

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Transportation

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BILL: SB 332

INTRODUCER: Senator Burgess

SUBJECT: Wrecker Operators

DATE: January 22, 2024

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shutes	Vickers	TR	<b>Pre-meeting</b>
2.			CA	
3.			FP	

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**I. Summary:**

SB 332 makes several changes to laws related to towing and storage operations, including allowable fees, responsibility for payment of fees where an investigating agency has ordered a vehicle be held, and requirements for the sale of unclaimed vehicles. Specifically, the bill:

- Requires counties to establish maximum rates that may be charged for the storage of electric vehicles and provides that those rates may exceed the rate charged for vehicles that operate on gasoline or diesel fuel.
- Provides that if a vehicle is stored at a wrecker operator’s facility more than 30 days, the person, entity, or agency that requested that the vehicle be stored is financially responsible for the daily cost of storing the vehicle after 30 days.
- Authorizes wrecker operators to charge fair and reasonable fees plus 10 percent for the cleanup, containment, and disposal of pollution and hazardous materials, including incidents involving an electric vehicle.
- Provides that a “governmental entity” (currently law enforcement agency) has specified authority related to liens for recovering, towing, or storing vehicles and vessels.
- Changes the posting requirement for the publication of the notice of sale of a vehicle from a newspaper in the county in which the sale is to be held to a central database or online format approved or operated by the Department of Highway Safety and Motor Vehicles.

This bill takes effect July 1, 2024.

**II. Present Situation:**

**Towing Fees**

A county, municipality, or other entity of a local government may not adopt an ordinance or a rule that imposes price controls upon lawful business activities that is not franchised by, owned by, or under contract with, the governmental agency, unless specifically provided by general

law.<sup>1</sup> Florida law does not prevent the enactment by local governments of public service rates otherwise authorized by law, including rates for towing of vehicles or vessels from or immobilization of vehicles or vessels on private property, or rates for removal and storage of wrecked or disabled vehicles or vessels from an accident scene or the removal and storage of vehicles or vessels in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle or vessel.<sup>2</sup>

Counties and municipalities must establish maximum rates that may be charged on the towing of vehicles or vessels. If a municipality chooses to enact an ordinance establishing the maximum rates for the towing or immobilization of vehicles or vessels, the county's ordinance does not apply within such municipality.<sup>3</sup> The Florida Highway Patrol is authorized to establish maximum rates for the towing and storage of motor vehicles where such rates have not been set by a county or municipality.<sup>4</sup>

### **Handling of Damaged Electric Vehicles**

The National Highway Traffic Safety Administration (NHTSA) has issued guidance for the handling of electric and hybrid-electric vehicles equipped with high-voltage batteries in certain situations.<sup>5</sup> The guidance provides that in the event of damage, fire, or flooding involving an electric vehicles or hybrid-electric vehicle:

- Assume that the high-voltage battery and the associated components are energized and fully charged;
- Exposed electrical components, wires, and high voltage batteries present potential high voltage shock hazards;
- Venting/off-gassing high voltage battery vapors are potentially flammable;
- Physical damage to vehicle or high voltage battery may result in immediate or delayed release of toxic and/or flammable gases and fire; and
- A high voltage battery in a flooded vehicle may have high voltage and shot circuits that can shock and cause fires.

In a post incident situation, the NHTSA guidance recommends to not store a severely damaged vehicle with a lithium-ion battery inside a structure or within 50 feet of any structure, vehicle, or combustible, and to ensure that the vehicle compartments remain well ventilated.<sup>6</sup>

### **Vehicle Holds by Investigating Agencies**

Section 323.001, F.S., states that a hold may be placed on a towed vehicle under certain conditions. An investigating agency is authorized to place a hold on a motor vehicle stored within a wrecker operator's storage facility for no more than five days, excluding holidays and

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<sup>1</sup> Sections 125.0103 and 166.043, F.S.

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

<sup>3</sup> *Id.*

<sup>4</sup> Section 321.051, F.S.

<sup>5</sup> U.S Department of Transportation, National Highway Traffic Safety Administration, *Interim Guidance for Electric and Hybrid-Electric Vehicles* (March 2014).

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

weekends, unless the hold is extended in writing. If the hold is extended past the five days, the investigating agency may remove the vehicle to a designated impound lot. The vehicle is not released until proof of payment of the towing and storage fees are presented to the investigating agency. If the investigating agency does not remove the vehicle from the wrecker's facility, the investigating agency is responsible for the storage charges incurred for the requested extended time. In such case, the owner or lienholder is responsible for payment of the towing and storage charges for the first five days, or any period less than the first five days, when the investigating agency moves the vehicle or provides written notification to hold past the five days.<sup>7</sup>

The investigating agency who ordered the hold must pay the accrued charges for any towing or storage when there is a judicial finding of no probable cause or having continued the immobilization or impoundment. The vehicle owner must pay the accrued towing and storage charges against the vehicle if the person is found guilty of, or please nolo contendere to, the offense that resulted in the hold, regardless of the adjudication of guilt.<sup>8</sup>

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

Liens are claims against property that evidence a debt, obligation, or duty. Liens can be created by judgment, equity, agreement, or statute. 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. Liens on a vehicle or vessel for towing and storage charges are created in statute.<sup>9</sup>

A wrecker operator who claims a lien is required to give notice, by certified mail, to the registered owner, the insurance company insuring the vehicle, and all persons claiming a lien, as disclosed by the records in the Department of Highway Safety and Motor Vehicles (DHSMV) or as disclosed by the records of any corresponding agency in any other state in which the vehicle is identified through a records check.

A towing-storage operator currently must use a third-party service<sup>10</sup> approved by the DHSMV to transmit the notice (as well as any other notices required under s. 713.78, F.S.). If there is no approved service, the operator may mail the notice and provide evidence of compliance upon application for a certificate of title.<sup>11</sup> The notice of lien must be sent by certified mail within seven business days after the date of storage of the vehicle or vessel.<sup>12</sup> A lienor or its agent may

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<sup>7</sup> Section 323.001(2), F.S.

<sup>8</sup> Section 323.001(7), F.S.

<sup>9</sup> Section 713.78, F.S.

<sup>10</sup> The term "third-party service" is defined in s. 713.78(16)(a), F.S., 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>11</sup> Section 713.78(16), F.S.

<sup>12</sup> Section 713.78(4)(a) and (c), F.S.

charge an administrative fee<sup>13</sup> to the registered owner or other person claiming a lien against the vehicle or vessel for a release from the lien, not to exceed \$250.<sup>14</sup>

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>15</sup> the law enforcement agency where the vehicle or vessel is stored must contact the 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>16</sup> The DHSMV, or 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>17</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>18</sup>

If 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>19</sup> has been made, including a records check of the DHSMV database and of the National Motor Vehicle Title Information System (NMVTIS).<sup>20</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.

### **Required Notice for Sale of 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 three years old;
- 50 days from the date of storage if the vehicle or vessel is three years old or less.<sup>21</sup>

<sup>13</sup> Defined to mean a lien fee or any fee imposed by the lienor or the lienor’s agent for administrative costs added to the amount due for towing and storing the vehicle or vessel. Section 713.78(15)(a), F.S.

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

<sup>15</sup> 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. S. 715.07(2)(a)2., F.S.

<sup>16</sup> Section 713.78(4)(b), F.S.

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

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

<sup>19</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>20</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)*, available at <https://www.aamva.org/technology/systems/vehicle-systems/nmvtis#> (last visited December 19, 2023).

<sup>21</sup> Section 713.78(6), F.S.

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>22</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>23</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>24</sup>

### III. Effect of Proposed Changes:

#### **Fees Associated with Electric Vehicles and Cleanup/Disposal**

The bill amends ss. 125.0103 and 166.043, F.S., to require counties to establish maximum rates that may be charged by a wrecker operator for the storage of electric vehicles in the wrecker operator's storage facilities. Those rates for storing electric vehicles may exceed that rate that is charged for storing vehicles that run on gasoline or diesel fuels.

The bill creates s. 323.003, F.S., to provide that a wrecker operator may charge a fair and reasonable fee plus 10 percent for the cleanup, containment, and disposal of pollution and hazardous materials. A wrecker operator may also charge a fair and reasonable fee plus 10 percent for any cleanup and disposal necessary after an accident, fire, or any accidental discharge of hazardous materials or debris associated with electric vehicles. The term "fair and reasonable fee" is not defined.

#### **Vehicle Holds by Investigating Agencies**

The bill amends s. 323.001(7), F.S., to provide that if a vehicle is stored at a wrecker operator's storage facility for more than 30 days, the person, entity, or agency that has requested the vehicle be held (typically a law enforcement agency or state attorney's office) is financially responsible for the daily cost of storing the vehicle after 30 days. It is unclear whether this new provision is intended to apply only in instances when the vehicle owner is found not guilty of the underlying charges that resulted in the hold request.

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

The bill amends s. 713.78, F.S., to remove reference to "law enforcement agency" and replace it with the term "governmental entity". The bill does not define, for purposes of this section,

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Section 713.78(6), F.S.

entities that are considered governmental entities. Presumably, this change is intended to expand the number and type of governmental entities that are empowered to authorize the removal of a vehicle or vessel in specified situations.

#### **Notice for Sale of Vehicles and Vessels**

The bill changes the posting requirement for the publication of the notice of sale from a newspaper in the county in which the sale is to be held to a central database or online format approved or operated by the DHSMV. According to DHSMV, the department would have to create or approve a means to satisfy this requirement or modify the MyDMV portal to allow wrecker and storage companies to provide the required notice.<sup>25</sup>

This bill takes effect July 1, 2024.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

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<sup>25</sup>DHSMV, *2024 Legislative Bill Analysis: SB 332* (December 21, 2023) at p. 5

**C. Government Sector Impact:**

DHSMV noted that the provision in the bill relating to holds on vehicles could have a negative fiscal impact on law enforcement agencies that are unable to provide their own storage areas for vehicles that must be retained as evidence in prolonged court cases.<sup>26</sup>

DHSMV estimates that programming and implementation associated with the bill will require \$55,653 in FTE and contracted resources.<sup>27</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

In its analysis of the bill DHSMV identified a number of comments and recommended amendments<sup>28</sup>, including:

- The bill should be amended to specify what must be included in itemized statement which must be included in the notice of lien pursuant to s. 713.78(4)(c)6., F.S.
- The bill does not address the establishment of maximum rates charged by a wrecker operator for vehicles which run on hydrogen, propane, or natural gas, or a combination of fuels.
- The department recommends clarification of the term “governmental entity” as used in the bill.
- The bill will require significant programming and implementation. As a result, DHSMV recommends the effective date should be amended to reflect October 1, 2025.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 125.0103, 166.043, 323.001, 713.78.

This bill creates section 323.003 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>26</sup> *Id.* at p. 4

<sup>27</sup> *Id.* at p. 7

<sup>28</sup> *Id.* at p. 7-8