

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 179 Towing and Storage

**SPONSOR(S):** Infrastructure Strategies Committee, Transportation & Modals Subcommittee, Bell, Andrade, and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 774

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Modals Subcommittee	18 Y, 0 N, As CS	Hinshelwood	Hinshelwood
2) Civil Justice Subcommittee	16 Y, 1 N	Mawn	Jones
3) Infrastructure Strategies Committee	25 Y, 0 N, As CS	Hinshelwood	Harrington

### SUMMARY ANALYSIS

Under Florida law, towing-storage operators may claim a lien on motor vehicles or vessels for specified fees, and Florida law provides a process for foreclosing on such lien if fees remain unpaid. The bill makes the following changes to the laws relating to towing-storage operators:

- Amends provisions related to maximum rates set by counties, cities, and the Florida Highway Patrol (FHP) for towing and related fees, including fees for cleanup and disposal of hazardous and nonhazardous materials.
- Requires such rates to be posted online and requires counties, cities, and FHP to establish a process for investigating and resolving complaints regarding fees charged in excess of such rates.
- Defines the term “towing-storage operator” and makes conforming changes.
- Specifies the existing fees which a towing-storage operator may charge for specified services.
- Clarifies the process provided in current law for law enforcement’s search for information on a towed vehicle or vessel.
- Modifies timelines relating to the sending of a notice of lien by a towing-storage operator.
- Increases the minimum number of days that must pass before an unclaimed newer model vehicle or vessel may be sold.
- Lowers the number of days over which a towing-storage operator may not charge a person if the towing-storage operator failed to provide notice to a lender or other lienholder on a vehicle or vessel.
- Specifies documents that may be presented as evidence of a person’s interest in a vehicle or vessel.
- Amends provisions relating to inspection or release of a vehicle, vessel, or personal property.
- Amends provisions relating to challenging a wrongful taking or withholding of a vehicle or vessel and relating to posting a bond for the release of the vehicle or vessel.
- Increases the minimum number of days that must pass from the notice of the public sale to the date of the public sale.
- Replaces the requirement that notice of the public sale be made in a newspaper of general circulation with the requirement that notice of the public sale be made on the publicly available website maintained by an approved third-party service.
- Requires a towing-storage operator to accept specified forms of payment methods.
- Provides requirements for record retention and for a towing-storage operator rate sheet and itemized invoice.
- Authorizes a towing-storage operator to enter a vehicle or vessel for purposes of recovering, removing, or storing such vehicle or vessel.
- Prohibits FHP from excluding a wrecker operator from the wrecker operator system based solely on a prior felony conviction unless such conviction is for a forcible felony.
- Requires an investigating agency or other specified persons to take possession of a vehicle within 30 days.

The bill has an indeterminate fiscal impact on the state and local governments, and the private sector.

The bill provides an effective date of July 1, 2024.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h0179d.ISC

DATE: 2/19/2024

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Fees Charged by a Towing Company and Lien Against Vehicle**

##### Background

In the case where the vehicle's owner or operator requests the vehicle to be towed, it is a consensual tow, and towing fees are established by contract between the towing company and the vehicle owner or operator.

If the vehicle is towed for a reason other than the request of the owner or operator, it is a nonconsensual tow. Examples of nonconsensual tows include towing at the request of law enforcement due to an accident, an arrest, the vehicle being disabled or abandoned, or the vehicle being evidence of a crime. Other examples include towing at the request of a private property owner due to the vehicle being wrongfully parked or remaining on a landlord's property after the tenancy has expired.

Maximum towing and storage rates *must* be set by each county.<sup>1</sup> Cities *may* establish maximum rates, in which case the county rates do not apply.<sup>2</sup> If the Florida Highway Patrol (FHP) calls for the tow, the maximum rates set by FHP apply, unless the county or city has established rates.<sup>3</sup>

As a result of a tow, whether consensual or non-consensual, the towing company has a lien on the vehicle for a reasonable:<sup>4</sup>

- Towing fee,
- Administrative fee imposed by a city or county, and
- Storage fee.

However, a storage fee may not be charged if the vehicle is stored for fewer than 6 hours. In addition to the amount due for the towing and storage of the vehicle, a towing company may charge an administrative fee of up to \$250 for releasing the claim of lien.<sup>5</sup>

In order to cover the cost of enforcement, including parking enforcement, a city or county may impose a fee of up to 25% of the maximum towing rate when a vehicle is towed from public property.<sup>6</sup> This fee is collected by the towing company and is remitted to the city or county after it is collected.<sup>7</sup>

##### Effect

The bill requires counties and FHP to establish maximum rates that towers may charge for cleanup and disposal of hazardous and nonhazardous materials incidental to a nonconsensual tow. Cities may enact such rates, in which case the city's rates apply.

A tower that is requested to perform cleanup or disposal of hazardous or nonhazardous materials must notify the applicable local government as soon as practicable of its intention not to perform such cleanup or disposal. In the case of a tow requested by FHP, the tower must notify FHP or one of its officers as soon as practicable of its intention not to perform such cleanup or disposal.

