

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 179 Towing and Storage  
**SPONSOR(S):** Transportation & Modals Subcommittee  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Transportation & Modals Subcommittee		Hinshelwood	Hinshelwood

### 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 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.
- Defines the term “towing-storage operator” and makes conforming changes.
- Specifies the existing fees which a towing-storage operator may charge for specified services.
- 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 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.
- 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.

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

The bill provides an effective date of July 1, 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 consensual 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 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 materials incidental to a nonconsensual tow. Cities may enact such rates, in which case the city's rates apply.

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 their 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

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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.*

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:

- Any reasonable fee for service specifically authorized pursuant to 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 pursuant to 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.

The bill prohibits a towing-storage operator from 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.

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

#### Background

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

There are currently two DHSMV-approved third-party providers:<sup>9</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>10</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 in this context, notices must be sent by the approved third-party service.

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

#### Background

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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> 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 1/17/24).

<sup>10</sup> S. 713.78(16)(f), F.S.

## *Liens Generally*

A lien is a claim against property that evidences a debt, obligation, or duty.<sup>11</sup> A lien can be created by judgment, equity, agreement, or statute.<sup>12</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>13</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>14</sup>

## *Notice of Lien*

A towing-storage operator who claims such a lien 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>15</sup> However, a towing-storage operator must use a DHSMV-approved third-party service<sup>16</sup> to transmit the notice of lien (as well as any other notices required under s. 713.78, F.S.).<sup>17</sup> If there is no approved third-party service, the towing-storage operator may mail the notice and provide evidence of compliance upon application for a certificate of title or destruction.<sup>18</sup>

In either case, 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>19</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>20</sup> has been made, including a records check of the DHSMV database and of the National Motor Vehicle Title Information System (NMVTIS).<sup>21</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>22</sup>

## *Law Enforcement Requirements*

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>23</sup> the law enforcement agency where the vehicle or vessel is stored must contact DHSMV, or

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<sup>11</sup> Fla. Jur. 2d Liens § 37:1

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

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

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

<sup>16</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>17</sup> S. 713.78(16), F.S.

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

<sup>19</sup> S. 713.78(4)(a) and (c), F.S.

<sup>20</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>21</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 March 17, 2023).

<sup>22</sup> S. 713.78(9), F.S.

<sup>23</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

the appropriate agency in the state of registration, if known, within 24 hours and provide a full description of the vehicle or vessel.<sup>24</sup> 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>25</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>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>

### *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>29</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>30</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>31</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>32</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>33</sup> The clerk must hold the proceeds for the benefit of the owner or lienholder whose interest in the vehicle or vessel was destroyed by the sale; however, the clerk is entitled to receive five percent of such proceeds for their care and disbursement.<sup>34</sup>

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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>24</sup> S. 713.78(4)(b), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

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

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

<sup>29</sup> S. 713.78(6), F.S.

<sup>30</sup> *Id.*

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

<sup>32</sup> S. 713.78(6), F.S.

<sup>33</sup> *Id.*

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

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>35</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>36</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>37</sup>

### 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. The bill clarifies that the count of days does not include federal or 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>38</sup> or
- 60 days before such sale if the vehicle or vessel is a newer model.<sup>39</sup>

The bill increases from 50 days to 60 days the minimum number of days that must pass before an 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.
- 55 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, which need not be notarized, 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;
- A written agreement evidencing that the person is an agent of the vehicle or vessel owner, lienholder, or insurance company.

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 arrival of the owner, lienholder, insurance company representative, or their agent, 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 of the renter not affixed to the vehicle or vessel within one hour after arrival.

The bill increases from 10 days to 20 days the time before a public sale that a notice of such public sale must be made. The bill removes the requirement that notice of public sale be made in a newspaper of

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<sup>35</sup> *Id.*

<sup>36</sup> S. 713.78(9), F.S.

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

<sup>38</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>39</sup> The bill defines "newer model" to mean a vehicle or vessel which is 3 model years old, beginning with the model year of the vehicle or vessel as year one, or less.

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 DHDSMV, 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 sale; the vehicle's 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 \$1.00.

The bill lowers from 7 days to 4 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 are not required to furnish more than one form of current government-issued photo identification when payment is made.

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

### Background

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

### Effect

The 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 its place of business;
- Make the rate sheet available upon request of a vehicle or vessel owner, lienholder, insurance company, or their agent;
- Prior to attaching a vehicle or vessel to a wrecker, furnish the rate sheet to the vehicle or vessel owner or operator, if the owner or operator is present at the scene of the disabled vehicle or vessel; and
- File and keep on record with the local law enforcement agency a complete copy of the current rates to be charged for such services.

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 non-hazardous 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 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 for inspection from:

- A law enforcement agency;
- The Attorney General;
- A city attorney, county attorney, or the prosecuting attorney having jurisdiction in the location of any of the towing-storage operator's business locations;
- The vehicle or vessel owner, lienholder, insurance company, or their agent; or
- If the vehicle or vessel was involved in a collision, any individual involved in the underlying collision or the individual's insurance company

## **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 713.78, F.S., relating to liens for recovering, towing, or storing vehicles and vessels.

**Section 5:** Amends s. 715.07, F.S., relating to vehicles or vessels parked on private property; towing.

**Section 6:** 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.

### FISCAL COMMENTS:

None.

## 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**

N/A