

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Reduce government?

The bill creates a new advisory council within DOACS, requires DOACS to register wrecker companies, and requires DOACS to provide for the education and certification of wrecker operators.

Lower taxes?

The bill authorizes DOACS to determine registration and other fees required under the new law.

Expand individual freedom?

The bill requires wrecker companies to register to continue in business, requires wrecker operators to undergo training and continuing education to continue in employment, and requires ultimate equitable owners and executive managers of wrecker companies to be fingerprinted.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Highway Patrol (FHP) is authorized to operate a wrecker operator system which uses qualified, reputable wrecker operators for the removal and storage of wrecked or disabled vehicles from crash scenes, and for the removal and storage of abandoned vehicles. All wrecker operators are eligible for use in the system provided their equipment meets recognized safety qualifications and mechanical standards set by the FHP for the size of the vehicle the equipment is designed to handle.

FHP can set maximum rates for towing and storage of vehicles removed at its request, if the rates have not already been set by a county or municipality. A wrecker operator may pursue an appeal by writ of certiorari from the circuit court if its participation in the system is denied, suspended, or revoked.

Wrecker operator's are prohibited from monitoring police radios for communications between patrol field units and the dispatcher to determine the location of a wrecked or disabled vehicle for the purpose of driving by the scene to initiate contact with the owner of the wrecked or disabled vehicle. This illegal monitoring is punishable by a civil fine of up to \$500. If the operator initiates contact before arrival of the dispatched operator, solicits towing, and tows the vehicle, or if the disabled vehicle owner or operator initiates contact, but the wrecker operator fails to disclose that he or she was not dispatched and fails to disclose all rates in writing for towing and storage, the drive-by wrecker operator commits a second-degree misdemeanor. A wrecker operator who falsely identifies him or herself as part of the system commits a first-degree misdemeanor. The law does not prohibit any person from calling a wrecker operator directly for services, even if that operator is not authorized to participate in the system.

Local governments are also authorized to operate a similar wrecker operator dispatch system.

In addition, current law provides regulations governing the operation of storage facilities that contain towed vehicles held at the request of investigating law enforcement agencies, and provides for liens against towed and stored vehicles when the owners fail to pay towing and storage costs.

Effect of Proposed Changes

The bill defines and differentiates wrecker companies and wrecker operators to clarify the distinction between those who own towing companies and those who drive tow trucks, and renames the wrecker operator system as the wrecker allocation system. In addition, the bill provides for registration of wrecker companies and training of wrecker operators.

Wrecker Operator Advisory Council

The bill creates a Wrecker Operator Advisory Council (Council) within the Department of Agriculture and Consumer Services (DOACS). The Council consists of 13 members including 6 members appointed by the Commissioner of Agriculture and Consumer Services, the Executive Director of the Professional Wrecker Operators of Florida, 3 persons who have been ultimate equitable owners of a wrecker company for at least 5 years, 1 wrecker operator of at least 5 years service, and 2 lay persons. DOACS is required to keep and store all records of the council and to provide administrative support and staff.

Registration of Wrecker Companies

In addition, DOACS must require the registration of wrecker companies and prohibit the operation of unregistered companies. Annual registration is a pre-requisite for local occupational licensing. The annual registration fee shall be set by DOACS by administrative rule. All registrants, equitable owners, partners, or those with executive management control must be fingerprinted, and must bear the cost of fingerprinting. DOACS will issue a certificate with a number to the registrant that must be displayed in a conspicuous place in the company's place of business. Any advertisement must bear the registration number.

Annual renewals are subject to a \$25 late fee. Unless local licensing requirements are met and maintained, and the company can present proof of the additional liability insurance that must be carried for a commercial vehicle, a wrecker company may not renew registration.

DOACS may deny or refuse registration renewal if:

- the wrecker company does not meet or adhere to registration requirements;
- the owners or executive managers have been convicted of a felony within the last 10 years;
- the owners or executive managers have been convicted in the last 10 years of any crime involving repossession, repair, MV theft, car jacking, chop shops, parts & accessories; airbags; overcharging for repairs or parts, or towing or storage;
- the company fails to pay fines or penalties imposed under this new law;
- the company has an action pending in any jurisdiction for violation of this new law; or
- the company has a judgment against it for violation of this new law.

Wrecker Operator Certification

In addition to wrecker company registration, the bill requires certification of wrecker operators. DOACS must establish a certification program, approve certification courses, schools and exams, and provide for specialized certification for specialized wrecker services. In addition, DOACS must require the courses to issue appropriate certificates and cards acknowledging completion of certification

requirements. DOACS is authorized to adopt rules providing for issuance of certification to operators from different states who have met substantially similar certification requirements.

Wrecker operators must:

- own or be employed by a wrecker company before they may provide wrecker services;
- complete 6-month probationary period;
- be endorsed as having completed specialty certification to provide specialized wrecker services; and
- participate in continuing education programs.