The bill clarifies that the provisions relating maximum rates charged by a tower for cleanup and disposal of hazardous and nonhazardous materials do not create a duty on the part of a vehicle or

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

<sup>2</sup> Ss. 125.0103(1)(c) and 166.043(1)(c), F.S.

<sup>3</sup> S. 321.051(2), F.S.

<sup>4</sup> S. 713.78(2), F.S.

<sup>5</sup> S. 713.78(15)(a), F.S.

<sup>6</sup> Ss. 125.01047(2)(b) and 166.04465(2)(b), F.S.

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

vessel owner who is a named insured on a valid insurance contract, or the insurer that issues such contract, to pay for cleanup or disposal of hazardous or nonhazardous materials beyond what is covered under the vehicle's or vessel's insurance contract in place at the time of the incident requiring such cleanup or disposal of hazardous or nonhazardous materials.

The bill makes FHP's maximum towing and storage rates applicable in areas where no maximum towing and storage rates have been established by a city or county.

A county or city that has established maximum towing and storage rates must post such rates on its respective website and must establish a process for investigating and resolving complaints regarding fees charged in excess of such maximum rates. Similarly, FHP's maximum rates for towing and storage must be posted on the website for the Department of Highway Safety and Motor Vehicles (DHSMV), and DHSMV must establish a process for investigating and resolving complaints regarding fees charged in excess of FHP's maximum rates.

The bill provides a list of already-established fees that a towing-storage operator<sup>8</sup> may charge the owner or operator of a vehicle or vessel for, or incidental to, the recovery, removal, or storage of the vehicle or vessel, as follows:

- Any reasonable fee for service specifically authorized under ss. 125.0103 or 166.043, F.S., by ordinance, resolution, regulation, or rule of the county or municipality in which the service is performed.
- Any reasonable fee for service specifically authorized by FHP under s. 321.051(2), F.S.
- Any reasonable fee for service as agreed upon in writing between a towing-storage operator and the owner of a vehicle or vessel.
- Any lien release administrative fee as set forth in s. 713.78(15)(a), F.S.
- Any reasonable administrative fee or charge imposed by a county or municipality pursuant to ss. 125.01047, 166.04465, or 323.002, F.S., upon the registered owner or other legally authorized person in control of a vehicle or vessel.

The bill clarifies that the fees listed above create a lien against a vehicle or vessel, and the bill adds that a tow requested by a county or municipality is a type of tow for which the above fees create a lien against a vehicle or vessel.

### **Third-Party Service Required to Send Notices**

#### Background

##### *Approved Third-Party Service*

A towing company must use a third-party service approved by DHSMV to transmit all required notices relating to liens for towing and storage.<sup>9</sup>

There are currently two DHSMV-approved third-party providers, as follows:<sup>10</sup>

- Auto Data Direct.
- Beacon Software.

A third-party service must maintain a publicly available website that allows owners, registrants, lienholders, insurance companies, or their agents to search for notices sent.<sup>11</sup>

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<sup>8</sup> For purposes of the statute relating to liens for recovering, towing, or storing vehicles and vessels, the bill defines the term "towing-storage operator" to mean a person who regularly engages in the business of transporting vehicles or vessels by wrecker, tow truck, or car carrier, or storing such vehicles or vessels.

<sup>9</sup> S. 713.78(16), F.S.

<sup>10</sup> FLHSMV, *Liens for Auto Repair Shops and Towing Companies*, <https://www.flhsmv.gov/motor-vehicles-tags-titles/liens-and-titles/liens-for-auto-repair-shops-and-towing-companies/> (last visited Feb. 7, 2024).

<sup>11</sup> S. 713.78(16)(f), F.S.

## *Law Enforcement Check for Vehicle or Vessel Information*

If a law enforcement agency authorized a towing-storage operator to remove a vehicle or vessel, or a towing-storage operator notifies a law enforcement agency of possession of a towed vehicle or vessel,<sup>12</sup> the law enforcement agency where the vehicle or vessel is stored must contact DHSMV, or the appropriate agency in the state of registration, if known, within 24 hours and provide a full description of the vehicle or vessel.<sup>13</sup> DHSMV, or the appropriate state agency, must search its records to determine the identity of the owner, the company insuring the vehicle or vessel, and any lienholders and provide the information to the law enforcement agency within 72 hours.<sup>14</sup> The towing-storage operator must obtain such information from the law enforcement agency within 5 days after the date of storage and provide the required notice.<sup>15</sup>

### Effect

The bill clarifies that the process provided in current law for law enforcement's search for information on a towed vehicle or vessel may only be utilized if an approved third-party service cannot obtain the vehicle's or vessel's owner, lienholder, and insurer information or last state of record. The bill also clarifies that, even in this context, notices must still be sent by the approved third-party service.

## **Liens for Recovering, Towing, or Storing Vehicles and Vessels**

### Background

#### *Liens Generally*

A lien is a claim against property that evidences a debt, obligation, or duty.<sup>16</sup> A lien can be created by judgment, equity, agreement, or statute.<sup>17</sup> The rights and duties of a lienholder depend on the type of lien created and are generally set out in the order, agreement, or statute creating the lien.<sup>18</sup> A statutory lien expires in the manner and method set forth in statute, and a consensual lien expires according to the terms of the parties' agreement.<sup>19</sup>

#### *Notice of Lien*

A towing-storage operator who claims a lien against a vehicle or vessel must give notice of the lien, by certified mail, to the registered owner, the insurance company insuring the vehicle, and all persons claiming a lien on the vehicle or vessel, as disclosed in DHSMV records or as disclosed by the records of any corresponding agency in any other state in which the vehicle or vessel is identified through a records check.<sup>20</sup> However, a towing-storage operator must use a DHSMV-approved third-party service<sup>21</sup> to transmit the notice of lien (as well as any other notices required under s. 713.78, F.S.).<sup>22</sup>

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<sup>12</sup> Section 715.07(2)(a)2., F.S., provides that within 30 minutes after completion of a tow or removal from private property without the consent of the registered owner or other legally authorized person, a towing-storage operator must notify the municipal police department, or, in an unincorporated area, the sheriff, of the tow or removal, the storage site, the time of the tow or removal, and the make, model, color, and license plate number of the vehicle or description and registration number of the vessel.

<sup>13</sup> S. 713.78(4)(b), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Fla. Jur. 2d Liens § 37:1

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Section 713.18(16)(a), F.S., defines the term "third-party service" to mean a qualified business entity that, upon a request submitted through a website by an operator: 1) Accesses the National Motor Vehicle Title Information System records to obtain the last state of record of the vehicle; 2) Accesses the owner, lienholder, and insurer information, as applicable, for a vehicle or vessel from the DHSMV; 3) Electronically generates the notices required of a towing-storage operator through the website; 4) Prints and sends the notices to each owner, lienholder, and insurer of record by certified mail; 5) Electronically returns tracking information or other proof of mailing and delivery of the notices to the towing-storage operator; and 6) Electronically reports to the DHSMV via an electronic data exchange process certain information related to the towing and storage notice.

<sup>22</sup> S. 713.78(16), F.S.

The notice of lien must be sent by certified mail within seven business days after the date of the vehicle's or vessel's storage.<sup>23</sup> Where a towing-storage operator is unsuccessful in locating the name and address of the owner or other lienholder, the operator must, after seven business days after the initial tow or storage, notify the jurisdictional entity where the vehicle or vessel is stored, in writing by certified mail or acknowledged hand delivery, that the operator has been unable to locate the name and address, a physical search of the vehicle or vessel has revealed no ownership information, and a "good faith effort"<sup>24</sup> has been made, including a records check of the DHSMV database and of the National Motor Vehicle Title Information System (NMVTIS).<sup>25</sup> Failure of the towing-storage operator to make a good faith effort to identify the owner or lienholder of the vehicle or vessel precludes the towing-storage operator from assessing any storage charges.<sup>26</sup>

### *Inspection and Release of Personal Property*

Towing-storage operators must allow vehicle or vessel owners, lienholders, insurance company representatives, or agents to inspect a towed vehicle or vessel and release to that person the vehicle, vessel, or all personal property not affixed to the vehicle or vessel which was in the vehicle or vessel at the time the vehicle or vessel came into the custody of the towing-storage operator.<sup>27</sup> Agency must be evidenced in an original writing acknowledged by the owner before a notary public or someone authorized to administer oaths.<sup>28</sup>

### *Challenging a Wrongful Taking or Withholding of a Vehicle or Vessel and Posting Bond for Release of the Vehicle or Vessel*

The owner of a vehicle or vessel that has been towed, or any person claiming a lien, other than the towing-storage operator, within 10 days after the time she or he has knowledge of the location of the vehicle or vessel, may file a complaint in the county court of the county in which the vehicle or vessel is stored to determine whether her or his property was wrongfully taken or withheld.<sup>29</sup>

At any time before the sale of the vehicle or vessel, an owner or lienholder may have her or his vehicle or vessel released upon posting with the court a cash or surety bond or other adequate security equal to the amount of the charges for towing or storage and lot rental amount to ensure the payment of such charges in the event she or he does not prevail.<sup>30</sup> Upon the posting of the bond and the payment of other specified fees, the clerk of the court must issue a certificate notifying the lienor of the posting of the bond and directing the lienor to release the vehicle or vessel.<sup>31</sup> At the time of such release, after reasonable inspection, she or he must give a receipt to the towing-storage company reciting any claims she or he has for loss or damage to the vehicle or vessel or the contents thereof.<sup>32</sup>

Upon determining the respective rights of the parties, the court may award damages, attorney's fees, and costs in favor of the prevailing party.<sup>33</sup> In any event, the final order shall provide for immediate payment in full of recovery, towing, and storage fees by the vehicle or vessel owner or lienholder; or the

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<sup>23</sup> S.713.78(4)(a) and (c), F.S.

<sup>24</sup> Section 713.78(5)(e), F.S., defines the term to mean that the operator has performed a list of "checks" of items such as searching specified databases and information systems; looking for any type of tag, tag record, temporary or regular tag on the vehicle or vessel; or looking for the vehicle identification number or the vessel registration number.

