

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: CS/SB 1792

INTRODUCER: Community Affairs Committee and Senator Gruters

SUBJECT: Towing and Immobilizing of Vehicles and Vessels

DATE: April 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Price</u>	<u>Miller</u>	<u>IS</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1792 addresses the towing, removal, storage, and immobilization of vehicles and vessels. Generally, the bill:

- Provides various definitions.
- Authorizes a county or municipality to regulate the rates for the towing, immobilization, and removal of vessels parked on private property, and their storage.
- Prohibits counties and municipalities, respectively, from enacting certain ordinances or rules that impose fees or charges on authorized wrecker operators, towing businesses, or vehicle immobilization services.
- Prohibits counties or municipalities from imposing charges, costs, expenses, fines, fees, or penalties on registered owners, other legally authorized persons in custody or in control, or lienholders of vehicles or vessels.
- Requires a reasonable administrative fee or charge imposed by a county or municipality to be included as part of the lien on the vehicle or vessel held by the towing operator.
- Includes vessels in the current prohibition against charging a vehicle storage fee when stored for less than six hours.
- Revises various related notice provisions.
- Revises requirements relating to towing and removing vehicles or vessels to include persons who are in custody of a vehicle or of a vessel.
- Removes provisions related to liability for improper removal of a vehicle or vessel.
- Establishes a regulatory structure applicable to vehicle immobilization services.

- Provides exemptions to bill requirements for certain ordinances enacted by a charter county with a population exceeding 1.3 million on or before January 1, 2019.

The fiscal impact on local government and on the private sector is indeterminate. See the Fiscal Impact Statement heading for details.

The bill's provisions in general may limit the ability of municipalities and counties to raise revenue, thus requiring approval of the bill by each house of the Legislature by two-thirds vote of its membership. However, whether such approval is required is indeterminate. See the Municipality/County Mandates Restrictions heading for details.

The bill takes effect July 1, 2019.

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.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

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 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.

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

If a county chooses to regulate the activity, 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 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

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.

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.

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;
- 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

¹⁸ Section 323.001(5), F.S.

¹⁹ Section 323.001(2), F.S.

²⁰ Section 323.001(2)(a)-(b), F.S.

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).

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).

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

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

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_S42-1IMMOVE (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).

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., both relating to local government ordinances and rules imposing price controls on certain lawful business activity, to apply to vessels the provisions of those sections currently applicable to vehicles towed from (and then stored elsewhere) or immobilized on private property. Thus, with respect to activities on private property, the bill authorizes a county or municipality to regulate the rates for the towing, immobilization, removal and storage of vessels. If a county does so, the county would be required to establish a maximum rate that may be charged for such activities. However, if a municipality within a county chooses to establish a maximum rate, the county’s ordinance would not apply within that municipality.

These sections of the bill also define identically the term “immobilize” as the act of rendering a vehicle or 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., addressing respectively county and municipal rules and ordinances relating to towing or to vehicle immobilization services. 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 for towing, impounding, or storing a vehicle or vessel; or a vehicle immobilization service, as defined in the bill in new s. 715.08, F.S. The bill defines the term “towing business” to mean 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 from the registered owner or other legally authorized person in control of the vehicle or vessel, or the lienholder, a reasonable administrative fee or charge to cover the cost of enforcement, including parking enforcement, by the county or municipality 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.

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).

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 requires the operator, business, or service to remit such fee or charge to the county or municipality after it is collected.

On the bill's effective date, rules or ordinances enacted by counties (with certain exceptions discussed below) and municipalities that impose 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 would be preempted by the bill's prohibition against such rules or ordinances. Counties and municipalities that have not enacted an ordinance imposing such fees or charges would be prohibited from doing so.

With respect to the referenced exception, the bill provides that s. 125.0147, F.S., does not affect an ordinance, resolution, or regulation enacted on or before January 1, 2019, by a charter county with a population exceeding 1.3 million according to the most recent decennial census which relates to the towing, immobilization, removal, or storage of vehicles or vessels, including any amendment or revision made to such ordinance, resolution, or regulation after July 1, 2019. According to the U.S. Census Bureau, based on the 2010 census, the specified charter counties include Broward, Miami-Dade, and Palm Beach.³³

An ordinance enacted by such charter county on or before January 1, 2019, would not be affected by the bill's revisions to s. 125.0147, F.S. The ordinance could continue in force indefinitely. Should the ordinance become ineffective for any reason, such charter county would be prohibited from imposing 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 county would then be limited to imposing and collecting the authorized reasonable business tax and administrative fee or charge, capped at 25 percent of the maximum towing or immobilization rate set by the county.

Section 5 amends s. 332.002, F.S., relating to county and municipal wrecker operator systems and penalties for operation outside of a system, by creating a new subsection (4) of that section. The bill, with one exception, prohibits a county or municipality from adopting or maintaining an ordinance or rule that impose 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

³³ Office of Economic & Demographic Research, *Census Population Counts by County and City in Florida, April 1, 2000 and 2010*, available at http://edr.state.fl.us/Content/population-demographics/data/Pop_2010Census.pdf (last viewed April 1, 2019).

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.

The bill provides these provisions do not affect an ordinance, resolution, or regulation enacted on or before January 1, 2019, by a charter county with a population exceeding 1.3 million according to the most recent decennial census which imposes a charge, cost, expense, fine, fee, or penalty on a 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 under ch. 323, F.S.