DOACS is authorized to inspect the records of wrecker companies to verify that employees meet all certification requirements. Each wrecker company has a duty to maintain and produce records.

Prohibited Acts

Wrecker companies, wrecker operators, or other employees or agents of the company are prohibited from:

- Charging rates in excess of those set by local ordinance;
- Violating the laws governing the FHP wrecker allocation system;
- Violating the laws governing the local wrecker allocation system;
- Violating the laws governing liens for towing or storing vehicles and vessels;
- Violating the laws governing towing, removing, or storing vehicles and vessels;
- Refusing to allow a law enforcement officer to inspect a towing and storage facility;
- Allowing a non-certified person to perform wrecker services or specialized services for more than 6 months after first being employed by, or becoming an equitable owner of, the company;
- Allowing an operator to provide specialized services without the proper endorsement; or
- Performing an act prohibited by the new law, or failing to perform an act required by the new law.

Penalties

DOACS may impose any of these administrative penalties:

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

The following acts are punishable as crimes:

- Operation of an unregistered wrecker company – third-degree felony; or
- Performance of wrecker services without being employed by, or without being the ultimate equitable owner of a registered wrecker company – third-degree felony.

All fees, penalties, and other monies collected pursuant to this new law are deposited into the General Inspection Trust Fund and may only be used to implement the new law.

License Taxes, License Plates and Registration

The bill allows a license plate to be placed on the front of a wrecker if a loading device may damage the plate, otherwise, wreckers must display plates on the rear of the truck. In addition, the bill allows heavy trucks bearing government license plates to display plates on the front.

The bill provides that only one wrecker license plate must be placed on a wrecker regardless of the weight of the vehicle. A wrecker may not be registered under license tax and registration requirements unless the owner of the vehicle is a wrecker company registered with DOACS pursuant to this new law, however, these provisions do not apply to wreckers that are registered under the International Registration Plan.

Miscellaneous

Recovery agents (repossession agents) are exempted from the requirements of this new law. In addition, local governments may impose regulations on wrecker operators and wrecker companies that are more restrictive than this new law, and may still levy occupational license taxes. However, no county or municipality may issue or renew an occupational or business license to a wrecker company unless that company is registered with DOACS.

Local and FHP wrecker allocation systems may use only registered companies. In addition, the bill provides emergency and public safety circumstances when law enforcement may dispatch a wrecker company out of the normal rotation in the wrecker allocation system

Attorneys fees may be awarded if a frivolous or harassing suit is brought to increase the cost of prosecuting a wrecker operator's lien.

The bill authorizes removal of a wrecked or disabled vehicle from a public road by DOT or authorized or unauthorized wrecker companies without consent of the owner or operator of the vehicle upon the request of law enforcement or a firefighter. In the event that the vehicle presents an imminent public safety hazard, neither the mover nor the official directing removal is liable for damage to the vehicle or its cargo.

The bill prohibits property owners from soliciting a rebate, or other consideration from wrecker operators for allowing them to tow vehicles from their property. The bill also provides that failure to comply with notice requirements in bad faith prior to towing precludes imposition of towing or storage charges.

The bill provides for an unspecified appropriation from the General Inspection Trust Fund and the creation of an unspecified number of positions in DOACS to implement the provisions of this new law.

C. SECTION DIRECTORY:

Section 1. Creates ch. 508, F.S., providing for comprehensive regulation of the wrecker business.

Section 2. Creates s. 205.1975, F.S., prohibiting issuance of local occupational licenses to unregistered wrecker companies.

Section 3. Amends s. 316.605, F.S., providing for the placement of license plates on vehicles with mechanical loading devices and government-owned heavy trucks.

Section 4. Amends s. 320.0706, F.S., requiring license plates to be displayed on the rear of wreckers.

Section 5. Amends s. 320.0821, F.S., providing that a wrecker shall display only one license plate regardless of its weight, and that it must be displayed on the rear of the wrecker.

Section 6. Amends s. 320.0821, F.S., prohibiting DHSMV from renewing a license plate for a wrecker unless the company owning the wrecker is registered with DOACS.

Section 7. Amends s. 321.051, F.S., to rename the wrecker operator system as the wrecker allocation system and to provide requirements relating to wrecker company registration, and dispatching wrecker companies out of rotation.

Section 8. Amends s. 323.001, F.S., to implement the new wrecker-related terminology and registration requirements.

Section 9. Amends s. 323.002, F.S., to rename the county and municipal wrecker operator system as the county and municipal wrecker allocation system and to provide requirements relating to wrecker company registration, and dispatching wrecker companies out of rotation.

Section 10. Amends s. 713.78, F.S., provide for dispute of a wrecker operator's lien if DHSMV records indicate that the vehicle, vessel, or mobile home was sold before issuance of a certificate of destruction.

