

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: General Government Appropriations Committee

BILL: CS/CS/SB 612

INTRODUCER: General Government Appropriations Committee, Commerce Committee, and Senators Crist and Lynn

SUBJECT: Wrecker Services

DATE: April 24, 2007

REVISED: _____

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

I. Summary:

This bill, the “Glen D. Rich Towing Reform Act of 2007”, creates the Wrecker Operator Advisory Council and subjects an estimated 1,400 wrecker companies to regulation by the Department of Agriculture and Consumer Services (department), requiring:

- An annual registration and fee of \$495.
- Mandatory acceptance of specific forms of payment.
- 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 bill appropriates \$693,000 to the department from the General Inspection Trust Fund and authorizes nine additional full-time-equivalent employees.

This bill substantially amends the following sections of the Florida Statutes: 120.080, 316.530, 320.01, 320.03, 320.0706, 320.0821, 320.13, 321.051, 323.001, 323.002, 713.78, and 715.07.

This bill creates section 205.1977 and chapter 508, Florida Statutes.

This bill repeals section 1.01(15) of the Florida Statutes.

This bill reenacts ss. 316.550(4)(a) and (9) and 320.08(5)(d) and (e), 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 that 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 required to display the license plate on the front of the vehicle only.

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 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 that uses 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 the FHP as part of the wrecker operator system, and an “unauthorized wrecker operator” as any wrecker operator who has not been designated by the FHP as part of the wrecker operator system. The section further provides that 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 that 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 five days, excluding holidays and weekends, unless extended in writing. The investigating agency must notify the wrecker operator in writing within five 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 that, if the hold continues beyond five 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 five days, then the investigating agency is responsible for payment of the storage charges incurred by the wrecker operator for the requested extended period. The owner or lien holder is responsible for payment of accrued towing and storage charges for up to the first five days.

The section further provides that 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.

- The law enforcement officer has probable cause to believe the vehicle should be seized and forfeited under the Florida Contraband Forfeiture Act.
- The law enforcement officer has probable cause to believe the vehicle should be seized and forfeited under ch. 370 or 372, F.S.
- The law enforcement officer has probable cause to believe the vehicle was used as the means of committing a crime.
- 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.
- 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.
- The vehicle is impounded or immobilized pursuant to s. 316.193, F.S., or s. 322.34, F.S., (driving under the influence).
- 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 the use of 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., prohibits an unauthorized wrecker operator or its employees or agents from monitoring 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, an unauthorized wrecker operator is prohibited from driving by the scene of a wrecked or disabled vehicle before the arrival of an authorized wrecker operator, initiating contact with the owner or operator of such vehicle by soliciting or offering towing services, and towing such vehicle. Any person who violates this provision is guilty of a misdemeanor of the second degree, which is punishable by a term of imprisonment of up to 60 days and which may include 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, which is punishable by a term of imprisonment up to 60 days and which may include 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, which is punishable by a term of imprisonment of up to one year and which may include 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 six 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 seven 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 ten 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 one 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, which is punishable by a term of imprisonment up to one year and which may include 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.

- The notice must be prominently placed at each driveway access or curb cut allowing vehicular access to the property, within five 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.
- The notice must clearly indicate, in not less than two-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 four-inch high letters.
- 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.
- The sign structure containing the required notices must be permanently installed with the words "tow-away zone" not less than three feet and not more than six 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.
- The local government may require permitting and inspection of these signs prior to any towing or removal of vehicles being authorized.
- 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 four-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. 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, which is punishable by a term of imprisonment up to one year and which may include 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, which is punishable by up to 5 years in state prison and which may include a fine not to exceed \$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 that, 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.
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

Section 11.62(4), F.S., requires that 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, s. 11.62(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 bill creates the Wrecker Operator Advisory Council and submits most wrecker companies to regulation by the department, requiring:

- An annual registration and fee not to exceed \$495.
- Mandatory acceptance of specific forms of payment.
- Maintenance of certain records.

A number of acts are prohibited and penalties are established for violations. Businesses primarily engaged in towing vehicles for repair or repossession are exempted from the registration requirement. The bill appropriates \$693,000 to the department 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 bill creates ch. 508, F.S., relating to wrecker services. Specifically, s. 508.102, F.S., creates the Wrecker Operator Advisory Council within the department to make recommendations regarding the need for a wrecker certification program and establishment of educational requirements for wrecker operators. The council will submit its recommendations to the Legislature and Governor by January 31, 2008. The council consists of five members appointed by the Commissioner of Agriculture and Consumer Services:

- One must be a wrecker owner-operator.
- One must be a consumer.
- One must be an owner of a wrecker company with ten or more employees.
- One must be an owner of a wrecker company with fewer than ten employees.
- One must be a community college staff person with expertise in continuing education programs.