The described ordinance, if enacted by such charter county on or before January 1, 2019, would not be affected by these revisions. The ordinance could continue in force indefinitely. Should the ordinance become ineffective for any reason, such charter county would be prohibited from enacting a new ordinance. The county would then be limited to imposing and collecting from the registered owner or other legally authorized person in control of the vehicle or vessel the authorized reasonable administrative fee or charge, capped at 25 percent of the maximum towing rate set by the county.

Section 6 amends s. 713.78, F.S., relating to liens for recovering, towing, or storing vehicles and vessels. The bill provides 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. The bill includes vessels in the current prohibition against charging a reasonable vehicle storage fee when stored for less than six hours.

Section 7 amends s. 715.07, F.S., relating to removal of vehicles or vessels parked on private property. The bill inserts references to persons in *custody* or *in custody or control* of a vehicle or vessel, in current provisions³⁴ of law to:

- Require the entity that tows or removes a vehicle or vessel, and proposes to make a person *in custody* of a vehicle or vessel to pay the costs of towing and storage prior to redemption of the vehicle or vessel, to keep on file and on record with local law enforcement a copy of the current rates to be charged by the entity.
- Require the entity that tows or removes a vehicle or vessel from private property without the consent of the person *in custody* to have specified identifying company information clearly printed on the entity's vehicle.
- Require the entity that tows or removes a vehicle or vessel to release the vehicle within one hour to *the person in custody or control*, who has the right to inspect the vehicle or vessel and who may not be required to sign a specified release or waiver of liability for damages noted by that person at the time of redemption.

With respect to required notices, the bill removes:

- A distance requirement within which a notice must be placed at a driveway access or curb cut allowing vehicular access to the property.
- Size and material requirements for certain information required on the sign.

³⁴ The current provisions apply the requirements to an entity as they relate, respectively, to an owner, operator, or person in control; to the owner or other legally authorized person in control; or to an owner, custodian, or agent.

- A height requirement for the sign structure.

This section of the bill also removes the current language regarding liability for damages caused by improper removal, transportation, or storage of a vehicle or vessel, and for court costs.

The bill retains current law deeming the section's requirements to be minimum standards and providing the standards do not preclude enactment of additional, local regulations, including the right to regulate rates when vehicles or vessels are towed from private property.

Section 8 creates s. 715.08, F.S., establishing a regulatory structure applicable to 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)³⁵, 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 and authorizes use of vehicle immobilization devices on trespassing motor vehicles as provided in the new section of law.

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. Each individual must carry

³⁵ 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.

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.

The bill authorizes an operator to conduct vehicle immobilization services 24 hours per day, seven 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 one 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 one 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, driver, or person in charge 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:

- Procuring a license issued by a local government by fraudulent conduct or by a false statement of a material fact.
- Paying, 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.
- Making 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.
- Charging fees in excess of those provided for in the bill.
- Impounding 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.

The bill provides that s. 715.08, F.S., does not affect an ordinance, resolution, or regulation enacted on or before January 1, 2019, by a charter county with a population exceeding 1.3 million according to the most recent decennial census which relates to the towing, immobilization, removal, or storage of vehicles or vessels, including any amendment or revision made to such ordinance, resolution, or regulation after July 1, 2019.

The described ordinance, if enacted by such charter county on or before January 1, 2019, would not be affected by these revisions. The ordinance could continue in force indefinitely. Should the ordinance become ineffective for any reason, the charter county would be prohibited from enacting a new ordinance in conflict with the provisions of the new section.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds or that limit their ability to raise revenue or receive state tax revenue.

Subsection (b) of Article VII, s. 18 of the Florida Constitution provides that, except upon approval by each house of the Legislature by two-thirds vote of its 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 municipalities or counties have to raise revenue in the aggregate. However, these requirements do not apply to laws that have an insignificant fiscal impact on local governments, which for Fiscal Year 2018-2019 is forecast at slightly over \$2 million.^{36, 37, 38}

While local governments appear to benefit from potential revenue increases as a result of some of the bill's provisions; *e.g.*, the authorized administrative fees, fees associated with immobilization operator licensure, or the potential \$1,000 fines, other provisions in the

³⁶ FLA. CONST. art. VII, s. 18(d).

³⁷ 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>

³⁸ Based on the Florida Demographic Estimating Conference's November 5, 2018 population forecast for 2019 of 21,170,399. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last viewed April 1, 2019).

bill prohibit local governments, *e.g.*, from imposing amounts that may be currently imposed and may not be imposed in the future. The extent to which the potential revenue increases would be offset by the bill's prohibitions against local government imposition of the specified fees, charges, etc., is indeterminate. Thus, whether the bill would reduce the authority of municipalities or counties to raise in the aggregate revenue exceeding the "insignificant impact" ceiling is unknown. Approval of the bill by each house of the Legislature by two-thirds vote of its membership may be required.

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 contains provisions that may both increase and decrease revenues and expenses for the private sector. The fiscal impact of the bill on affected private sector businesses and individuals is indeterminate.

C. Government Sector Impact:

The bill contains provisions that may both increase and decrease revenues and expenses for local governments. The fiscal impact of the bill on local governments is indeterminate.

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 Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 26, 2019:

The committee substitute provides that certain provisions in the bill do not affect an ordinance, resolution, or regulation enacted on or before January 1, 2019 by a charter county with a population exceeding 1.3 million.

- B. **Amendments:**

None.