

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

House Bill 1255 (Delegates Niemann and Malone)
 Environmental Matters

Motor Vehicles - Towing Services - Licensing

This bill requires a tow truck to be registered as such by the Motor Vehicle Administration (MVA) beginning October 1, 2015, and, likewise, requires a person to be licensed to drive a tow truck, operate a towing service, or operate a vehicle storage facility by that date. The bill establishes application requirements and minimum qualifications to receive a towing service license, and it imposes several duties and restrictions on licensees. A police department is authorized to take an improperly registered tow truck into custody. The bill creates a Towing Regulation Advisory Board within MVA and a Towing Services Fund, comprised in part of license fees to be set by MVA. MVA is authorized to investigate a complaint alleging a towing violation, and the bill establishes administrative and criminal penalties.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures increase by \$1.1 million in FY 2014, and special fund expenditures increase by about \$2.6 million in FY 2015 and by more than \$2.3 million annually thereafter for MVA to implement the bill. Special fund revenues increase by about \$12.5 million between FY 2015 and 2018, including \$8.9 million in FY 2015 from the collection by MVA of licensing fees under the bill, which are directed to the Towing Services Fund within MVA. TTF and general fund revenues may also increase beginning in FY 2016 due to application of the bill's administrative and criminal penalties.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
GF Revenue	\$0	\$0	-	-	-
SF Revenue	\$0	\$8,872,500	\$2,957,500	\$472,500	\$157,500
SF Expenditure	\$1,110,000	\$2,643,800	\$2,375,900	\$2,481,300	\$2,594,300
Net Effect	(\$1,110,000)	\$6,228,700	\$581,600	(\$2,008,800)	(\$2,436,800)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local government revenues and expenditures may decrease for jurisdictions that currently license towing services. Local law enforcement expenditures may also increase minimally to enforce the bill.

Small Business Effect: Meaningful adverse impact on towing services due to numerous licensing qualifications, additional requirements and restrictions regulating current business practices, several new fees, new administrative fines and criminal penalties, and the authority for police to take a tow vehicle into custody and for MVA to investigate towers.

Analysis

Bill Summary:

Licensure Requirements and New Regulations

Beginning October 1, 2015, a person may not register a tow truck if the person is not licensed, and a person must obtain a towing license from MVA before the person may drive a tow truck, operate a towing service, or operate a vehicle storage facility for towed or removed vehicles. The bill does not preempt a county or municipality from enacting and enforcing standards to govern towing practices.

MVA must set fees for the issuance and renewal of licenses at a level to cover the costs of regulating the towing industry under the bill. Each licensed tow truck driver, towing service, or vehicle storage facility must pay to MVA an initial license fee and a renewal fee. MVA must pay all fees collected to the Comptroller, which must distribute the fees to the Towing Services Fund established by the bill to be administered by MVA. The fund may be used only for costs associated with administration and enforcement of the bill.

On the request of any person and the payment of a fee set by MVA, MVA must inform the person of the license status and qualifications of a licensee. The information must include a statement of the status of the subject towing license and may include information about any other qualifications of that person, the dates of issuance and renewal of the license, and any disciplinary action taken against that person.

To qualify for a license, a person must be 18 or older, of good reputation and moral character, have a driver's license that authorizes the person to drive a tow truck, and meet any other requirements established by MVA. A towing service may not employ a tow truck driver required to register as a sex offender under State law.

An applicant must submit an application on an MVA form, provide fingerprints for a criminal history records check, and pay an application fee. MVA must apply to the central repository for a State and national criminal history records check for each applicant. The criminal justice information system central repository of the Department of Public Safety and Correctional Services must forward to the applicant and MVA the applicant's criminal history records information. The applicant may contest the contents of the printed statement as specified in current law.

At least one month before a license expires, MVA must mail to the licensee, at the last known address of the licensee, a renewal application form and a notice that states the date on which the current license expires, the date by which MVA must receive the application, and the amount of the renewal fee. A license may be renewed for an additional term if the licensee otherwise is entitled to be licensed, pays to MVA a renewal fee, and submits a renewal application. MVA must reinstate the license of a person that has failed to renew the license if the person is otherwise entitled to be licensed and pays to MVA all past-due renewal fees and a reinstatement fee.

The bill requires MVA to adopt regulations by October 1, 2014, governing tow truck drivers, towing services, and vehicle storage facilities in the State, including regulations that (1) establish qualifications for license applicants; (2) establish standards and procedures for administering examinations; (3) establish procedures for the issuance of licenses; (4) set standards for safety, equipment, vehicle storage, and signage; (5) establish insurance and bonding requirements for licensees; (6) establish license fees; (7) govern towing fees and methods of payment for vehicle towing and storage; and (8) establish an administrative penalty schedule for a violation of the bill.

Each towing service must display the towing service license in a conspicuous place in the licensee's principal office, display a valid MVA registration sticker issued on the driver's side door of each tow truck, and maintain a list of all employed drivers.

A licensee may not tow or remove a vehicle that is trespassing or removed at the request of a police department out of the State. Each towing service must also accept payment by cash, insurance check, certified check, money order, at least two major nationally recognized credit cards, or additional methods of payment approved by MVA. A licensee must also give change up to \$100 for a cash payment by a vehicle's owner if the payment is for a vehicle that was towed, removed, or stored without the owner's consent. All towing, recovery, storage, and processing fees must be displayed in a conspicuous place in the licensee's principal office for vehicles with a gross weight of 26,000 pounds or less. On request from a customer, a towing service must provide the maximum fees charged for the initial hookup and towing for vehicles with a gross vehicle weight of 26,000 pounds or less, as well as the phone number at which consumer complaints may be filed with MVA.