Section 11. Amends s. 713.78, F.S., to reflect the changes in terminology and definitions created in the new wrecker law, to provide for an award of attorneys fees where the non-prevailing party filed the complaint to increase the cost of prosecuting a wrecker lien, and to authorize certain public officials and authorized or unauthorized wrecker companies to remove vehicles and cargo from a public road without liability if the debris poses an imminent public safety hazard.

Section 12. Amends s. 715.07, F.S., to implement new wrecker-related terminology and registration requirements, and to provide new regulations relating to towing vehicles or vessels from private property.

Section 13. Amends s. 1.01, F.S., to delete the definition of the term "wrecker operator."

Section 14. Amends s. 120.80, F.S., to rename the wrecker operator system as the wrecker allocation system.

Section 15. Amends s. 316.530, F.S., to delete the term "tow truck."

Section 16. Amends s. 320.01, F.S., to amend the definition of "wrecker."

Section 17. Amends s. 320.03, F.S., to replace "wrecker operator" with "wrecker company."

Section 18. Amends s. 320.13, F.S., to delete the term "tow truck."

Section 19. Reenacts s. 316.550, F.S., to incorporate the amendments made to s. 320.01, F.S.

Section 20. Provides an unspecified appropriation from the General Inspection Trust Fund and creation of an unspecified number of positions in DOACS.

Section 21. Provides that the act shall take effect July 1, 2003, except where otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

FY 2003-04

FY 2004-05

FY 2005-06

| | | | |
|--------|------------|------------|------------|
| GITF** | \$ 595,000 | \$ 595,000 | \$ 595,000 |
|--------|------------|------------|------------|

2. Expenditures:

| | <u>FY 2003-04</u> | <u>FY 2004-05</u> | <u>FY 2005-06</u> |
|---|-------------------|-------------------|-------------------|
| Non-recurring | | | |
| OCO – 7 professional pkgs. | \$ 10,500 | | |
| 2 support pkgs. | \$ 4,000 | | |
| One time expenses | | | |
| Siemens reprogramming and additional card in telephone sys. | \$ 8,000 | | |
| AGMIC | | | |
| Software application and integrate with DOCS | \$ 23,000 | | |
| TOTAL (GITF) | \$ 45,500 | | |
| Recurring | | | |
| Positions (GITF) | | | |
| 2 invest. spec. II | \$ 82,528 | \$ 85,004 | \$ 87,554 |
| 3 Regulatory Consults. | \$ 123,792 | \$ 127,506 | \$ 131,331 |
| 2 Regulatory Spec. III | \$ 78,854 | \$ 81,220 | \$ 83,656 |
| 1 Sr. Word Proc. Sys. Op. | \$ 30,246 | \$ 31,153 | \$ 32,088 |
| 1 Sr. Clerk | \$ 29,256 | \$ 30,134 | \$ 31,038 |
| Expenses | | | |
| 7 Prof. expense pkg. | \$ 69,405 | \$ 69,405 | \$ 69,405 |
| 2 Supp. expense pkg. | \$ 16,038 | \$ 16,038 | \$ 16,038 |
| AGMIC | | | |
| Additional PC maint. | \$ 1,250 | \$ 1,250 | \$ 1,250 |
| Add. Siemens sys. maint. | \$ 1,950 | \$ 1,950 | \$ 1,950 |
| Add. comp. sys. maint. | \$ 2,700 | \$ 2,700 | \$ 2,700 |
| TOTAL (GITF) | \$ 468,829 | \$ 480,154 | \$ 499,663 |
| GRAND TOTAL (GITF) | \$ 514,329 | \$ 480,154 | \$ 499,663 |

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Unknown.

2. Expenditures:

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Wrecker companies will be required to pay an annual registration fee and comply with the new certification requirements. The annual registration fee necessary for DOACS to cover its costs in implementing the provisions of the bill is estimated to be \$425**. It is unknown how much the certification and continuing education requirements will cost industry members.

According to DOACS, concerning the regulation of wrecker companies, this bill will offer greater consumer protection to Florida citizens by requiring wrecker operators to be regulated and to undergo and maintain educational training as it relates to the provision of wrecker services.

D. FISCAL COMMENTS:

All fiscal impacts to the state are based on DOACS estimates.

**According to DOACS, there are an estimated 1,400 wrecker operators that will be subject to registration. This bill provides that the fee shall be set by DOACS. In order to collect sufficient revenues to cover the anticipated expenses, revenues were calculated at an annual registration fee of \$425.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DOACS to promulgate rules necessary to implement its provisions, and requires DOACS to set wrecker company registration and registration renewal fees. However, the bill provides no guidelines or conditions on how the agency shall determine the fee. Placing such broad discretion in DOACS in setting fees may constitute an unconstitutional delegation of Legislative power to the Executive branch of government.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Staff recommends that the bill be amended to provide some standard for promulgation of wrecker company registration and registration renewal fees. If it is the intent of the sponsor that the fee be sufficient to defray the agency's costs in administration of the regulatory scheme, then an amendment to the bill reflecting that intent may cure the apparent constitutional defect.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES