

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 133 Towing and Immobilizing Vehicles and Vessels
SPONSOR(S): State Affairs Committee, Business & Professions Subcommittee, McClain
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1332

FINAL HOUSE FLOOR ACTION: 81 Y's 31 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 133 passed the House on February 20, 2020. The bill was amended in the Senate on March 13, 2020, and returned to the House. The House concurred in the Senate amendments and subsequently passed the bill as amended on March 13, 2020.

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 allows municipalities to establish maximum rates for the towing and immobilization of vessels; however, counties and municipalities are prohibited from enacting a rule or ordinance that imposes a fee or charge on authorized wrecker operators or towing businesses. This prohibition does not apply to the levying of a reasonable business tax or the imposition of an administrative fee on the registered owner or other legally authorized person in control of a vehicle or vessel to cover the cost of enforcement, which may be collected by an authorized wrecker operator or towing business and remitted to the county or municipality after it is 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. It provides that a wrecker operator that recovers, removes, or stores a vehicle or vessel must 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 charter counties with towing or immobilization licensing, regulatory, or enforcement programs as of January 1, 2020, from the prohibition on imposing a fee or charge on an authorized wrecker operator or a towing business.

The bill requires tow-away zone notices be placed within 10 feet from the road instead of within 5 feet from the public right-of-way line.

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

The bill was approved by the Governor on September 18, 2020, ch. 2020-174, L.O.F., and will become effective on October 1, 2020.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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.¹ After the establishment of such contract(s), the county or municipality must create a “wrecker operator system” to apportion towing assignments between the contracted wrecker services. This apportionment may occur through the creation of geographic zones, a rotation schedule, or a combination of those methods.² Any wrecker operator that is included in the wrecker operator system is an “authorized wrecker operator” in the jurisdiction, while any wrecker operation not included is an “unauthorized wrecker operator.”³

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

- His or her full name;
- Driver license number;
- That he or she is not a member of the wrecker operator system;
- That the vehicle is not being towed for the owner’s or operator’s insurance company or lienholder;
- Whether he or she has an insurance policy providing \$300,000 in liability coverage and \$50,000 in on-hook cargo coverage; and
- The maximum charges for towing and storage.⁵

The unauthorized wrecker operator must disclose this information to the owner or operator in the presence of a law enforcement officer if an officer is present at the scene of the accident.⁶

It is a second degree misdemeanor for an unauthorized wrecker operator to initiate contact or to fail to provide required information after contact has been initiated.⁷ An unauthorized wrecker operator misrepresenting his or her status as an authorized wrecker operator commits a first degree misdemeanor.⁸ In either instance, the unauthorized wrecker operator’s wrecker, tow truck, or other motor vehicle used during the offense may be immediately removed and impounded.⁹

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

¹ 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.”)

² *Id.*

³ S. 323.002(1)(a)-(b), F.S.

⁴ S. 323.002(2)(b), F.S.

⁵ S. 323.002(2)(c), F.S.

⁶ *Id.*

⁷ *Id.*

⁸ S. 323.002(2)(d), F.S.

⁹ S. 323.002(2)(c) and (d), F.S.

¹⁰ 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 from where the vehicle is towed at the request of a law enforcement officer. Municipalities are also authorized to adopt maximum rate ordinances. If a municipality enacts an ordinance to establish towing fees, the county ordinance will not apply within the municipality.¹¹ A county or municipality may not establish rates, including a maximum rate, for the towing of vessels.¹²

Vehicle Holds, Wrecker Operator Storage Facilities, and Liens

An investigating agency may place a hold on a motor vehicle stored within a wrecker operator's storage facility for up to five business days.¹³ A hold may be applied 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.¹⁴

An officer may also apply a hold when the vehicle is impounded pursuant to s. 316.193, F.S. (relating to driving under the influence) or s. 322.34, F.S. (relating to driving with a suspended or revoked license) or when the officer is complying with a court order.¹⁵ 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.¹⁶

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.¹⁷ 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.¹⁸

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 enforcing a lien pursuant to s. 83.806, F.S., or for the removal of property left after a lease is vacated pursuant to s. 715.104, F.S.; or
- Any law enforcement agency.¹⁹

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

¹² 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).

¹³ S. 323.001(1), F.S.

¹⁴ S. 323.001(4)(a)-(e), F.S.

¹⁵ S. 323.001(4)(f)-(g), F.S.

¹⁶ S. 323.001(5), F.S.

¹⁷ S. 323.001(2), F.S.

¹⁸ S. 323.001(2)(a)-(b), F.S.

¹⁹ 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.²⁰ 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.²¹ 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.²² 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.”²³ 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.²⁴

Fees Related to Towing and Storage

Some municipalities charge administrative fees when a vehicle is towed in connection with certain misdemeanors or felonies. For example, the City of Sarasota seizes the vehicle of those arrested for crimes related to drugs or prostitution.²⁵ The registered owner of the vehicle is 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.²⁶

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.²⁷

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.²⁸ 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.²⁹

²⁰ Art. VII, s. 1(a), Fla. Const.

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

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

²³ *Id.* at 758-59.

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

²⁵ Sarasota Police Department, *Vehicle Seizure Program*, <https://www.sarasotapd.org/about-us/vehicle-seizure-program> (last visited Oct. 14, 2019).

