

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1237 Towing and Immobilizing of Vehicles and Vessels  
**SPONSOR(S):** Business & Professions Subcommittee; McClain and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1792

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	12 Y, 1 N	Darden	Miller
2) Business & Professions Subcommittee	14 Y, 0 N, As CS	Thompson	Anstead
3) State Affairs Committee			

### SUMMARY ANALYSIS

County and municipal governments may contract with wrecker operators to tow or remove wrecked, disabled, or abandoned vehicles from streets, highways, and accident sites within their jurisdiction. Counties and municipalities may establish a wrecker operator system to apportion towing services across multiple wrecker operators. Wrecker operators who participate in the wrecker operator system are known as authorized wrecker operators. Counties and municipalities are authorized to establish by ordinance or rule maximum rates for the towing and storage of vehicles. 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.

Vehicles or vessels parked without permission on private property may be towed at the direction of the owner or lessee of the property. The towing or removal must be conducted by a person regularly engaged in the business of towing vehicles or vessels and is subject to strict compliance with certain conditions and restrictions placed on the towing company. If the property is not a single-family residence, towing may only occur if notice is given via signage that must meet certain conditions.

The bill requires counties and municipalities to establish maximum rates for the towing and immobilization of vessels, and prohibits a county or municipality from enacting a rule or ordinance that imposes a fee or charge on authorized wrecker operators. The bill provides that an authorized wrecker operator 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 fees on the registered owner or lienholder of a vehicle or vessel removed and impounded by an authorized wrecker operator. The bill provides that a wrecker operator who recovers, removes, or stores a vehicle or vessel shall have a lien on the vehicle or vessel that includes the value of the reasonable administrative fee or charge imposed by a county or municipality.

The bill exempts a county with an existing towing license program as of January 1, 2019, from the prohibition on imposing a fee or charge on an authorized wrecker operator or on a towing business. However, the county would not be authorized to levy a business tax or impose and collect an administrative fee or charge.

The bill prohibits a municipality or county from enacting an ordinance or rule requiring an authorized wrecker operator to accept checks as a form of payment, and from authorizing attorney fees or court costs in connection with the towing of vehicles or vessels from private property. The bill expressly preempts the regulation of attorney fees and court costs in connection with the towing of vehicles or vessels from private property to the state and supersedes any municipal or county ordinance on the subject.

The bill may have an indeterminate fiscal impact on local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### 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.<sup>2</sup> Any wrecker operator that is included in the wrecker operator system is an “authorized wrecker operator” in the jurisdiction, while any wrecker operation not included is an “unauthorized wrecker operator.”<sup>3</sup>

Unauthorized wrecker operators are not permitted to initiate contact with the owner or operator of a wrecked or disabled vehicle.<sup>4</sup> 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 \$300,000 in liability coverage and \$50,000 in on-hook cargo coverage; and
- The maximum charges for towing and storage.<sup>5</sup>

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.<sup>6</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.<sup>7</sup> An unauthorized wrecker operator misrepresenting his or her status as an authorized wrecker operator commits a first degree misdemeanor.<sup>8</sup> 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.<sup>9</sup>

Unauthorized wrecker operators also are prohibited from monitoring police radios to determine the location of wrecked or disabled vehicles.<sup>10</sup>

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<sup>1</sup> S. 323.002(1)(c), F.S. The definition of “vehicle” does not include a vessel or trailer intended for the transport on land of a vessel. *See* s. 320.01, F.S. (defining “motor vehicle” for the purpose of issuance of motor vehicle licenses and separately defining a “marine boat trailer dealer” as a person engaged in “business of buying ... trailers specifically designed to be drawn by another vehicle and used for the transportation on land of vessels.”)

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

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

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

<sup>5</sup> S. 323.002(2)(c), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> S. 323.002(2)(d), F.S.

<sup>9</sup> S. 323.002(2)(c) and (d), F.S.

<sup>10</sup> S. 323.002(2)(a), F.S.