<sup>25</sup> "The National Motor Vehicle Title Information System (NMVTIS) is a system that allows the titling agency to instantly and reliably verify the information on the paper title with the electronic data from the state that issued the title." See AAMVA, *National Motor Vehicle Title Information System (NMVTIS)*, <https://www.aamva.org/technology/systems/vehicle-systems/nmvtis/> (last visited Feb. 7, 2024).

<sup>26</sup> S. 713.78(9), F.S.

<sup>27</sup> S. 713.78(10), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> S. 713.78(5)(a), F.S.

<sup>30</sup> S. 713.78(5)(b), F.S.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> S. 713.78(5)(c), F.S.

agency ordering the tow; or the owner, lessee, or agent thereof of the property from which the vehicle or vessel was removed.<sup>34</sup>

### *Public Sale of Stored Vehicles and Vessels*

A towing-storage operator may sell at public sale a stored vehicle or vessel that remains unclaimed, or for which charges for recovery, towing, or storage remain unpaid, after:

- 35 days from the date of storage if the vehicle or vessel is more than 3 years old; or
- 50 days from the date of storage if the vehicle or vessel is 3 years old or less.<sup>35</sup>

If the date of the sale was not included in the notice of claim of lien, the towing-storage operator must send a notice of sale by certified mail, no less than 30 days before the date of the sale, to:

- The person in whose name the vehicle or vessel is registered; and
- All persons claiming a lien on the vehicle or vessel as shown in the records of DHSMV or any corresponding agency in any other state in which the vehicle is identified as being titled by a records check of NMVTIS or an equivalent commercially available system.<sup>36</sup>

The notice must have clearly identified and printed, if the claim of lien is for a motor vehicle, the last eight digits of the VIN of the motor vehicle subject to the lien, or, if the claim of lien is for a vessel, the hull identification number of the vessel subject to the lien, in the delivery address box and on the outside of the envelope sent to the registered owner and all other persons claiming an interest therein or lien thereon.<sup>37</sup> The towing-storage operator must also publish notice of the time and place of the sale, at least ten days before the date of the sale, in a newspaper of general circulation in the county where the sale will occur.<sup>38</sup>

The sale must be a public sale for cash. If the owner or lienholder of the vehicle or vessel sold is absent, the proceeds of the sale of the vehicle or vessel, minus any reasonable towing and storage charges owed and costs of the sale, must be deposited with the clerk of the court for the county where the sale occurred.<sup>39</sup> The clerk must hold the proceeds for the benefit of the owner or lienholder whose interest in the vehicle or vessel was extinguished by the sale; however, the clerk is entitled to receive five percent of such proceeds for their care and disbursement.<sup>40</sup>

The certificate of title issued after such sale must be discharged of all liens unless otherwise provided by court order. Further, the owner or lienholder of the vehicle or vessel sold may file a complaint after the sale in the county court of the county in which it was stored. Upon determining the respective rights of the parties, the court may award damages, attorney fees, and costs in favor of the prevailing party.<sup>41</sup>

### *Good Faith Effort*

A towing-storage operator's failure to make a good faith effort to comply with the notice requirements in s. 713.78, F.S., precludes the imposition of any storage charges against the vehicle or vessel.<sup>42</sup> Further, if a lienor fails to provide notice to a person claiming a lien on a vehicle or vessel, the lienor may not charge the person for more than seven days of storage, but such failure does not affect charges made for towing the vehicle or vessel or the priority of liens on the vehicle or vessel.<sup>43</sup>

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<sup>34</sup> *Id.*

<sup>35</sup> S. 713.78(6), F.S.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> S. 713.78(6), F.S.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> S. 713.78(9), F.S.

<sup>43</sup> *Id.*

## Effect

The bill reduces the time a towing-storage operator has to send a notice of lien from seven business days after the date of storage of the vehicle or vessel to five business days after such date and clarifies that the count of days does not include federal legal holidays. The bill also modifies how soon before the vehicle or vessel's sale such notice may be sent from not less than 30 days before such sale to not less than:

- 30 days before such sale if the vehicle or vessel is an older model;<sup>44</sup> or
- 52 days before such sale if the vehicle or vessel is a newer model.<sup>45</sup>

As to newer model vehicle or vessels, the bill increases the minimum number of days that must pass from the time the vehicle or vessel is stored before the unclaimed vehicle or vessel may be sold. Under the bill, a vehicle or vessel may not be sold until:

- 35 days after the vehicle or vessel is stored if the vehicle or vessel is an older model.
- 57 days after the vehicle or vessel is stored if the vehicle or vessel is a newer model.

The bill requires a towing-storage operator to accept an original or a copy of any of the following documents as evidence of a person's interest in a vehicle or vessel:

- An electronic title;
- A paper title;
- A contract between a lender and the owner of the vehicle or vessel;
- A contract between a lessor and the lessee of the vehicle or vessel;
- Credentials establishing the person as an employee or contract agent of an insurance company along with documentation identifying the vehicle by the vehicle identification number or vessel by the hull identification number; or
- A written agreement evidencing that the person is an agent of the vehicle or vessel owner, lienholder, or insurance company representative.

A towing-storage operator may not require any of the documents listed above to be notarized, except for the written agreement evidencing that the person is an agent of specified persons if such agreement is presented for the purpose of releasing the vehicle or vessel.

