

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Commerce Committee

BILL: CS/SB 612

INTRODUCER: Commerce Committee and Senator Crist

SUBJECT: Wrecker Services

DATE: March 21, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	Fav/1 amendment
2.	<u>Herrin</u>	<u>Yeatman</u>	<u>CA</u>	Fav/1 amendment
3.	<u>Hinely</u>	<u>Cooper</u>	<u>CM</u>	Fav/CS
4.	_____	_____	<u>CJ</u>	_____
5.	_____	_____	<u>GA</u>	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute creates the Wrecker Operator Advisory Council and subjects an estimated 1,400 wrecker companies to regulation by the Department of Agriculture and Consumer Services (DACs), requiring:

- an annual registration and fee of \$495;
- certification and continuing education of tow-truck operators;
- mandatory acceptance of specific forms of payment; and
- maintenance of certain records.

A number of acts related to towing and storage are prohibited and penalties are established for violations. Businesses engaged in primarily towing vehicles for repair or repossession are exempted from the regulation. The committee substitute appropriates \$693,000 to DACs from the General Inspection Trust Fund and authorizes nine additional full-time-equivalent (FTE) employees.

This committee substitute creates s. 205.1977 and ch. 508, substantially amends ss. 120.080, 316.530, 320.01, 320.03, 320.0706, 320.0821, 320.13, 321.051, 323.001, 323.002, 713.78, 715.07, reenacts ss. 316.550(4)(a) and (9), 320.08(5)(d) and (e), and repeals s. 1.01(15) of the Florida Statutes.

II. Present Situation:

Currently, wrecker operators in Florida are not regulated by the state beyond the requirement to register wrecker vehicles with the Department of Highway Safety and Motor Vehicles (DHSMV). At the local level, some local governments have adopted ordinances governing

wrecker operators and the provision of wrecker services. Also, local governments may require wrecker operators to pay a local business tax. Although Florida Statutes do not provide a regulatory program for wrecker operators, there are several provisions relating to wrecker operations as discussed below.

Wrecker Registration Requirements

Section 320.0706, F.S., provides a commercial truck weighing 26,001 pounds or more must display a license plate on both the front and rear of the truck; however, a truck tractor is only required to display the license plate on the front of the vehicle.

Section 320.08(5)(d) and (e), F.S., provides registration fees for wreckers. A wrecker used to tow any unclaimed vessel, a disabled, abandoned, stolen-recovered, or impounded motor vehicle or trailer, or a replacement motor vehicle for a disabled vehicle, pays a flat registration fee of \$30. A wrecker used to tow any motor vehicle whether or not such motor vehicle is a disabled motor vehicle, a replacement motor vehicle, a vessel, or any other cargo pays a registration fee that varies between \$87 and \$979 based on gross vehicle weight.

FHP Wrecker Allocation System

Section 321.051, F.S., authorizes the Florida Highway Patrol (FHP) to establish, within areas designated by the patrol, a system utilizing qualified, reputable wrecker operators for removal and storage of wrecked or disabled vehicles or for removal and storage of abandoned vehicles. The FHP establishes eligibility standards based on safety and mechanical qualifications for wrecker operators. The FHP may also limit the number of operators participating in the system and may establish maximum rates for contracted towing and storage services.

The section defines an “authorized wrecker operator” as any wrecker operator who has been designated by FHP as part of the wrecker operator system, and an “unauthorized wrecker operator” as any wrecker operator who has not been designated by FHP as part of the wrecker operator system. The section further provides any owner of a motor vehicle may contract with any wrecker operator for wrecker services, regardless of whether the operator is an authorized member of the rotation system.

Law Enforcement Hold on Vehicles

Section 323.001, F.S., provides an investigating agency may place a hold on a motor vehicle stored within a wrecker operator’s storage facility for a period not to exceed 5 days, excluding holidays and weekends, unless extended in writing. The investigating agency must notify the wrecker operator in writing within 5 days whether the hold is to be continued. If no notification follows this period of time, the wrecker operator may release the vehicle to the designated person pursuant to s. 713.78, F.S.

The section provides if the hold continues beyond 5 days, then the investigating agency may have the vehicle removed to a designated impound lot. The vehicle may not be released by the investigating agency to the owner or lien holder of the vehicle until proof of payment of the towing and storage charges incurred by the wrecker operator is presented to the investigating agency.