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.<sup>11</sup> A county or municipality may not establish rates, including a maximum rate, for the towing of vessels.<sup>12</sup>

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

An investigating agency may place a hold on a motor vehicle stored within a wrecker operator's storage facility for up to five business days.<sup>13</sup> A hold may be applied when 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>14</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>15</sup> The hold must be in writing and include the name and agency of the law enforcement officer placing the hold, the date and time the hold is placed on the vehicle, a general description of the vehicle, the specific reason for the hold, the condition of the vehicle, the location where the vehicle is being held, and the name and contact information for the wrecker operator and storage facility.<sup>16</sup>

The investigating agency must inform the wrecker operator within the five-day holding period if the agency intends to hold the vehicle for a longer period of time.<sup>17</sup> 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.<sup>18</sup>

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

- The owner of the vehicle or vessel;
- The owner, lessor, or authorized person acting on behalf of the owner/lessor of property on which the vehicle or vessel is wrongly parked (as long as the removal is performed pursuant to s. 715.07, F.S.);
- The landlord or authorized person acting on behalf of a landlord, when the vehicle or vessel remains on the property after the expiration of tenancy and the removal is performed pursuant to s. 83.806, F.S., or s. 715.104, F.S.; or
- Any law enforcement agency.<sup>19</sup>

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<sup>11</sup> S. 125.0103(1)(c) and 166.043(1)(c), F.S.

<sup>12</sup> Compare s. 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).

<sup>13</sup> S. 323.001(1), F.S.

<sup>14</sup> S. 323.001(4)(a)-(e), F.S.

<sup>15</sup> S. 323.001(4)(f)-(g), F.S.

<sup>16</sup> S. 323.001(5), F.S.

<sup>17</sup> S. 323.001(2), F.S.

<sup>18</sup> S. 323.001(2)(a)-(b), F.S.

<sup>19</sup> S. 713.78(2), F.S.

## 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.<sup>20</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>21</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>22</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>23</sup> Usually a fee is charged 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.<sup>24</sup>

## 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>25</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 (\$500.00), hearing costs (\$50.00), and towing and storage fees (\$125.00 plus \$25.00 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 (\$500.00).

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 the same process and rate structure.<sup>26</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>27</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>28</sup> 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 (\$550.00). If the registered owner waives the right to hearing, the administrative fee is reduced to \$250.00. These fees are payable to the city but are collected by towing companies.<sup>29</sup>

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<sup>20</sup> Art. VII, s. 1(a), Fla. Const.

<sup>21</sup> *City of Boca Raton v. State*, 595 So. 2d 25, 30 (Fla. 1992).

<sup>22</sup> *City of Miami v. Quik Cash Jewelry & Pawn, Inc.*, 811 So.2d 756, 758 (Fla. 3rd DCA 2002).

<sup>23</sup> *Id.* at 758-59.

<sup>24</sup> *See Jasinski v. City of Miami*, 269 F. Supp. 2d 1341, 1348 (S.D. Fla. 2003).

<sup>25</sup> Sarasota Police Department, *Vehicle Seizure Program*, <https://www.sarasotapd.org/about-us/vehicle-seizure-program> (last visited Mar. 11, 2019).

<sup>26</sup> Bradenton, Fla. Code of Ordinances, ch. 54, art. IV (2019).

<sup>27</sup> Sweetwater, Fla. Code of Ordinances, ch. 42-1, s. 42.1(c) (2019).

<sup>28</sup> Winter Springs, Fla. Code of Ordinances ch. 12, s. 12-100 (2019).

<sup>29</sup> Winter Springs, Fla. Notice of Right to Hearing Form. A copy of this form is attached as Appendix A.

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>30</sup>

### Towing from Private Property

Section 715.07, F.S., regulates the towing of vehicles or vessels parked on private property.<sup>31</sup> A vehicle or vessel may be towed at the direction of an owner or lessee of real property, or their designee, if the vehicle or vessel is parked on the property without permission.<sup>32</sup> A person regularly engaged in the business of towing vehicles or vessels must conduct the tow. The towing or removal of any vehicle or vessel from private property without the consent of the registered owner or other legally authorized person in control of that vehicle or vessel is subject to strict compliance with certain conditions and restrictions. These conditions and restrictions include:<sup>33</sup>