²⁶ Bradenton, Fla. Code of Ordinances, ch. 54, art. IV (2019).

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

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

²⁹ Winter Springs, Fla. Notice of Right to Hearing Form (on file with the Local, Federal & Veterans Affairs Subcommittee).

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.³⁰

Towing from Private Property

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.³¹ 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:³²

- Any towed or removed vehicle or vessel must be stored at a site within a specified distance of the point of removal.³³
- 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 as a condition of returning the vehicle. The towing company operator must issue a detailed, single receipt to the owner of the vehicle or vessel.

³⁰ Agreement for Wrecker Towing and Storage Services, City of Sarasota and J&G WFR, Inc. dba Direct Towing (on file with the Local, Federal & Veterans Affairs Subcommittee).

³¹ S. 715.07(2), F.S.

³² S. 715.07(2)(a), F.S.

³³ 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 is 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 or when 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.

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:³⁴

- 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 letters 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,³⁵ 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.³⁶

A county or municipality may adopt additional standards, including regulation of the rates charged when a vehicle or vessel is towed from private property.³⁷

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 fees; and court costs.³⁸

Violations of these provisions may constitute a first-degree misdemeanor³⁹ or a third-degree felony.⁴⁰

Effect of the Bill

The bill authorizes a county or municipality to regulate the rates for the towing or immobilization of vessels. A county must establish a maximum rate that may be charged for the towing or immobilization of a vessel. If a municipality establishes a maximum rate for the towing or immobilization of a vessel, the county's rate does not apply within such municipality.

³⁴ S. 715.07(2)(a)5, F.S.

³⁵ These requirements are contained in s. 715.07(2)(a)5.a.-f., F.S.

³⁶ S. 715.07(2)(a)5, F.S.

³⁷ S. 715.07(2)(b), F.S.

³⁸ S. 715.07(4), F.S.

³⁹ For subparagraphs (2)(a)2. and (2)(a)6. S. 715.07(5)(a), F.S.

⁴⁰ 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 an authorized wrecker operator or a towing business. The bill defines the term “towing business” as a business providing towing services for monetary gain. This prohibition does not apply to the levying of a reasonable business tax or the imposition of a reasonable administrative fee or charge on the legal owner or other legally authorized person in control of a vehicle or vessel to cover the cost of enforcement, including parking enforcement when the vehicle or vessel is towed from public property. The administrative fee may not exceed 25 percent of the maximum towing rate and may be collected by an authorized wrecker operator or towing business and remitted to the county or municipality after it is 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 prohibition on county ordinances or rules that impose a fee or tax on authorized wrecker operators or on towing businesses does not apply to towing or immobilization licensing, regulatory, or enforcement programs in effect on January 1, 2020, in a charter county where:

- Ninety percent of the county’s population lives in incorporated municipalities;⁴¹
- The county contains at least 38 incorporated municipalities within its territorial boundaries as of January 1, 2020;⁴² or
- The county is a county as defined in s. 125.011(1), F.S.⁴³

Such charter counties may continue to operate their existing towing or immobilization licensing, regulatory, or enforcement programs and are authorized to levy an administrative fee for enforcement costs.; however, a charter county as defined in s. 125.011(1), F.S., is prohibited from imposing any new business tax, fee, or charge that was not in effect on January 1, 2020, on a towing business or authorized wrecker operator.

The bill 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 other legally authorized person in control of a vehicle or vessel, on the lienholder of a vehicle or vessel, or on an authorized wrecker operator when the vehicle or vessel is 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 and does not apply to the continuing operation of towing or immobilization licensing, regulatory, or enforcement programs in grandfathered charter counties.

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., rather than in “strict” compliance.

The bill revises the requirement that tow-away zone notices be placed within “five feet” from the “public right-of-way line” to instead require the notice be placed within “10 feet” from the “road” as defined in s. 334.03(22), F.S., of the Florida Transportation Code.⁴⁴

⁴¹ As of April 1, 2018, more than 90 percent of the populations of Broward County and Duval County lived in incorporated areas. EDR, *Florida Population Estimates for Counties and Municipalities*, <http://edr.state.fl.us/Content/population-demographics/data/index-floridaproducts.cfm> (last visited Oct. 14, 2019). As of October 1, 2019, Broward County operated a towing or immobilization licensing, regulatory, or enforcement program, while Duval County did not.

⁴² As of October 1, 2019, only Palm Beach County had more than 38 municipalities. *See id.* (Palm Beach County has 39 municipalities).

⁴³ S. 125.011(1), F.S. defines a “county” as “any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968.” As of January 1, 2020, only Miami-Dade County operated under a charter adopted pursuant to those provisions.

⁴⁴ S. 334.03(22), F.S., defines the term “road” as a way open to travel by the public, including, but not limited to, a street, highway, or alley. The term includes associated sidewalks, the roadbed, the right-of-way, and all culverts, drains, sluices, ditches, water storage areas, waterways, embankments, slopes, retaining walls, bridges, tunnels, and viaducts necessary for the maintenance of travel and all ferries used in connection therewith.

The bill revises several provisions relating to the towing or removal of a vehicle applicable to a person in control of a vehicle or vessel, making these provisions applicable also to those in custody of the vehicle.

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.