If the investigating agency chooses to have the vehicle remain at the wrecker operator's storage facility beyond 5 days, then the investigating agency will be responsible for payment of the storage charges incurred by the wrecker operator for the requested extended period. The owner or lien holder will be responsible for payment of accrued towing and storage charges for up to the first 5 days.

The section further provides the towing and storage rates for the owner or lien holder of the held vehicle may not exceed the rates for the investigating agency. If there is a judicial finding of no probable cause for having continued the immobilization or impoundment, the investigating agency ordering the hold must pay the accrued charges for any towing and storage.

A vehicle may be held when any of the following conditions are present.

1. The law enforcement officer has probable cause to believe the vehicle should be seized and forfeited under the Florida Contraband Forfeiture Act.
2. The law enforcement officer has probable cause to believe the vehicle should be seized and forfeited under chs. 370 or 372, F.S.
3. The law enforcement officer has probable cause to believe the vehicle was used as the means of committing a crime.
4. The law enforcement officer has probable cause to believe the vehicle is itself evidence that tends to show a crime has been committed or the vehicle contains evidence, which cannot readily be removed, which tends to show a crime has been committed.
5. The law enforcement officer has probable cause to believe the vehicle was involved in a traffic accident resulting in death or personal injury and should be sealed for investigation and collection of evidence by a vehicular homicide investigator.
6. The vehicle is impounded or immobilized pursuant to s. 316.193, F.S., or s. 322.34, F.S. (driving under the influence).
7. The law enforcement officer is complying with a court order.

Finally, the section provides a wrecker operator's storage facility must comply with a hold placed by a law enforcement officer, including instructions for inside or outside storage. A wrecker operator's storage facility may not release a motor vehicle subject to a hold to any person except as directed by the law enforcement agency placing the hold. When a vehicle owner is found guilty of, or pleads nolo contendere to, the offense that resulted in a hold being placed on his or her vehicle, regardless of the adjudication of guilt, the owner must pay the accrued towing and storage charges assessed against the vehicle.

Local Wrecker Allocation Systems

Section 323.002, F.S., defines an "authorized wrecker operator" as any wrecker operator who has been designated as part of the wrecker operator system established by the governmental unit having jurisdiction over the scene of a wrecked or disabled vehicle. An "unauthorized wrecker operator" is defined as any wrecker operator who has not been designated as part of the wrecker operator system established by the governmental unit having jurisdiction over the scene of a wrecked or disabled vehicle.

The section defines a "wrecker operator system" as a system for the towing or removal of wrecked, disabled, or abandoned vehicles, similar to the Florida Highway Patrol wrecker

operator system described in s. 321.051(2), F.S., under which a county or municipality contracts with one or more wrecker operators for the towing or removal of wrecked, disabled, or abandoned vehicles from accident scenes, streets, or highways. A wrecker operator system includes using a method for apportioning the towing assignments among the eligible wrecker operators through the creation of geographic zones, a rotation schedule, or a combination of these methods.

Section 323.002, F.S., further provides it is unlawful for an unauthorized wrecker operator or its employees or agents to monitor a police radio for communications between patrol field units and the dispatcher in order to determine the location of a wrecked or disabled vehicle for the purpose of driving by the scene of such vehicle. Any person who violates this provision is guilty of a noncriminal violation, punishable by a \$500 fine.

Further, it is unlawful for an unauthorized wrecker operator to drive by the scene of a wrecked or disabled vehicle before the arrival of an authorized wrecker operator, initiate contact with the owner or operator of such vehicle by soliciting or offering towing services, and tow such vehicle. Any person who violates this provision is guilty of a misdemeanor of the second degree, punishable by a term of imprisonment of up to 60 days and a fine not to exceed \$500.

When an unauthorized wrecker operator drives by the scene of a wrecked or disabled vehicle and the owner or operator initiates contact by signaling the wrecker operator to stop and provide towing services, the unauthorized wrecker operator must disclose to the owner or operator of the vehicle that he or she is not the authorized wrecker operator who has been designated as part of the wrecker operator system and must disclose, in writing, what charges for towing and storage will apply before the vehicle is connected to the towing apparatus. Any person who violates this provision is guilty of a misdemeanor of the second degree, punishable by a term of imprisonment up to 60 days and a fine not to exceed \$500.

At the scene of a wrecked or disabled vehicle, it is unlawful for a wrecker operator to falsely identify himself or herself as being part of the wrecker operator system. Any person who violates this provision is guilty of a misdemeanor of the first degree, punishable by a term of imprisonment of up to 1 year and a fine not to exceed \$1,000.

The section does not prohibit the owner or operator of a vehicle involved in an accident or otherwise disabled from contacting any wrecker operator for the provision of towing services, regardless of whether the wrecker operator is an authorized wrecker operator.

Liens for Recovering Towing and Storage Fees

Section 713.78, F.S., provides when a wrecker or tow service properly tows a vehicle or vessel, they have a lien against the vehicle or vessel for payment of reasonable towing and storage fees. The owner of the vehicle or vessel may not be charged storage fees if the vehicle has been stored for less than 6 hours. When a wrecker service tows and stores a motor vehicle, the service must send notice to the registered owner and all lien holders by certified mail, return receipt requested, within 7 business days after the date of storage of the vehicle.

Towing Vehicles from Private Property

Section 715.07, F.S., provides the owner or lessee of real property may have any vehicle parked on such property without her or his permission to be removed by a person regularly engaged in the business of towing vehicles, without liability for the costs of removal, transportation, or storage or damages caused by such removal, transportation, or storage, if certain restrictions are complied with.

Any towed or removed vehicle must be stored at a site within 10 miles of the point of removal in any county with a population of 500,000 or more, and within 15 miles of the point of removal in any county with a population of less than 500,000. That site must be open from 8:00 a.m. to 6:00 p.m., and when closed, the site must have prominently posted a sign indicating a telephone number where the operator of the site can be reached at all times. Upon receipt of a telephone request to open the site to redeem a vehicle, the operator must return to the site within 1 hour. If no towing business providing such service is located within the area, any towed or removed vehicle must be stored at a site within 20 miles of the point of removal in any county with a population of 500,000 or more, and within 30 miles of the point of removal in any county with a population of less than 500,000.

The person or firm towing or removing the vehicle must, within 30 minutes of completion of such towing or removal, notify the municipal police department or, in an unincorporated area, the sheriff, of such towing or removal, the storage site, the time the vehicle was towed or removed, and the make, model, color, and license plate number of the vehicle, and must obtain the name of the person at that department to whom such information was reported and note that name on the trip record. Any person who violates this provision is guilty of a misdemeanor of the first degree, punishable by a term of imprisonment up to 1 year and a fine not to exceed \$1,000.

If the registered owner or other legally authorized person in control of the vehicle arrives at the scene prior to removal or towing of the vehicle, the vehicle must be disconnected from the wrecker, and that person must be allowed to remove the vehicle without interference upon the payment of a reasonable service fee of not more than one-half of the posted rate for such towing service.

The rebate or payment of money or any other valuable consideration from the individual or firm towing or removing vehicles to the owners or operators of the premises from which the vehicles are towed or removed, for the privilege of removing or towing those vehicles, is prohibited.

Except for property which is obviously a part of a single-family residence, and except for instances when notice is personally given to the owner of the vehicle, any property owner, prior to towing or removing any vehicle from private property without the consent of the owner or other legally authorized person in control of that vehicle, must post a notice meeting the following requirements.

1. The notice must be prominently placed at each driveway access or curb cut allowing vehicular access to the property, within 5 feet from the public right-of-way line. If there are no curbs or access barriers, the signs must be posted not less than one sign for each 25 feet of lot frontage.

2. 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. The words "tow-away zone" must be included on the sign in not less than 4-inch high letters.
3. The notice must also provide the name and current telephone number of the person or firm towing or removing the vehicles, if the property owner, lessee, or person in control of the property has a written contract with the towing company.
4. The sign structure containing the required notices must be permanently installed with the words "tow-away zone" not less than 3 feet and not more than 6 feet above ground level and must be continuously maintained on the property for not less than 24 hours prior to the towing or removal of any vehicles.
5. The local government may require permitting and inspection of these signs prior to any towing or removal of vehicles being authorized.
6. A business with 20 or fewer parking spaces satisfies the notice requirements of this subparagraph by prominently displaying a sign stating "Reserved Parking for Customers Only Unauthorized Vehicles Will be Towed Away At the Owner's Expense" in not less than 4-inch high, light-reflective letters on a contrasting background.

A business owner or lessee may authorize the removal of a vehicle by a towing company when the vehicle is parked in such a manner that restricts the normal operation of business; and if a vehicle parked on a public right-of-way obstructs access to a private driveway the owner, lessee, or agent may have the vehicle removed by a towing company upon signing an order that the vehicle be removed without a posted tow-away zone sign.

Any person or firm that tows or removes vehicles must file with the local law enforcement agency a complete copy of the current rates for such services and post at the storage site an identical rate schedule and any written contracts with property owners, lessees, or persons in control of property which authorize such person or firm to remove vehicles. Any person who violates this provision is guilty of a misdemeanor of the first degree, punishable by a term of imprisonment up to 1 year and a fine not to exceed \$1,000.

Any person or firm towing or removing any vehicles from private property without the consent of the owner must have the name, address, and telephone number of the company performing such service clearly printed in contrasting colors on the driver and passenger sides of the wrecker. Any person violating these provisions is guilty of a felony of the third degree, punishable by up to 5 years in jail, a fine of \$5,000, and enhanced penalties for habitual felony offenders.

This section provides the wrecker operator may enter the vehicle for the purpose of removing the vehicle with reasonable care. Such person or firm is liable for any damage to the vehicle if such entry is not in accordance with the standard of reasonable care.

The requirements in this section are minimum standards and do not preclude the enactment of additional regulations by any municipality or county including the right to regulate rates when vehicles are towed from private property. This section does not apply to law enforcement, firefighting, rescue squad, ambulance, or other emergency vehicles which are marked as such or to property owned by any governmental entity.

The section provides when a person improperly causes a vehicle to be removed, such person is liable to the owner or lessee of the vehicle for the cost of removal, transportation, and storage; any damages resulting from the removal, transportation, or storage of the vehicle; attorney's fees; and court costs.

Florida's Sunrise Act

Section 11.62, F.S., provides guiding principles for the establishment of new regulatory programs for professions and occupations. Subsection (3) provides that in determining whether to regulate a profession or occupation, the Legislature shall consider certain factors, including:

- whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare;
- whether the practice of the profession or occupation requires specialized skill or training;
- whether the regulation will have an unreasonable effect on job creation or job retention in the state;
- whether the public can be protected by other means; and
- whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

Subsection (4) of s. 11.62, F.S., requires the proponents of legislation providing for the regulation of a profession or occupation not already subject to state regulation shall provide, *upon request*, certain information in writing to the state agency that is proposed to have jurisdiction over the regulation and to the legislative committees to which the legislation is referred. Similarly, subsection (5) requires the agency to provide the Legislature with information concerning the effect of proposed legislation that provides for new regulation of a profession or occupation, including the resources necessary to implement and enforce the proposed regulation.

III. Effect of Proposed Changes:

Generally, the committee substitute creates the Wrecker Operator Advisory Council and submits most wrecker companies to regulation by DACS, requiring:

- an annual registration and fee not to exceed \$495;
- certification and continuing education of tow-truck operators;
- mandatory acceptance of specific forms of payment; and
- maintenance of certain records.

A number of acts are prohibited and penalties are established for violations. Businesses engaged in primarily towing vehicles for repair or repossession are exempted from the regulation. The committee substitute appropriates \$693,000 to the Department of Agriculture and Consumer Services (DACS) from the General Inspection Trust Fund and authorizes nine additional FTE employees. Numerous technical changes are made to various sections for the purpose of conforming terminology and cross-references.

The committee substitute creates ch. 508, F.S., relating to wrecker services. Specifically, s. 508.102, F.S., creates the Wrecker Operator Advisory Council (council) within DACS to advise

the department on implementation of this chapter. The council consists of seven members appointed by the Commissioner of Agriculture and Consumer Services: four of whom must be persons who have been ultimate equitable owners of a wrecker company for at least 5 years, with two of those four operating three trucks or fewer, one wrecker operator of at least 5 years service who is not an ultimate equitable owner, and two lay persons. DACS is required to keep and store all records of the council and to provide administrative support and staff. Section 508.103, F.S., provides DACS with rulemaking authority to administer ch. 508, F.S.

Section 508.104, F.S., effective January 1, 2008, prohibits persons from engaging in wrecker services for hire unless the person is registered according to the provisions of this act. A local occupational license may not be issued or renewed to any person or company not registered with DACS. The section exempts from wrecker registration requirements in this committee substitute, franchised motor vehicle dealers and any vehicle repair shop registered by DACS that meets the following requirements: the shop derives at least 80 percent of its gross sales from vehicle repairs; each wrecker used is registered with the Department of Highway Safety and Motor vehicles; any wrecker services are performed by an employee of the shop; and each wrecker operator performing services on behalf of the shop is certified pursuant to ss. 508.107-508.110, F.S.

Section 508.105, F.S., is created to require the registration of wrecker companies with DACS and prohibits the operation of unregistered companies. The annual registration fee shall be set by DACS by administrative rule. All registrants, equitable owners, partners, or those with executive management control must be fingerprinted, and must pay the cost of fingerprinting for the initial registration. DACS will collect the fingerprinting fees, screen background results, and issue a certificate with a number to the registrant that must be displayed in a conspicuous place in the company's place of business. Any advertisement must bear the registration number. Annual renewals are subject to a \$25 late fee. A wrecker company may not renew a registration unless local licensing requirements are met and maintained, and the company can present proof of the additional liability insurance that must be carried for a commercial vehicle.

Section 508.106, F.S., is created to provide that DACS may deny or refuse registration renewal if:

1. The wrecker company does not meet or adhere to registration requirements;
2. The owners or executive managers have been convicted of a felony within the last 7 years;
3. The owners or executive managers have been convicted in the last 7 years of any crime involving repossession, repair, motor vehicle theft, car jacking, chop shops, parts and accessories, airbags, overcharging for repairs or parts, or towing or storage;
4. The company fails to pay fines or penalties imposed under this new law;
5. The company has an action pending in any jurisdiction for violation of this new law; or
6. The company has a judgment against it for violation of this new law.

Section 508.1061, F.S., is created to specify acceptable forms of payment for wrecker company services. A wrecker company must accept at least two of the following types:

- Cash, cashier's check, money order, or traveler's check;
- Valid personal check; or
- Valid credit cards, including Visa and MasterCard.

The committee substitute creates s. 508.110, F.S., effective January 1, 2008, to require a wrecker operator to be the owner or employee of a registered wrecker service, with an exemption for employees of certain motor vehicle repair shops. To be authorized to perform wrecker services, operators are required to become certified within 6 months after employment as a wrecker operator. In addition, DACS is authorized to examine company records to enforce this provision.

The committee substitute creates s. 508.107, F.S., to provide that the department, in consultation with the council, must establish a certification program for wrecker operators, and approve certification courses, schools, and exams. A wrecker operator must receive at least 16 hours of training in a certification program within 6 months of employment. Additionally, s. 508.108, F.S., is created to provide that each approved certification course must offer specialized certification for specialized wrecker services. Section 508.109, F.S., is created to provide each organization conducting an approved wrecker operator certification course must issue a certification card to each wrecker operator who completes the certification course and passes the certification examination. Each certification card expires 5 years after the date of issuance.

The committee substitute creates s. 508.111, F.S., to authorize DACS, in consultation with the council, to establish Continuing Wrecker Education (CWE) requirements of at least 4 hours of continuing education every 5 years for the renewal of a wrecker operator's certification.

Section 508.112, F.S., prohibits a person from engaging in the following acts.

1. Charging rates in excess of those set by local ordinance.
2. Violating the laws governing the FHP wrecker allocation system.
3. Violating the laws governing the local wrecker allocation system.
4. Violating the laws governing liens for towing or storing vehicles and vessels.
5. Violating the laws governing towing or removing vehicles and vessels from private property.
6. Refusing to allow a law enforcement officer to inspect a towing and storage facility.
7. Allowing a non-certified person to perform wrecker services or specialized services for more than 6 months after first being employed by, or becoming an equitable owner of, the company.
8. Allowing an operator to provide specialized services without the proper endorsement.
9. Performing an act prohibited by the new law, or failing to perform an act required by the new law.

Sections 508.113 and 508.114, F.S., are created to provide administrative and civil penalties. DACS may impose any of the following civil penalties.

1. Issue a notice of noncompliance.
2. Impose an administrative fine of no more than \$5,000.
3. Issue cease and desist orders.
4. Revoke, suspend, or refuse registration.
5. Impose a department specified probationary period.
6. Seek a civil remedy of up to \$5,000 per violation.
7. Seek restitution on behalf of an aggrieved party.

Section 508.115, F.S., effective January 1, 2008, is created to provide criminal penalties for the following acts which are punishable as third-degree felonies.

1. Operation of an unregistered wrecker company.
2. Performance of wrecker services without being employed by, or without being the ultimate equitable owner of a registered wrecker company.

Sections 508.116 and 508.117, F.S., are created to assess a fee not to exceed \$495 for wrecker company registration and renewal. All fees, penalties, and other monies collected pursuant to this committee substitute are deposited into the General Inspection Trust Fund and may only be used to implement the new law.

Section 508.118, F.S., is created to provide that local governments may impose regulations on wrecker operators and wrecker companies which are more restrictive than those provided in this committee substitute, and may still levy business taxes. DACS is authorized to delegate enforcement of this act to any county or municipality.

Section 508.119, F.S., is created to require wrecker companies to maintain records of its wrecker services and records sufficient to demonstrate successful completion of required educational courses for each operator. Additionally, each organization providing wrecker education courses is directed to maintain records on each person completing one of the courses.

Section 120.80, F.S., is amended to conform existing law to the provisions of the committee substitute. The term “wrecker operator” is changed to “wrecker company” and “wrecker rotation system” is revised to be “wrecker allocation system.”

Section 205.1977, F.S., is created to prohibit counties and local municipalities from issuing or renewing an occupational license for the operation of a wrecker company unless the wrecker company provides proof the company is registered as a wrecker by DACS.

Section 316.530, F.S., is amended to conform existing law to the provisions of the committee substitute.

Section 320.01, F.S., is amended to clarify the definition of “wrecker.”

Section 320.03(8), F.S., is amended to conform existing International Registration Plan law to the provisions of the committee substitute.

Section 320.0706, F.S., is amended to require a wrecker’s license plate to be mounted to the front of the vehicle. Subsection 320.0821(1), F.S., is amended and subsection (5) is added to clarify license plate requirements for wreckers. Effective January 1, 2008, the DHMSV may issue license plates to wreckers only if they are registered under ch. 508, F.S. This section does not apply to vehicles registered under the International Registration Plan. The committee substitute makes technical changes to conform existing law to the provisions of the committee substitute.

Section 321.051, F.S., is amended to authorize a law enforcement officer to dispatch a wrecker from the wrecker allocation system if the officer believes a disabled vehicle is a public safety hazard and the wrecker would arrive before a wrecker requested by the vehicle owner. The section is further amended to provide a law enforcement officer may dispatch an authorized wrecker company out of rotation to the scene of a wrecked or disabled vehicle if the authorized wrecker company next on rotation is not equipped to provide the required wrecker services and the out-of-rotation authorized wrecker company is available with the required equipment.

The committee substitute makes a substantive change to a current offense. Presently, s. 321.051(3)(b), F.S., provides “[i]t is unlawful for an unauthorized wrecker operator to drive by the scene of a wrecked or disabled vehicle before the arrival of the authorized wrecker operator, initiate contact with the owner or operator of such vehicle by soliciting or offering towing services, and tow such vehicle.” The offense is a second-degree misdemeanor. The committee substitute does not change the penalty. However, the committee substitute rewords the offense to read: “A wrecker operator dispatched by an unauthorized wrecker company may not drive by the scene of a wrecked or disabled vehicle before the arrival of the wrecker operator dispatched by the authorized wrecker company, initiate contact with the owner or operator of the vehicle by soliciting or offering wrecker services, or tow the vehicle.” In current s. 321.051(3)(b), F.S., all three actions specified must occur for the law to be violated; however, the committee substitute replaces the conjunctive “and” with the disjunctive “or,” so that the occurrence of any of the three actions specified will constitute a violation.

Section 323.001, F.S., is amended to include updated language and clarify the length of time a vehicle may be held. Definitions for “Business day” and “Wrecker company” are added, and the term “investigating agency” is replaced with “law enforcement agency.”

The committee substitute provides the towing and storage rates for a vehicle held pursuant to a request by an investigating agency shall not exceed the contract or county rates instead of the rates for the investigating agency. As a result, law enforcement agencies and vehicle owners will be charged the same towing and storage rates on held vehicles regardless of who is responsible for payment.

Section 323.002, F.S., is amended to include updated language. The amended section also authorizes a law enforcement officer to dispatch a wrecker from the local wrecker allocation system if the officer believes a disabled vehicle is a public safety hazard and the wrecker would arrive before a wrecker requested by the vehicle owner. The section is further amended to provide a law enforcement officer may dispatch an authorized wrecker company out of rotation to the scene of a wrecked or disabled vehicle if the authorized wrecker company next on rotation is not equipped to provide the required wrecker services and the out of rotation authorized wrecker company is available with the required equipment.

The committee substitute makes a substantive change to a current offense. Presently, s. 323.002(2)(b), F.S., provides that “[i]t is unlawful for an unauthorized wrecker operator to drive by the scene of a wrecked or disabled vehicle before the arrival of an authorized wrecker operator, initiate contact with the owner or operator of such vehicle by soliciting or offering towing services, and tow such vehicle.” The offense is a second-degree misdemeanor. The committee substitute does not change the penalty. However, the committee substitute rewords

the offense to read: “A wrecker operator dispatched by an unauthorized wrecker company may not drive by the scene of a wrecked or disabled vehicle before the arrival of the wrecker operator dispatched by the authorized wrecker company, initiate contact with the owner or operator of the vehicle by soliciting or offering wrecker services, or tow the vehicle.” In current s. 323.002(2)(b), F.S., all three actions specified must occur for the law to be violated; however, the committee substitute replaces the conjunctive “and” with the disjunctive “or,” so that the occurrence of any of the three actions specified will constitute a violation.

Section 713.78, F.S., is amended to conform existing law to the provisions of the committee substitute. Additionally, the committee substitute removes the requirement for towing-storage operators to use the Return Receipt Requested service provided by postal services when notifying owners, lien holders, and insurers concerning vehicles and vessels for which the towing-storage operator has claimed a lien. The committee substitute allows towing-storage operators to make use of the U.S. Postal Service’s Delivery Confirmation feature which provides proof of mailing at a lower cost than the Return Receipt Requested service. Proof of mailing must be retained and provided to any person involved in actions relating to the vehicle or vessel.

The committee substitute clarifies liens established under s. 713.78, F.S., prior to July 1, 2008, are not affected by the changes to the section made by this committee substitute. It conforms language in s. 715.07, F.S., to reflect the provisions of ch. 508, F.S., and provides a failure to make good faith efforts to adequately identify areas as tow-away zones precludes the imposition of towing or storage fees against a vehicle or vessel. The committee substitute repeals s 1.01(15), F.S., defining “wrecker operator.” Finally, the committee substitute appropriates \$693,000 from the General Inspection Trust Fund to DACS and authorizes nine additional FTE employees for FY 2007-2008.

The committee substitute takes effect July 1, 2007, except as otherwise provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This committee substitute provides all wrecker companies and persons engaged in towing activities must be certified and registered with DACS in order to conduct business in this state. The committee substitute provides the fee for such registration will not exceed \$495. Prospective wrecker operators will likely have to pay for the certification course and the required 4 hours of continuing education (once every 5 years), however, the cost of the training is currently unknown. Wrecker companies will also be required to pay for fingerprinting and background checks with a combined cost of \$47 as currently estimated by the Florida Department of Law Enforcement.

C. Government Sector Impact:

According to DACS, this committee substitute will have an average annual cost to DACS of approximately \$693,000 to fund the necessary staff to implement this program over the next 3-fiscal years. However, this impact will be partially offset by registration fees if the estimated 1,400 wrecker operators in the state pay an annual registration fee of \$495, the maximum allowed by the committee substitute.

The committee substitute appropriates \$693,000 from the General Inspection Trust Fund to DACS to fund the program and authorizes nine additional FTE positions.

VI. Technical Deficiencies:

On page 74, lines 4 through 7 state: “Failure to make good faith efforts to comply with the notice requirements in subparagraph (2)(a)5. precludes the imposition of any towing or storage charges against the vehicle or vessel.” The towing and storage of a vehicle or vessel parked on real property without permission involves at least three parties: the property owner, the vehicle or vessel owner, and the wrecker operator. The statement only provides the vehicle or vessel owner is not responsible for the towing and storage costs. It is not clear which party would be liable for the cost of towing and storage and whether the vehicle or vessel may be released to the owner pending the disposition of those costs.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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