- Any towed or removed vehicle or vessel must be stored at a site within a specified distance of the point of removal.<sup>34</sup>
- The towing company must notify local law enforcement within 30 minutes of completing the tow of the storage site; the time the vehicle or vessel was towed; and the make, model, color, and license plate number of the vehicle or description and registration number of the vessel. The towing truck operation is required to record the name of the law enforcement officer who received the information in the trip record.
- The owner of a vehicle or vessel must be allowed to redeem the vehicle or vessel from the towing company if the owner seeks return before the tow has occurred. The towing company may charge a reasonable service fee of up to one-half of the posted towing rate for the return of the vehicle or vessel and may tow the vehicle or vessel if the owner is unable to pay the fee after a reasonable opportunity.
- A towing company may not pay or accept money in exchange for the privilege of towing or removing vehicles or vessels from a particular location.
- If the towing company requires the owner of a vehicle to pay the costs of towing and storage prior to redemption, the towing company must file and keep on record its rate schedule with the local law enforcement agency and post the rate schedule at the storage site.
- Trucks and wreckers used by the towing company must have the name, address, and telephone number of the company printed on both sides of the vehicle in contrasting letters. The name of the towing company must be in 3-inch or taller permanently affixed letters, while the address and telephone number must be in 1-inch or taller permanently affixed letters.
- The towing company must exercise reasonable care when entering a vehicle or vessel for the purpose of removing it. The towing company is liable for any damage to the vehicle caused by failure to exercise reasonable care.
- The vehicle or vessel must be released to its owner within one hour after request. The owner maintains a right to inspect the vehicle or vessel and the towing company operation may not require a release or waiver of damages to be signed a condition of returning the vehicle. The

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<sup>30</sup> Agreement for Wrecker Towing and Storage Services, City of Sarasota and J&G WFR, Inc. dba Direct Towing. A copy of the relevant portions of the contract is attached as Appendix B.

<sup>31</sup> S. 715.07, F.S. A “vehicle” is defined as any mobile item which normally uses wheels, whether motorized or not. S. 715.07(1)(a), F.S. A “vessel” is defined as every description of watercraft, barge, and airboat used or capable of being used as a means of transportation on water, other than a seaplane or a “documented vessel” as defined in s. 327.02, F.S. S. 715.07(1)(b), F.S.

<sup>32</sup> S. 715.07(2), F.S.

<sup>33</sup> S. 715.07(2)(a), F.S.

<sup>34</sup> S. 715.07(2)(a)1.a., F.S. The vehicle or vessel must be stored within a 10-mile radius of the removal point in a county with a population of at least 500,000 and within a 15-mile radius of the removal point in a county with a population of fewer than 500,000. If no towing business operated within the given area, these radiuses are extended to 20 miles (for a county with a population of at least 500,000) and 30 miles (for a county with a population of fewer than 500,000). The site must be open from 8 am to 6 pm on the towing business is in operation and must post a telephone number where the operator of the site can be reached when the site is closed. The operator must return to the site within one hour.

towing company operator must issue a detailed, single receipt to the owner of the vehicle or vessel.

Additionally, a vehicle or vessel may not be towed without consent of its owner, except from property appurtenant to a single-family residence, unless a notice is posted which states the area in which that vehicle or vessel is parked is reserved or otherwise unavailable for unauthorized vehicles or that the vehicle or vessel is subject to being removed at the owner's or operator's expense and the notice meets the following requirements:<sup>35</sup>

- The notice is placed prominently at each driveway access or curb cut, within five feet from the public right-of-way line. If the property has no curbs or access barriers, signs must be posted at least once every 25 feet of lot frontage.
- The notice must clearly indicate, in not less than 2-inch high, light-reflective letters on a contrasting background, that unauthorized vehicles will be towed away at the owner's expense and contain the words "tow-away zone" in letter not less than 4 inches high.
- The notice must provide the name and telephone number of the towing company.
- The sign containing the notices must be permanently installed in such a way that the words "tow-away zone" are between 3 and 6 feet above ground level and the sign must have been continuously maintained on the property for not less than 24 hours prior to the towing of any vehicle or vessel.
- Local governments may also require permitting and inspection of signage before any towing is authorized.
- A business with 20 or fewer parking spaces may satisfy the requirement by prominently displaying a sign stating "Reserved Parking for Customers Only Unauthorized Vehicles or Vessels Will be Towed Away At the Owner's Expense" in not less than 4-inch high, light-reflective letters on a contrasting background.
- A property owner towing or removing vessels from real property must post notice, consistent with the requirements in the statute which apply to vehicles,<sup>36</sup> that unauthorized vehicles or vessels will be towed away at the owner's expense.

