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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/27/13

SPONSOR HTPWC LAST UPDATED \_\_\_\_\_ HB 253/HTPWCS

SHORT TITLE Towing Service Fees, Hours and Payment SB \_\_\_\_\_

ANALYST Clark

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	NFI			

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Public Regulation Commission (PRC)

### SUMMARY

#### Synopsis of Bill

House Transportation and Public Works Committee Substitute for House Bill 253 creates a new section of the Motor Carrier Act to prohibit a towing service from charging certain fees that vary by day or time of day, to have a towing service representative available during specified hours, and to prohibit a towing service from charging a storage fee for any period of time less than 24 hours.

This bill creates a new section of the Motor Carrier Act, NMSA 1978, Sections 65-2A-1 to -40. This section would require a towing service to refrain from charging fees that vary depending on the day or time of day that an owner requests possession or inspection of or access to the owner's motor vehicle, so long as the request is made between the hours of 7:00 a.m. and 7:00 p.m. The amendment would allow a towing service to charge a "reasonable additional fee" if a request is made outside the 7:00 a.m. and 7:00 p.m. timeframe.

The bill would also require a towing service to make a representative available every day of the year, between the hours of 7:00 a.m. and 7:00 p.m., to process requests for the pickup or inspection of a motor vehicle. Furthermore, the proposed amendment would require a representative to appear on-site within one-half hour of receiving a request on weekdays and

within one hour on weekends and federal holidays. An exception is made for vehicles that have been towed or impounded pursuant to a DWI arrest or a criminal investigation by a law enforcement agency. A towing service cannot require payment of any portion of a towing or storage fee as a precondition of inspecting a towed vehicle.

Additionally, the bill requires a towing service representative to be available 24 hours a day, every day of the year, on one hour's notice and at no charge, to respond to a request from the owner of a towed vehicle to retrieve medication or medical supplies from the vehicle.

If a person other than the owner or authorized representative of the owner of a motor vehicle requests a vehicle be towed from private property, this bill requires the owner or representative of the private property from which the vehicle would be towed to be physically present at the time the vehicle is towed, and that person must personally sign the towing invoice. For the purpose of this subsection, neither the towing service nor any employee or agent of the towing service may be the private property owner's representative for the purpose of signing the invoice.

Finally, the bill would prohibit a towing service from charging a storage fee for holding a vehicle for less than 24 hours. It would also prohibit remuneration in any form from a towing service to the owner of real property from which the towing service is authorized to tow motor vehicles. A person who violates the provisions of this section is guilty of a petty misdemeanor.

## **FISCAL IMPLICATIONS**

There are no significant fiscal implications.

## **SIGNIFICANT ISSUES**

The PRC provides the following analysis.

HB 253 supersedes two subsections of the PRC's towing services rule. Subsection C of 18.3.12.24 NMAC requires towing services to permit inspection of towed vehicles, retrieval of property from towed vehicles, and the recovery of vehicles between 8:00 a.m. and 5:00 p.m. on any weekday, excluding holidays. And Subsection B of 18.3.12.23 NMAC requires towing services to "have a person working at their storage facilities" between 8:00 a.m. and 5:00 p.m. on every weekday excluding holidays.

HB 253 also supersedes the portion of the PRC Statewide Wrecker Tariff that sets a fee of \$50.00 for inspecting or recovering a vehicle between 5:00 p.m. and 8:00 a.m. during the week, on weekends, or on holidays. HB 253 eliminates the PRC's authority to set hours for inspection or recovery of towed vehicles and to set fees that are contradictory to those set forth in HB 253.

Requiring all towing services, many of which are small, family owned enterprises, to extend their operating hours significantly and accept credit card payments may create a financial burden. Such financial burden would almost certainly result in pressure to increase towing rates.

## **ADMINISTRATIVE IMPLICATIONS**

There are no significant administrative implications. However, the PRC reports that if the expanded hours required for towing services lead to more complaints about violations of those hours, it may require additional staff time to investigate them.

**TECHNICAL ISSUES**

Section 1 of the bill references in the title for the new section of the Motor Carrier Act “permitting payment by credit card” but does not include such permission in the text of the bill.

The AGO analysis includes the following technical issues.

This amendment may implicate federal preemption issues since transportation is regulated by the federal government. Specifically, 49 USC §14501(c) governing federal authority over intrastate transportation provides that a “state, political subdivision of a state, or political authority of two or more states may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier ... or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.”

The federal statute does not apply, however, to states that “enact or enforce a law, regulation, or other provision relating to the price of for-hire motor vehicle transportation by a tow truck, if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.” 49 USC §14501(c)(2)(C). Consequently, the State of New Mexico may regulate the price of towing services in cases where a vehicle has been towed without the owner’s consent.

Additionally, the term “reasonable additional fee” in Section A is subjective and may result in many different interpretations.

JC/blm