storage services may be permissible to the extent the fee provides a specific benefit to vehicle owners.²⁶

Fees Related to Towing, Storage, and Wrecker Operators

Some municipalities impose an administrative fee on vehicles towed by an authorized wrecker operator if the vehicle is seized or towed in connection with certain misdemeanors or felonies. The administrative fee is collected by the towing company on behalf of the municipal government and, in addition to towing and storage fees, must be paid before the vehicle is released to the registered owner or lienholder.

The City of Sarasota seizes the vehicle of those arrested for crimes related to drugs or prostitution.²⁷ 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 to receive the vehicle back pending the outcome of the hearing, or the owner may leave the vehicle in impound, incurring additional fees; or
- The registered owner may waive the right to a hearing and pay the civil penalty (\$500).

²¹ Section 713.78(2), F.S.

²² FLA. CONST., art. VII, s. 1(a).

²³ *City of Boca Raton v. State*, 595 So. 2d 25, 30 (Fla. 1992).

²⁴ *City of Miami v. Quik Cash Jewelry & Pawn, Inc.*, 811 So.2d 756, 758 (Fla. 3rd DCA 2002).

²⁵ *Id.*

²⁶ See *Jasinski v. City of Miami*, 269 F. Supp. 2d 1341, 1348 (S.D. Fla. 2003).

²⁷ Sarasota Police Department, *Vehicle Seizure Program*, available at <https://www.sarasotapd.org/about-us/vehicle-seizure-program> (last visited March 22, 2019).

If the registered owner of the vehicle is unable to pay the administrative penalty within 35 days, the city disposes of the vehicle. The City of Bradenton uses a similar process and rate structure.²⁸

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.²⁹

The City of Winter Springs imposes an administrative fee for impoundment arising from twelve offenses enumerated in the authorizing ordinance, ranging from prostitution to dumping litter weighing more than 15 pounds.³⁰ The registered owner may request a hearing, either accruing additional storage fees 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.

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.³¹

Additionally, a county or municipality may require a fee from a towing business in order to be licensed to operate within that county or municipality. For example, to operate a towing business in Miami-Dade County a person or corporation must apply to be a registered towing business with the county, which includes a \$412 annual fee, a vehicle safety inspection with a \$94 decal fee, proof of insurance requirements, and background checks (\$24 fee) of the owners of the towing business.³²

III. Effect of Proposed Changes:

Sections 1 and 3 amend ss. 125.0103 and 166.043, F.S., to authorize a county or municipality to regulate the rates for the towing or immobilization of vessels. A county or municipality is required to establish a maximum rate that may be charged for the towing, immobilization or storage of vessels. The bill defines the term “immobilize” as the act of rendering a vehicle or

²⁸ Bradenton, Fla. Code of Ordinances, ch. 54, art. IV, *available at* https://library.municode.com/fl/bradenton/codes/code_of_ordinances?nodeId=PTIICOOR_CH54OFMIPR_ARTIVIMMOVE_USFAPDRRECR (last visited March 22, 2019).

²⁹ Sweetwater, Fla. Code of Ordinances, ch. 42-1, s. 42.1(c), *available at* https://library.municode.com/fl/sweetwater/codes/code_of_ordinances?nodeId=PTIICOOR_CH42MOVETR_ARTIINGE_S_42-1IMMOVE (last visited March 22, 2019).

³⁰ Winter Springs, Fla. Code of Ordinances, ch. 12, art. V., s. 12-100, *available at* https://library.municode.com/fl/winter_springs/codes/code_of_ordinances?nodeId=PTIICOOR_CH12MOVETR_ARTVIMMOVE_S12-100IMMOVEUSFACEMICRPATRRE (last visited March 22, 2019).

³¹ City of Sarasota, *Agreement for Wrecker Towing and Storage Services* (May 5, 2010) (on file with the Senate Community Affairs Committee).

³² Miami-Dade County, *Towing License*, *available at* <http://www.miamidade.gov/licenses/towing.asp> (last visited March 22, 2019).

vessel inoperable by the use of a device such as a “boot,” “club,” “barnacle,” or any other device that renders a vehicle or vessel inoperable.

Sections 2 and 4 create ss. 125.01047 and 166.04465, F.S., to prohibit a county or municipality from enacting a rule or ordinance that imposes a fee or charge on an authorized wrecker operator, a towing business for towing, impounding, or storing a vehicle or vessel, or a vehicle immobilization service. The term “towing business” means a business that provides towing services for monetary gain.