A vehicle or vessel may be towed even in the absence of a tow-away zone sign if the vehicle or vessel is parked in such a way that it restricts the normal operation of business or restricts access to a private driveway and the tow is requested by the business owner or lessee.<sup>37</sup>

A county or municipal may adopt additional standards, including regulation of the rates charged when a vehicle or vessel is towed from private property.<sup>38</sup>

If a person causes a vehicle or vessel to be removed improperly, that person is liable to the owner or lessee for the cost of removal, transportation, and storage; any damages resulting from the removal, transportation, or storage of the vehicle or vessel; attorney's fees; and court costs.<sup>39</sup>

Violations of these provisions may constitute a first-degree misdemeanor<sup>40</sup> or a third-degree felony.<sup>41</sup>

### **Effect of Proposed Changes**

The bill authorizes 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 or immobilization of a vessel.

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<sup>35</sup> S. 715.07(2)(a)5, F.S.

<sup>36</sup> These requirements are contained in s. 715.07(2)(a)5.a.-f., F.S.

<sup>37</sup> S. 715.07(2)(a)5, F.S.

<sup>38</sup> S. 715.07(2)(b), F.S.

<sup>39</sup> S. 715.07(4), F.S.

<sup>40</sup> For subparagraphs (2)(a)2. and (2)(a)6. S. 715.07(5)(a), F.S.

<sup>41</sup> For subparagraphs (2)(a)1., (2)(a)3., (2)(a)4., (2)(a)7., and (2)(a)9. S. 715.07(5)(b), F.S.

The bill prohibits a county or municipality from enacting a rule or ordinance that imposes a fee or charge on authorized wrecker operators. The prohibition would not impact the ability of the county or municipality to levy a business tax under ss. 205.0315, 205.033, or 205.0535, F.S. It also would not impact the ability of the county to impose a reasonable administrative fee or charge by ordinance 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 administrative fee imposed under this section may not exceed 25 percent of the maximum towing rate.

The bill authorizes an authorized wrecker operator or towing business to impose and collect the administrative fee and provides that the authorized wrecker operator or towing business is not required to remit the fee to the county or municipality until it is actually collected. The bill requires the administrative fee to be included as part of the lien on the vehicle or vessel held by the towing operator.

The bill also prohibits a county or municipality from adopting or enforcing an ordinance that imposes any charge, cost, expense, fine, fee, or penalty on the registered owner or lienholder of a vehicle removed and impounded by an authorized wrecker operator. This prohibition does not apply to a reasonable administrative fee or charge, limited to 25 percent of the maximum towing rate, to cover the cost of enforcement.

The bill exempts a county with an existing towing license program as of January 1, 2019, from the prohibition on enacting an ordinance or rule that would impose a fee or charge on an authorized wrecker operator or on a towing business. However, such county would not be authorized to levy a business tax under ss. 205.0315, 205.033, or 205.0535, F.S., or impose and collect an administrative fee or charge.

The bill prohibits a municipality or county from:

- enacting an ordinance or rule requiring an authorized wrecker operator to accept checks as a form of payment; and
- authorizing attorney fees or court costs in connection with the towing of vehicles or vessels from private property.

The bill expressly preempts the regulation of attorney fees and court costs in connection with the towing of vehicles or vessels from private property to the state and supersedes any municipal or county ordinance on the subject.

The bill authorizes the towing or removal of a vehicle or vessel from private property without the consent of the registered owner as long as the towing company is in "substantial" compliance with the conditions and restrictions established in s. 715.07, F.S.

The bill removes the requirement that the tow-away zone notice placed prominently at each driveway access or curb cut allowing vehicular access to the property be placed within five feet from the public right-of-way line.

The bill removes the requirement that a "tow-away zone" sign must be permanently installed at between 3 and 6 feet above ground level.

The bill revises several provisions that currently apply to a person in control of a vehicle or vessel to also apply to those in custody of the vehicle.

The bill removes liability for any person causing a vehicle or vessel to be removed improperly for the cost of removal, transportation, and storage; any damages resulting from the removal, transportation, or storage of the vehicle or vessel; attorney's fees; and court costs.