Additionally, the bill provides that presenting one form of current government-issued photo identification constitutes sufficient identity verification.

The bill requires a towing-storage operator to allow inspection and release of the vehicle, vessel, or personal property within one hour after the owner, lienholder, insurance company representative, or their agent presents specified documents during normal business hours at the site where the vehicle or vessel is stored. A rental vehicle or vessel agreement is not evidence that the person who rented a vehicle or vessel is an agent of the rental vehicle or vessel owner for the purpose of releasing the vehicle or vessel. However, a towing-storage operator must release to the renter of a rental vehicle or vessel all personal property belonging to the renter which is not affixed to the rental vehicle or vessel within one hour after the renter's arrival.

The bill amends provisions relating to challenging a wrongful taking or withholding of a vehicle or vessel and relating to posting a bond for the release of the vehicle or vessel. The registered owner of a vehicle or vessel in the possession of a towing-storage operator, the insurance company insuring such vehicle or vessel, and any other person claiming a lien thereon, other than the towing-storage operator, may initiate judicial proceedings in the court of competent jurisdiction in the county in which the vehicle or vessel is stored to determine whether the vehicle or vessel was wrongfully taken or withheld or whether fees were wrongfully charged.

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<sup>44</sup> The bill defines "older model" to mean a vehicle or vessel which is more than 3 model years old, beginning with the model year of the vehicle or vessel as year one.

<sup>45</sup> The bill defines "newer model" to mean a vehicle or vessel which is 3 model years old or less, beginning with the model year of the vehicle or vessel as year one.

Regardless of whether judicial proceedings have been initiated, at any time before the sale of the vehicle or vessel by the towing-storage operator, the owner of the vehicle or vessel, the insurance company insuring the vehicle or vessel, and any other person claiming a lien thereon, other than the towing-storage operator, may have the vehicle or vessel released upon posting with the clerk of the court in the county in which the vehicle or vessel is held a cash or surety bond or other adequate security equal to the amount of the accrued charges set forth in the notice of lien, plus accrued storage charges, at the time of the release of the vehicle or vessel, if any, to ensure the payment of such charges in the event a court determines that the vehicle or vessel was not wrongfully taken or withheld or fees were not wrongfully charged.

The owner of the vehicle or vessel, the insurance company insuring the vehicle or vessel, and any other person claiming a lien thereon, other than the towing-storage operator, may not be required to initiate judicial proceedings in order to post the bond in the registry of the court and are not required to use a particular form for posting the bond unless the clerk provides such form. Upon the posting of the bond and the payment of other specified fees, the clerk of the court must automatically issue a certificate notifying the towing-storage operator of the posting of the bond and directing the towing-storage operator to release the vehicle or vessel to the party that posted the bond. At the time of such release, after reasonable inspection, the party that posted the bond must give a receipt to the towing-storage operator reciting any claims for loss or damage to the vehicle or vessel or the contents thereof, or such claims are deemed waived.

Upon receiving a copy of a certificate giving notice of the posting of a bond in the required amount and directing the release of the vehicle or vessel, a towing-storage operator must release or return the vehicle or vessel to the party that posted the bond. If the party posting the bond does not initiate judicial proceedings within 45 days after the issuance of the certificate by the clerk of the court, then upon request by the towing-storage operator, the clerk of the court must:

- Release the cash to the towing-storage operator; or
- Issue a notice certifying that a judicial proceeding has not been initiated within 45 days after the issuance of the certificate and requiring the surety that issued the bond to promptly pay the full face value of the bond to the towing-storage operator. The towing-storage operator has the obligation, upon receipt of the clerk's notice, to timely notify the surety of such notice. A notice issued by the clerk under this sub-subparagraph expires 120 days after its issuance if the notice is not delivered to the surety.

Upon determining the respective rights of the parties, the court may award damages, attorney fees, and costs in favor of the prevailing party. In the event the defendant prevails, the final order must provide for immediate payment in full of recovery, towing, and storage fees by the vehicle or vessel owner or lienholder; or the agency ordering the tow; or the owner, lessee, or agent thereof of the property from which the vehicle or vessel was removed.

The bill increases the minimum number of days from 10 days to 20 days that must pass from the notice of the public sale to the date of the public sale. The bill removes the requirement that notice of public sale be made in a newspaper of general circulation. Rather, notice of public sale will be made on the publicly available website maintained by an approved third-party service. The third-party service must electronically report to the DHSMV, via an electronic data exchange process using a web interface, the name, physical address, and telephone number of the lienor; the time and place of the sale; the vehicle's license plate number, if known; the vehicle identification number, if the claim of lien is for a vehicle, or the hull identification number, if the claim of lien is for a vessel; and the amount due for towing, recovery, storage, and administrative fees. The third-party service that publishes the public notice of sale and electronically reports the required information to DHSMV may collect and retain a service charge of no more than \$1.

The bill lowers from 7 days to 5 days the number of days over which a towing-storage operator may not charge a person if the towing-storage operator failed to provide notice to a person claiming a lien on a vehicle or vessel.



## **Forms of Payment Accepted by a Towing-Storage Operator**

### Background

Florida law does not contain a requirement for towing-storage operators to accept specified forms of payment.