The term of each member is four years. However, provisions are made to stagger several initial terms to provide continuity of the council. Council members are not compensated but may be reimbursed for expenses. The department is required to keep and store all records of the council and to provide administrative support and staff. Section 508.103, F.S., provides the department 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 the department. The section exempts from wrecker registration requirements in this bill, franchised and independent motor vehicle dealers and any vehicle repair shop registered by the department that derives at least 80 percent of its gross sales from vehicle repairs.

Section 508.105, F.S., is created to require the registration of wrecker companies with the department and prohibits the operation of unregistered companies. The annual registration fee shall be set by the department 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. The department 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 the department may deny or refuse registration renewal if:

- The wrecker company does not meet or adhere to registration requirements.
- The owners or executive managers have been convicted of a felony within the last ten years.
- The owners or executive managers have been convicted in the last ten 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.
- The company fails to pay fines or penalties imposed under this new law.
- The company has an action pending in any jurisdiction for violation of this new law.
- 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.
- Valid credit cards, including Visa and MasterCard.

Section 508.107, F.S., prohibits a person from engaging in the following acts:

- Charging rates in excess of those set by local ordinance.
- Violating the laws governing the FHP wrecker allocation system.
- Violating the laws governing the local wrecker allocation system.
- Violating the laws governing liens for towing or storing vehicles and vessels.
- Violating the laws governing towing or removing vehicles and vessels from private property.
- Refusing to allow a law enforcement officer to inspect a towing and storage facility.
- Performing an act prohibited by the new law, or failing to perform an act required by the new law.

Sections 508.108 and 508.109, F.S., are created to provide administrative and civil penalties. The department may impose any of the following civil penalties:

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

Sections 508.110 and 508.111, 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 bill are deposited into the General Inspection Trust Fund and may only be used to implement the new law.

Section 508.112, F.S., exempts recovery (repossession) agents from the provisions of the chapter.

Section 508.113, 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 bill, and may still levy business taxes. The department is authorized to delegate enforcement of this act to any county or municipality.

Section 508.114, 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 508.116, F.S., effective January 1, 2008, is created to provide criminal penalties for operating an unregistered wrecker company which is punishable as third-degree felonies:

Section 120.80, F.S., is amended to conform existing law to the provisions of the bill. 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 the department.

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

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 bill.

Section 320.0706, F.S., is amended to require a wrecker’s license plate to be mounted to the front of the vehicle. Section 320.0821(1), F.S., is amended and section 320.0821(5) is added to clarify license plate requirements for wreckers. Effective January 1, 2008, the DHSMV 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 bill makes technical changes to conform existing law to the provisions of the bill.

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 bill 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 bill does not change the penalty. However, the bill 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 bill replaces “and” with “or,” so that any one 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 bill 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 bill 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 bill does not change the penalty. However, the bill 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 bill replaces “and” with “or,” so that any one 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 bill. Additionally, the bill 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 bill 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 bill clarifies that liens established under s. 713.78, F.S., prior to July 1, 2008, are not affected by the changes to the section created by this bill. It conforms language in s. 715.07, F.S., to reflect the provisions of ch.508, F.S., and provides that 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 bill repeals s. 1.01(15), F.S., defining "wrecker operator." Finally, the bill appropriates \$693,000 from the General Inspection Trust Fund to the department and authorizes nine additional full time equivalent employees for Fiscal Year 2007-2008.

The bill 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:

The bill will generate \$693,000 in recurring revenues as a result of the registration fee paid by wrecker companies. The fees collected will be deposited into the department's General Inspection Trust Fund.

B. Private Sector Impact:

This bill provides that all wrecker companies and persons engaged in towing activities must be registered with the department in order to conduct business in this state. The bill provides that the fee for such registration will not exceed \$495. 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 the department, this bill will have an average annual cost of approximately \$693,000, to fund the necessary staff to implement this program over the next three 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 bill.

The bill appropriates \$693,000 from the General Inspection Trust Fund to the department in Fiscal Year 2007-2008 to fund the program and authorizes nine additional FTE positions.

According to the DHSMV, programming hours are needed to change current FRVIS software to issue one wrecker tag instead of two as it currently does. This assumes 70 hours of contracted programming, which will be absorbed.

The Criminal Justice Impact Conference has not met to consider the prison bed impact of felony penalty provisions of the bill. However, it appears the impact would be insignificant as none of the felony offenses involve a mandatory minimum term or a Level 7 ranking, which would score a lowest permissible sentence of imprisonment for even a first-time offender.

VI. Technical Deficiencies:

In Section 20, the bill states: "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.