**B. SECTION DIRECTORY:**

- Section 1: Amends s. 125.0103, F.S., requiring counties to establish maximum rates for the towing and immobilization of vessels.
- Section 2: Creates s. 125.01047, F.S., prohibiting counties from enacting ordinances imposing specific fees and charges on authorized wrecker operators; provision exceptions.
- Section 3: Amends s. 166.043, F.S., requiring municipalities to establish maximum rates for the towing of vessels.
- Section 4: Creates s. 166.04465, F.S., prohibiting municipalities from enacting ordinances imposing specific fees and charges on authorized wrecker operators.
- Section 5: Amends s. 323.002, F.S., prohibiting counties and municipalities from imposing fees and charges on the registered owner or lienholder of a vehicle removed and impounded pursuant to ch. 323, F.S.
- Section 6: Amends s. 713.78, F.S., providing that a wrecker operation has a lien for a reasonable administrative fee or charge imposed by a county or municipality.
- Section 7: Provides that the bill takes effect July 1, 2019.

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

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

1. Revenues:

None.

2. Expenditures:

None.

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

1. Revenues:

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 that are currently charged by some jurisdictions, while authorizing the collection of administrative fees for the cost of enforcement.

2. Expenditures:

None.

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

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

**D. FISCAL COMMENTS:**

None.



### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

The Florida Constitution prohibits the passage of any law that would impair the obligation of contracts.<sup>42</sup> The bill does not appear to implicate this provision, as the bill does not address the enforcement of current contracts. The retroactive application of a statutory provision generally only occurs upon an express statement of intent by the Legislature and is limited to the extent retroactive application would impair a vested right, create a new obligation, or impose a new penalty.<sup>43</sup>

#### B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

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

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 26, 2019, the Business & Professions Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute made the following changes to the bill:

- Removes requirements for businesses engaged in vehicle immobilization operations;
- Allows a county with an existing towing license program to impose a fee or charge on an authorized wrecker operator or on a towing business. Such county would not be authorized to levy a business tax under ss. 205.0315, 205.033, or 205.0535, F.S., or impose and collect an administrative fee or charge;
- Prohibits a municipality or county from requiring an authorized wrecker operator to accept checks as a form of payment;
- Prohibits a municipality or county from authorizing attorney fees or court costs in connection with the towing of vehicles or vessels from private property; and
- Preempts the regulation of attorney fees and court costs in connection with the towing of vehicles or vessels from private property to the state.

The staff analysis is drafted to the committee substitute as passed by the Business & Professions Subcommittee.

### APPENDIX A

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<sup>42</sup> Art. I, s. 10, Fla. Const.

<sup>43</sup> *Menendez v. Progressive Exp. Ins. Co, Inc.*, 35 So. 3d 873, 877 (Fla. 2010).



# NOTICE OF RIGHT TO HEARING

Case#: [ ]  
Dated this [ ] day of [ ], 20 [ ]

### HAND DELIVERED TO:

NAME: [ ] DOB: [ ]  
ADDRESS: [ ]  
D/L # [ ] Sex: [ ] Race: [ ]

### SECTION 1:

The following property was taken on the [ ] day of [ ], 20 [ ], on or about [ ] hours by members of the Winter Springs Police in the vicinity of [ ] because the undersigned police officer has probable cause to believe that the vehicle:

- Was used to facilitate the commission or attempted commission of an act of prostitution, assignation or lewdness as defined in §796.07, F.S. or the exposure of sexual organs as set forth in section 800.03 F.S.
- Was knowingly used in the commission of any misdemeanor act of possession or attempted possession of any controlled substance as defined in section 893.02 F.S.
- Was used, intended or attempted to be used, to facilitate the commission of any misdemeanor violation of Chapter 893 F.S.
- Was used, intended or attempted to be used, to facilitate the commission of any misdemeanor violation of section 316.061 F.S.
- Was used, intended or attempted to be used, to facilitate the commission of any misdemeanor violation of section 322.34 F.S.
- Was operated by a person driving under the influence defined in section 316.193 F.S. when such violation is a misdemeanor.
- Was used in the commission of the offense of driving without a valid license or permit in violation of 322.03 F.S.
- Was being operated on a public street and is not covered by liability insurance as required by Chapter 324 F.S.
- Was used in the commission of the misdemeanor offense of criminal mischief in violation section 806.13 F.S.
- Was used to dump litter in any manner prohibited by section 403.413(4) F.S. exceeding 15 lbs. or 27 cu. ft. in volume not exceeding 500 lbs. or 100 cu. ft. and not for commercial purposes.
- Was being operated by a person presenting proof of insurance in violation of section 316.646(4) F.S. knowingly not in force.
- Was parked in a way impeding traffic, creating a hazard, obstructing a street or city utility or left unattended because the driver was taken into custody by law enforcement.

Such property is being held pending civil proceedings under Winter Springs Code, Section 12 and is described as: YEAR [ ] MAKE [ ] MODEL [ ] COLOR [ ] TAG [ ] VIN/HIN [ ] STATE [ ]

Other [ ]

And is currently being held at:

Tri-County Towing  
1155 Belle Ave.  
Winter Springs, FL 32708  
(407) 695-4400

Winter Springs Police Department  
300 N. Moss Rd.  
Winter Springs, FL 32708  
(407) 327-1000

Received By (Operator/Owner) *Signed* \_\_\_\_\_

Received By (Operator/Owner) *Print* \_\_\_\_\_

Delivered By (Officer/Clerk) *Signed* \_\_\_\_\_

Delivered By (Officer/Clerk) *Print* \_\_\_\_\_

**SECTION 2:**

Pursuant to City Code, Section 12-100 the owner has the right to request a hearing in the following manner:

Within seven (7) business days of receipt of this notice, the owner, co-owner or lienholder may request a hearing by delivering to the Police Department, at 300 N. Moss Rd., Seminole County, Winter Springs, Florida 32708, a written request for a hearing.

Such request for a hearing shall include a valid telephone number and correct address where the owner, co-owner, or lienholder may be contacted.

The written notice must be received by the Police Department within the allotted time or the right to a hearing shall be deemed to be waived.

**SECTION 3:**

In order to retrieve the above described vehicle, the owner has the below options:

***Owner, Co-Owner, or Lienholder Requesting a Hearing:***

The Owner, Co-Owner, or Lienholder may secure release of the vehicle by posting a bond (cash, money order, or certified check payable to the City of Winter Springs) in the amount of \$550.00 submitted to the towing company. The Owner, Co-Owner, or Lienholder may then take possession of the vehicle from the towing company after payment of towing and storage charges payable to the towing company.

The Owner, Co-Owner, or Lienholder may leave the vehicle impounded and request a hearing directly from the police department Support Services Bureau.

***Owner, Co-Owner, or Lienholder Waiving a Hearing and Submitting Civil Penalty:***

The Owner, Co-Owner, or Lienholder may secure release of the vehicle by submitting a civil penalty (cash, money order, or certified check payable to the City of Winter Springs) in the amount of \$250.00 and submitted to the towing company during business hours.

The Owner, Co-Owner, or Lienholder then may receive the vehicle from the towing company after payment of towing and storage charges payable to the the towing company.

An executed written waiver shall bind both the owner and co-owner except as otherwise provided herein.

## APPENDIX B

### AGREEMENT FOR WRECKER TOWING AND STORAGE SERVICES

THIS AGREEMENT FOR WRECKER TOWING AND STORAGE SERVICES, made and entered into this 5 day of MAY, 2010 by and between the CITY OF SARASOTA, FLORIDA, a municipal corporation, hereinafter referred to as "CITY," and J & G WFR, INC. DBA DIRECT TOWING, a Florida corporation, hereinafter referred to as "DIRECT".

#### WITNESSETH:

WHEREAS, CITY has publicly announced an Invitation to Bid to obtain annual wrecker towing and storage services on an as needed basis pursuant to Invitation to Bid No. 10-08MK; and

WHEREAS, DIRECT has submitted a responsive bid which has been accepted by CITY to provide the CITY with the annual wrecker towing and storage services on an as needed basis; and

WHEREAS, CITY and DIRECT desire to formalize the terms and conditions of DIRECT's performance of such services as set forth herein; and

WHEREAS, the City Manager, pursuant to Sarasota City Code Section 2-5 (3) v. is authorized to administratively approve and execute this Agreement on behalf of CITY so long as the total compensation paid to DIRECT during the entire term of this Agreement, as may be extended, does not exceed Two Hundred Thousand Dollars (\$200,000.00).

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE MUTUAL COVENANTS CONTAINED HEREIN, IT IS AGREED AS FOLLOWS:

1. Definitions: The following terms shall have the meanings herein ascribed to them:

A. *City Manager* shall mean the City manager of the City of Sarasota, Florida, or his designee.

B. *Police Chief* shall mean the Chief of Police of the City of Sarasota, Florida, or his designee.

C. *Project* shall mean the Scope of Services to be performed by DIRECT in furtherance of this Agreement. The Scope of Services shall include all labor, materials, tools, equipment, insurance and the like required to perform vehicle and vessel towing and storage services within the boundaries of the towing area on an as needed basis for CITY. A more detailed description of the Scope of Services is set forth in the City of Sarasota Police Department Vehicle and Vessel Towing and Storage Services section found on pages 13 through 20, inclusive, of Invitation to Bid No. 10-08MK. A copy of Invitation to Bid No. 10-08MK, as well as the Bid Form submitted by DIRECT in response thereto, are on file in the offices of



the Financial Administration Purchasing Division of CITY. Invitation to Bid No. 10-08MK, as well as DIRECT's Bid Form submitted in response thereto are deemed incorporated by reference into this Agreement. DIRECT covenants to strictly comply with all of the terms and conditions of Bid No. 10-08MK as well as DIRECT's Bid Form submitted in response thereto. In the event of any conflict between the terms set forth in the main body of this Agreement and Invitation to Bid No. 10-08MK, the terms and conditions set forth in the main body of this Agreement shall control.

2. Scope of Services: DIRECT shall diligently and timely provide all labor, material and equipment required for the Scope of Services for the Project in strict conformance with Bid No. 10-08MK as well as DIRECT's Bid Form submitted in response thereto and in strict conformance with all the terms and conditions of this Agreement. The parties hereby agree to be bound by the terms and conditions set forth in Bid No. 10-08MK as well as DIRECT's Bid Form submitted in response thereto. The Police Chief will notify DIRECT when an assignment within the Project Scope of Services may be available. DIRECT covenants to provide the Project Scope of Services within the time limits set forth in Invitation to Bid No. 10-08MK.

3. Payment: In consideration for CITY providing DIRECT the opportunity to provide the Scope of Services, DIRECT agrees to pay CITY a fee in the amount of Ten Thousand One Hundred Fifty One and 00/100 Dollars (\$10,151.00) per month. Said payment shall be submitted to the CITY prior to the 10th day of each month. This monthly payment shall be due and payable by DIRECT to CITY in advance for each month during the term of this Agreement. Furthermore, in consideration of the CITY not placing, attempting to foreclose or foreclosing a vehicle impoundment lien upon a vehicle impounded pursuant to Section 33-271 of the Sarasota City Code, DIRECT agrees to waive any and all storage charges to which the CITY would be obligated to pay as a result of the operation of any provision of Chapter 323, Florida Statutes, on any vehicles impounded by the City and stored by DIRECT. As further

consideration, DIRECT shall pay CITY Five Hundred Dollars (\$500.00) for each sale by DIRECT of a vehicle that was sold subsequent to a seizure initiated by the police department of CITY. Said payment shall be made to CITY within thirty (30) days of DIRECT'S sale of a vehicle which had been seized.

4. Term: This Agreement shall be effective upon complete execution by each of the parties hereto. The initial term of this Agreement shall expire one year thereafter. This Agreement may be extended upon mutual agreement of the parties for up to two additional one year periods under the same terms and conditions pursuant to an amendment to this Agreement.

5. Public Records: DIRECT acknowledges that it shall be responsible to totally and fully comply with the Florida Public Records Law as set forth in Chapter 119, Florida Statutes and all other relevant laws, rules and regulations regarding public records.

6. Termination Without Default: The City Manager shall have the right at any time upon fifteen (15) days written notice to DIRECT to terminate the services of DIRECT hereunder for any reason whatsoever. If the City Manager terminates this Agreement pursuant to this Section 6, DIRECT shall be entitled to a pro-rated refund of the monthly payment required by Section 3 above. The amount of the refund shall be pro-rated based upon the number of days remaining in the calendar month starting with the day after the effective date of termination.

7. Termination With Default: DIRECT acknowledges that the conditions, covenants and requirements on its part to be kept, as set forth herein, are material inducements to CITY entering into this Agreement. Should DIRECT fail to perform any of the conditions, covenants and requirements on its part to be kept, the City Manager shall give written notice thereof to DIRECT specifying those acts or things which must occur in order to cure said default, including the time within which such cure shall occur. DIRECT shall have seventy two (72) hours measured from the date and time of the written notice within which to cure the default.