### Effect

The bill requires a towing-storage operator to accept payment for accrued charges from specified authorized persons in any form from at least two of the following lists:

- Cash, cashier's check, money order, or traveler's check.
- Bank, debit, or credit card.
- Mobile payment service, digital wallet, or other electronic payment system.

A person presenting such forms of payment is not required to furnish more than one form of current government-issued photo identification when payment is made.

The bill expressly preempts a county or municipal charter, ordinance, resolution, regulation, or rule that conflicts with the provision specifying the forms of payment that a towing-storage operator must accept.

## **Towing-Storage Operator Record Retention**

### Background

Florida law does not contain any record-keeping requirements for towing-storage operators.

### Effect

The bill requires a towing-storage operator to retain for three years records produced for all vehicles or vessels recovered, towed, stored, or released. Such records must include at least all of the following:

- All notice publications and certified mailings.
- The purchase price of any unclaimed vehicle or vessel sold.
- The names and addresses of persons to which vehicles or vessels were released.
- The names and addresses of vehicle or vessel purchasers.
- All fees imposed under s. 713.78, F.S., including the required itemized invoice described below.

## **Towing-Storage Operator Rate Sheet and Itemized Invoice**

### Background

Florida law does not currently contain provisions relating to a rate sheet and itemized invoice applicable to all types of towing.

### Effect

The bill requires a towing-storage operator to maintain a rate sheet listing all fees for, or incidental to, the recovery, removal, or storage of a vehicle or vessel. The towing-storage operator must:

- Post the rate sheet at the towing-storage operator's place of business;
- Make the rate sheet available upon request by the vehicle or vessel owner, lienholder, insurance company, or their agent; and
- Before attaching a vehicle or vessel to a wrecker, furnish the rate sheet to the owner or operator of the vehicle or vessel, if the owner or operator is present at the scene of the disabled vehicle or vessel.

Any fee charged in excess of those listed on the rate sheet is deemed unreasonable.

Additionally, the bill requires that an itemized invoice of actual fees charged by a towing-storage operator for a completed tow must be produced and be available to the vehicle or vessel owner, lienholder, insurance company, or their agent no later than one business day after:

- The tow is completed; or
- The towing-storage operator has obtained all necessary information to be included on the invoice, including any charges submitted by subcontractors used by the towing-storage operator to complete the tow and recovery.

The itemized invoice must contain all of the following information:

- The date and time the vehicle or vessel was towed;
- The location to which the vehicle or vessel was towed;
- The name, address, and telephone number of the towing-storage operator;
- A description of the towed vehicle or vessel, including the color, make, model, model year, and vehicle identification number of the vehicle or hull identification number of the vessel;
- The license plate number and state of registration for the towed vehicle or vessel;
- The cost of the initial towing service;
- The cost of any storage fees, expressed as a daily rate;
- Other fees, including administrative fees, vehicle or vessel search fees, fees for hazardous material and nonhazardous material cleanup, and fees for labor; and
- A list of the services that were performed under a warranty or that were otherwise performed at no cost to the owner of the vehicle or vessel.

Any service performed or fee charged in addition to fees for towing and storage must be set forth on the itemized invoice individually as a single line item that includes an explanation of the service or fee and the exact amount charged for the service or the exact amount of the fee.

A towing-storage operator must make the itemized invoice available for inspection and copying no later than 48 hours after receiving a written request to inspect such invoice from:

- A law enforcement agency;
- The Attorney General; or
- The vehicle or vessel owner, lienholder, insurance company, or their agent.

## **Authorization for a Towing-Storage Operatory to Enter a Vehicle or Vessel**

### Background

Florida law does not currently expressly authorize a towing-storage operator to enter a vehicle or vessel that is under its control.

### Effect

The bill authorizes a towing-storage operator to enter, using reasonable care, a vehicle or vessel for purposes of recovering, removing, or storing such vehicle or vessel. A towing-storage operator is liable for any damage to the vehicle or vessel if such entry is not in accordance with the standard of reasonable care.

## **Investigatory Holds on Vehicles**

### Background

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.<sup>46</sup> If the investigating agency desires for the hold to continue, it must notify the wrecker operator

in writing within 5 days, excluding holidays and weekends, else the wrecker operator may release the vehicle.<sup>47</sup>

If the hold is to continue beyond 5 days, excluding holidays and weekends, the investigating agency may have the vehicle removed to a designated impound lot, in which event the investigating agency will not release the vehicle to the owner or lienholder of the vehicle until proof of payment of the towing and storage charges incurred by the wrecker operator is presented to the investigating agency.<sup>48</sup>

If the investigating agency chooses to have the vehicle remain at the wrecker operator's storage facility beyond 5 days, excluding holidays and weekends, pursuant to the written notification, the investigating agency is responsible for payment of the storage charges incurred by the wrecker operator for the requested extended period.<sup>49</sup> The owner or lienholder is responsible for payment of accrued towing and storage charges for the first 5 days, excluding holidays and weekends, or any period less than the first 5 days, excluding holidays and weekends, when the investigating agency either moves the vehicle from the wrecker operator's storage facility to a designated impound lot or provides written notification to extend the hold on the vehicle prior to the expiration of the 5 days, excluding holidays and weekends.<sup>50</sup>

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.<sup>51</sup>

The requirements for a written hold apply when the following conditions are present:<sup>52</sup>

- The officer has probable cause to believe the vehicle should be seized and forfeited under the Florida Contraband Forfeiture Act;<sup>53</sup>
- The officer has probable cause to believe the vehicle should be seized and forfeited under ch. 379, F.S.;
- The officer has probable cause to believe the vehicle was used as the means of committing a crime;
- The officer has probable cause to believe that the vehicle is itself evidence that tends to show that a crime has been committed or that the vehicle contains evidence, which cannot readily be removed, which tends to show that a crime has been committed;
- The 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.,<sup>54</sup> or s. 322.34, F.S.,<sup>55</sup> or
- The officer is complying with a court order.

The hold must be in writing and must specify:<sup>56</sup>

- The name and agency of the law enforcement officer placing the hold on the vehicle;
- The date and time the hold is placed on the vehicle;
- A general description of the vehicle, including its color, make, model, body style, and year; VIN (Vehicle Identification Number); registration license plate number, state, and year; and validation sticker number, state, and year;
- The specific reason for placing the hold;
- The condition of the vehicle;
- The location where the vehicle is being held; and
- The name, address, and telephone number of the wrecker operator and the storage facility.

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<sup>47</sup> S. 323.001(2), F.S.

<sup>48</sup> S. 323.001(2)(a), F.S.

<sup>49</sup> S. 323.001(2)(b), F.S.

<sup>50</sup> *Id.*

<sup>51</sup> S. 323.001(3), F.S.

<sup>52</sup> S. 323.001(4), F.S.

<sup>53</sup> Ss. 932.701-932.7062, F.S.

<sup>54</sup> Relating to driving under the influence; penalties.

<sup>55</sup> Relating to driving while license suspended, revoked, canceled, or disqualified.

<sup>56</sup> S. 323.001(5), F.S.

A wrecker operator's storage facility must comply with a hold placed by a law enforcement officer, including instructions for inside or outside storage.<sup>57</sup> 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.<sup>58</sup>

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.<sup>59</sup>

### Effect

The bill provides that if a vehicle is stored at a wrecker operator's facility pursuant to an investigatory hold or a hold for other evidentiary purposes, the investigating agency or other person requiring such hold must take possession of the vehicle within 30 days after the first day on which the vehicle is stored, unless another timeframe is otherwise agreed upon by the wrecker operator and the investigating agency or other person requiring the hold.

## **FHP Wrecker Operator System**

### Current Situation

Florida Law authorizes FHP to establish within areas designated by the patrol a wrecker operator system using qualified, reputable wrecker operators for removal and storage of wrecked or disabled vehicles from a crash scene or for removal and storage of abandoned vehicles, in the event the owner or operator is incapacitated or unavailable or leaves the procurement of wrecker service to the officer at the scene. All reputable wrecker operators are eligible for use in the system provided their equipment and drivers meet recognized safety qualifications and mechanical standards set by FHP's rules for the size of vehicle it is designed to handle. FHP may limit the number of wrecker operators participating in the wrecker operator system, which authority does not affect wrecker operators currently participating in the system. Notwithstanding the Administrative Procedures Act,<sup>60</sup> DHSMV's final order denying, suspending, or revoking a wrecker operator's participation in the system is reviewable in the manner and within the time provided by the Florida Rules of Appellate Procedure only by a writ of certiorari issued by the circuit court in the county where such wrecker operator resides.<sup>61</sup>

For the purpose of FHP's wrecker rotation rule,<sup>62</sup> the lack of reputability means that FHP cannot trust the wrecker operator to safeguard the welfare and property of the public. Lack of reputability includes, but is not limited to, the following:

- Conviction of any felony without restoration of the person's civil rights.
- Conviction of any felony or first-degree misdemeanor directly related to the business of operating a wrecker, regardless of whether civil rights have been restored.<sup>63</sup>
- Responding to a call while under the influence of alcohol or any controlled substance or chemical substance.

### Effect of the Bill

The bill prohibits FHP from excluding a wrecker operator from the wrecker operator system or failing to designate a wrecker operator as an authorized wrecker operator<sup>64</sup> based solely on a prior felony

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<sup>57</sup> S. 323.001(6), F.S.

<sup>58</sup> *Id.*

<sup>59</sup> S. 323.001(7), F.S.

<sup>60</sup> Ch. 120, F.S., is the Administrative Procedure Act.

<sup>61</sup> S. 321.051(2), F.S.

<sup>62</sup> R. 15B-9.007, F.A.C.

<sup>63</sup> For the purpose of Rule 15B-9007, F.A.C., any offense involving perjury or false statement is considered to be directly related to the business of operating a wrecker.

<sup>64</sup> Section 321.051(1)(a), F.S., defines the term "authorized wrecker operator" to mean any wrecker operator who has been designated by the Florida Highway Patrol as part of the wrecker operator system.

conviction, unless such conviction is for a forcible felony<sup>65</sup> or a felony listed in s. 812.014(2)(c)6.,<sup>66</sup> F.S., or s. 812.16(2), F.S.<sup>67</sup>

### **Effective Date**

The bill provides an effective date of July 1, 2024.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 125.0103, F.S., relating to ordinances and rules imposing price controls.

**Section 2:** Amends s. 166.043, F.S., relating to ordinances and rules imposing price controls.

**Section 3:** Amends s. 321.051, F.S., relating to Florida Highway Patrol wrecker operator system; penalties for operation outside of system

**Section 4:** Amends s 323.001, F.S., relating to wrecker operator storage facilities; vehicle holds.

**Section 5:** Amends s 713.78, F.S., relating to liens for recovering, towing, or storing vehicles and vessels.

**Section 6:** Amends s. 715.07, F.S., relating to vehicles or vessels parked on private property; towing.

**Section 7:** Provides an effective date of July 1, 2024.

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

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

1. Revenues:

Indeterminate.

2. Expenditures:

Indeterminate.

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

1. Revenues:

Indeterminate.

2. Expenditures:

Indeterminate.

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

Indeterminate.

#### **D. FISCAL COMMENTS:**

None.

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<sup>65</sup> Section 776.08, F.S., defines the term "forcible felony" to mean treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

<sup>66</sup> Theft of a motor vehicle.

<sup>67</sup> Operating chop shops.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

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

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

Rulemaking may be necessary to conform with changes made by the bill.

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

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 19, 2024, the Transportation & Modals Subcommittee considered a proposed committee substitute with one amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute differs from the original bill in the following ways:

- Removes prohibition on DHSMV excluding a wrecker operator from its wrecker operator system based solely on certain types of felony convictions.
- Requires counties and FHP to establish maximum rates for cleanup and disposal of hazardous and nonhazardous materials incidental to a vehicle tow. Authorizes municipalities to establish such rates, in which case the municipalities' rates apply.
- Applies maximum towing and storage rates established by FHP in areas where no maximum rates have been established by a county or municipality.
- Requires a county or municipality which has established maximum towing and storage rates to publish such rates on its website. Requires DHSMV to publish on its website maximum towing and storage rates established by FHP.
- Requires counties, cities, and FHP to establish a process for investigating and resolving complaints regarding fees charged in excess of maximum rates that they have set.
- Creates definitions for "newer model" and "older model" in order to clarify the meaning of the age of a vehicle or vessel by basing the age on model year of the vehicle or vessel.
- Clarifies the list of towing and storage fees that may be charged to the owner or operator of a vehicle or vessel.
- Prohibits a towing-storage operator from charging storage fees before submitting the vehicle or vessel information to an approved third-party service as required in current law.
- Amends provisions relating to proof of a person's interest in a vehicle or vessel and relating to a person's ability to inspect or obtain release of the vehicle, vessel, or personal property.
- Changes the place of public notification of a sale from a newspaper of general circulation to the website of an approved third-party service, which already maintains a public website for vehicles and vessels that have been towed.
- Requires a towing-storage operator to maintain a rate sheet for its fees, provides requirements for such rate sheets, and deems unreasonable any fee charged in excess of those listed on the rate sheet.
- Adjusts to timeframes associated with various notice requirements and other minimum timeframes.
- Removes provisions related to self-storage facilities.
- Removes provisions directing that liens which arise under specified statutes be foreclosed pursuant to s. 713.78, F.S.
- Makes other technical and clarifying changes.

On February 15, 2024, the Infrastructure Strategies Committee adopted one amendment and two amendments to the amendment and reported the bill favorably as a committee substitute. The committee substitute differs from CS/HB 179 in the following ways:

- Amends provisions relating to counties, cities, and FHP setting maximum rates for cleanup and disposal of hazardous and nonhazardous materials.
- Prohibits FHP from excluding a wrecker operator from the wrecker operator system based solely on a prior felony conviction unless such conviction is for a forcible felony.
- Requires an investigating agency or other specified persons to take possession of a vehicle within 30 days.
- Removes the prohibition on a towing-storage operator charging a storage fee prior to the towing-storage operator submitting the vehicle or vessel information to the third-party service in order for the third-party service to transmit notices required by law.
- Authorizes a towing-storage operator to enter a vehicle or vessel for purposes of recovering, removing, or storing such vehicle or vessel.
- Amends timeframes relating to newer model vehicles.
- Amends provisions relating to challenging a wrongful taking or withholding of a vehicle or vessel and relating to posting a bond for the release of the vehicle or vessel.
- Increases the number of days over which a towing-storage operator may not charge a person if the towing-storage operator failed to provide notice to a person claiming a lien on a vehicle or vessel.
- Amends the list of documents that a towing-storage operator must accept as evidence of a person's interest in a vehicle or vessel.
- Expressly preempts a county or municipal charter, ordinance, resolution, regulation, or rule that conflicts with the provision specifying the forms of payment that a towing-storage operator must accept.
- Amends the list of persons for whom a towing-storage operator must make the itemized invoice available for inspection and copying after receiving a request from such persons.
- Makes other technical and clarifying changes.

The analysis is drafted to the committee substitute as approved by the Infrastructure Strategies Committee.