The prohibition does not affect the county or municipality’s ability to levy a business tax under ss. 205.0315, 205.033, 205.043, or 205.0535, F.S., or to impose and collect a reasonable administrative fee or charge from the registered owner or other legally authorized person in control of a vehicle or vessel, or the lienholder of a vehicle or vessel, to cover the cost of enforcement, including parking enforcement, by the county when the vehicle or vessel is towed from or immobilized on public property. The reasonable administrative fee may not exceed 25 percent of the maximum towing or immobilization rate.

The bill authorizes an authorized wrecker operator, towing business, or vehicle immobilization service to impose and collect the administrative fee or charge on behalf of the county or municipality, but only remit such fee or charge after it is collected.

Section 5 amends s. 332.002, F.S., to prohibit a county or municipality from adopting or maintaining an ordinance or rule that imposes a charge, cost, expense, fine, fee, or penalty, on a registered owner or other legally authorized person in custody or in control of a vehicle or vessel, or the lienholder of a vehicle or vessel, when the vehicle or vessel is towed by an authorized wrecker operator.

A county or municipality may 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, or the lienholder of a vehicle or vessel, when the vehicle or vessel is towed by an authorized wrecker operator.

The fee or charge may not 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. The authorized wrecker operator or towing business is authorized to collect the administrative fee or charge on behalf of the county and municipality and must remit such fee or charge to the county or municipality after it is collected.

Section 6 amends s. 713.78, F.S., to provide that a reasonable administrative fee or charge imposed by a county or municipality must be included as part of the lien on the vehicle or vessel held by the towing operator.

Section 7 amends s. 715.07, F.S., to revise notice requirements for towing a vehicle from private property.

Section 8 creates s. 715.08, F.S., regarding vehicle immobilization services.

The bill defines the following terms:

- “Immobilize” means the act of rendering a vehicle or a vessel inoperable by the use of a vehicle immobilization device.
- “License” means a license, a permit, or other similar grant of authority to operate issued to an operator by a local government.
- “Operator” means any person, as defined in s. 1.01(3)³³, F.S., individual, or entity, including, but not limited to, a sole proprietor, an independent contractor, a partnership, or a similar business entity, offering or operating a vehicle immobilization service.
- “Vehicle immobilization device” means any mechanical device that is designed or used to be attached to a wheel, a tire, or other part of a parked motor vehicle which includes, but is not limited to, a “boot” or “club,” the “Barnacle,” or any other device that renders a vehicle or vessel inoperable.
- “Vehicle immobilization service” means any service in which vehicles are immobilized.

The bill establishes requirements for businesses engaged in vehicle immobilization operations. A business engaged in vehicle immobilization operations must be licensed by the local government where the operator will provide services. The operator may not provide immobilization services on any property or lot in which the operator has an ownership or other interest of value if that property or lot is used for the business of parking, including as a parking lot or valet parking operation, or if the parking of motor vehicles has otherwise been allowed.

The bill requires each operator to conduct vehicle immobilization services using a name that is distinguishable from any other existing operator.

An operator must issue all individuals under the operator’s employment, or who are acting on behalf of the operator, including the operator himself or herself, or partners, members, or officers of the operator, a photo identification with the name of the operator. Such individual must carry this operator-issued identification with him or her at all times while performing vehicle immobilization services.

All individuals under an operator’s employment, or who are acting on behalf of the operator, including the operator himself or herself, or partners, members, or officers of the operator, are required to wear a uniform that clearly identifies the name of the operator while performing vehicle immobilization services.

All vehicles being used by operators or individuals under an operator’s employment to perform vehicle immobilization services must have prominently displayed on both sides of each vehicle the name of the operator and that the operator performs vehicle immobilization services, the address from which the operator conducts business, and the telephone number of the operator. The lettering must be in a contrasting color to the color of the vehicle, or if a vehicle magnet or decal is used, the lettering must be in a contrasting color to the color of the magnet or decal. The lettering must be at least one and one-half inches in height.

³³ Section 1.01(3), F.S., provides that “person” includes individuals, children, firms, associations, joint adventurers, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

The bill authorizes an operator to conduct vehicle immobilization services 24 hours per day, 7 days per week, and 365 days per year. The operator must maintain a telephone number that is staffed by a live individual 24 hours per day and 365 days per year to communicate immediately with a driver or owner of an immobilized vehicle.

An operator who has immobilized a vehicle is required to immediately affix a notice to the driver's side window containing, at minimum, the following information:

- A warning that any attempt to move the vehicle may result in damage to the vehicle; and
- The fee required to remove the immobilization device, the name of the operator, and the telephone number to call to have the immobilization device removed.

It is unlawful for a vehicle immobilization service or operator to:

- Immobilize vehicles on any private property without having entered into a valid written contract for vehicle immobilization services with the private property owner, the lawful lessee, the managing agent, or other person in control of the property;
- Fail to arrive on the site where a vehicle was immobilized within 1 hour of being contacted by the owner, the driver, or the person in custody or in control of the vehicle;
- Fail to release a vehicle from immobilization within 1 hour after receipt of payment from the owner, the driver, or the person in charge of a vehicle that has been immobilized; and
- Fail to provide a receipt of payment of the immobilization fee to the owner, the driver, or the person in custody or in control of an immobilized vehicle. The receipt must have the name, address, and telephone number of the operator; the name of the individual under the operator's employment or the partner, member, or officer of such operator who removed the immobilization device; and the operator's license number as issued by the department.

An operator is liable for the cost of repairing damages to a vehicle caused by an immobilization device, but is not liable for any damages resulting from a the vehicle owner attempting to operate the vehicle with the device attached or to remove the device. If the owner of a vehicle attempts to operate the vehicle with the device attached or remove the device, the vehicle owner is liable to the operator for damages to the device.

An operator is required to maintain minimum insurance coverage in the amount of \$1 million in commercial general liability, \$1 million in commercial automobile liability, \$1 million in garage liability, \$1 million in professional liability, and \$1 million in umbrella coverage and must have workers' compensation coverage on all employees.

The bill prohibits an operator from doing the following:

- Procure a license issued by a local government by fraudulent conduct or by a false statement of a material fact.
- Pay, in the form of a gratuity or any other valuable consideration, any person who does not have ownership in property or in a lot being used for the business of parking, or allowing for the parking of, motor vehicles for information as to illegally parked vehicles.
- Make any payment or other valuable consideration to an owner, an employee, an agent, or a person in possession of property or a lot that is being used for the business of parking, or allowing for the parking of, motor vehicles in excess of the reasonable and customary fee ordinarily charged by such person in possession of such property or lot for parking thereon.

- Charge fees in excess of those provided for in the bill.
- Impound any vehicle located on any portion of a public way within this state, unless such operator is contracted to do so by a governmental agency.

The bill establishes signage requirements. An operator is prohibited from installing or attaching a device to any motor vehicle without posting signs that meet the following requirements:

- The operator must install signs at each designated entrance to a parking lot or parking area where parking prohibitions are in effect. If there is no designated entrance, the operator shall erect the signs so they are clearly visible from every parking space;
- Signs must be a minimum of 18 inches by 24 inches, or if not allowed in such size, the maximum allowable size, with lettering a minimum height of one and one-half inches; and
- Sign lettering must be in a solid color that contrasts with the sign's background.

An operator's signs must clearly state the following, at a minimum:

- WARNING: IMMOBILIZATION ENFORCED 24/7.
- UNAUTHORIZED VEHICLES MAY BE IMMOBILIZED AT OWNER'S RISK AND EXPENSE.
- THE IMMOBILIZATION OPERATOR IS ...(insert name of vehicle immobilization service)....
- THE TELEPHONE NUMBER FOR IMMOBILIZATION REMOVAL IS ...(insert operator's telephone number). . . .

The sign may not contain abbreviations.

Local governments are authorized to fine operators and revoke, suspend, or not renew a license for due cause. A local government intending to take adverse action against an operator must first provide notice and conduct a hearing. The hearing notice must be in writing, served on the operator at least 30 days before the hearing date, state the grounds of the complaint, and designate a time and place for the hearing. The notice must be served upon the license holder by certified mail, signature required, at the address on the operator's current license application.

Any operator whose license has been revoked is disqualified from reapplying to the local government for another license for 12 months immediately following the revocation. The violation of any provision of this section by any person with any ownership interest in the vehicle immobilization service may result in the revocation of the operator's license.

The maximum fine for any violation is \$1,000. The maximum suspension of a license for any one violation is 30 days.

Section 9 provides the bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill will reduce expenses for towing companies that are located in counties or municipalities currently charging a fee on authorized wrecker operators.

C. Government Sector Impact:

The bill will have an indeterminate impact on local government revenue. The bill prohibits counties and municipalities from charging certain fees to authorized wrecker operators and towing companies which are currently charged by some jurisdictions, while authorizing the collection of administrative fees for the cost of enforcement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 125.0103, 166.043, 323.002, 713.78, and 715.07 of the Florida Statutes.

This bill creates sections 125.01047, 166.04465, and 715.08 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.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