Towing Regulation Advisory Board

The bill establishes the Towing Regulation Advisory Board within MVA. The board consists of the following members appointed by the Governor with the advice and consent of the Senate: four representatives of the towing service industry; one police employee of the Department of State Police; one representative of the Consumer Protection Division of the Office of the Attorney General; one representative of MVA; one consumer member; and one representative of the insurance industry. MVA must provide staff for the board. The board must advise MVA on matters related to the towing services industry and review and comment on proposed MVA regulations.

New Penalties and Enforcement Authority

MVA may investigate an alleged complaint of the bill and may inspect the place of business or vehicle storage facility of any licensee or applicant for a license under the bill at any time during business hours. If MVA concludes that the alleged conduct will result in harm to a Maryland resident, MVA may seek a permanent or temporary injunction from the circuit court of the county in which the alleged violation occurred. In seeking an injunction MVA is not required to post bond or to allege or prove that an adequate remedy does not exist or that substantial or irreparable damage would result from the continued violation. MVA, or a hearing officer designated by MVA, may administer oaths, hold hearings, and take testimony.

The bill requires a motor vehicle required to be registered as a tow truck to display a distinctive registration sticker issued by MVA on the driver's side door of the truck. A police department may take an improperly registered tow truck into custody. An owner or a secured party may reclaim a tow truck taken into custody if the owner or secured party properly registers the truck and pays all outstanding administrative penalties and towing and storage fees.

Subject to a hearing, MVA may deny a license to an applicant, reprimand a licensee, or suspend or revoke a license if the applicant or licensee:

- fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another person;
- fraudulently or deceptively provides vehicle towing, recovery, or storage services;
- conducts business or offers services in a manner that endangers public health and welfare;
- uses alcohol or a controlled substance in a manner that renders the applicant or licensee unsafe to provide vehicle towing, recovery, or storage services;

- obtains any fee by fraud or misrepresentation;
- directly or indirectly publishes any advertisement relating to vehicle towing, recovery, or storage services that contains an assertion, representation, or statement of fact that is false, deceptive, or misleading;
- advertises, provides services, or attempts to provide services under a name other than the name shown on the license;
- willfully seeks payment from any local government for a service not in a contract;
- is convicted of a felony; or
- violates or aids, assists, or induces another to violate any law or regulation relating to the towing, recovery, or storage of vehicles.

MVA may also impose an administrative penalty of up to \$5,000 per violation, determined by the seriousness of the violation, the harm caused by the violation, the good faith of the licensee, and any history of previous violations. MVA must use the administrative penalties for license enforcement. MVA must consider specified facts in the approval, denial, renewal, suspension, or revocation of a license or the reprimand of a licensee when an applicant or licensee is convicted of a felony. A violation of the bill is also a misdemeanor that carries a fine of up to \$2,000.

Current Law/Background: The Task Force to Study Motor Vehicle Towing Practices was created by Chapter 514 of 2008 (HB 684) and extended by Chapter 704 of 2009 (HB 978). The task force was charged with studying the following areas of towing:

- the State and local laws governing towing practices, including the storage and disposal of towed vehicles, and any recommended changes to these laws;
- the costs, benefits, and feasibility of a State program of licensure or registration for the towing industry;
- issues related to notice given by a private property owner to the owner of a motor vehicle before towing the vehicle;
- issues related to notice given by a police department to the motor vehicle owner, a secured party, or an insurer of an abandoned motor vehicle in police custody;
- issues related to notice given by a private tower to the motor vehicle owner, a secured party, an insurer, or the local police department of a towed vehicle in the possession of a private tower;
- issues related to State preemption of local authority governing the towing or removal of motor vehicles; and
- any other issues that the task force considers relevant to motor vehicle towing practices in the State.

The task force met 12 times between October 14, 2008, and December 8, 2009, and expired on December 31, 2009. Each meeting of the task force was open to the public. The task force considered two main proposals: (1) creation of an independent towing licensure board; and (2) focusing on private nonconsensual towing, the creation of penalties (civil and criminal), consumer protection measures, and allowing towing a process to dispose of unclaimed vehicles. Chapter 228 of 2012 (SB 401) generally implemented the task force's recommended legislative changes relating to the regulation of nonconsensual towing of vehicles from private property and the disposition of towed vehicles.

However, as to the creation of an independent licensure board, the task force decided not to support the model licensing legislation presented to it for both fiscal and policy reasons. The task force reviewed information on the divergent levels of regulation of the towing industry within various jurisdictions of the State. Some counties and municipalities had no regulatory requirements for towing, while other counties and municipalities had fairly extensive requirements. Despite an early consensus that the most appropriate method of regulation would be through a self-governing, self-funded towing board similar to a newly enacted law in Virginia, the task force ultimately decided against recommending a licensing entity.

State Expenditures: TTF expenditures increase by \$1.1 million in fiscal 2014, and Towing Service Fund expenditures increase by about \$2.6 million in fiscal 2015 and more than \$2.3 million annually thereafter. This estimate assumes Towing Service Fund revenues are sufficient to cover all costs beginning in fiscal 2015; to the extent revenues do not accrue as anticipated, additional TTF expenditures may be needed. The estimate reflects the cost to establish new sections within MVA's Business Licensing and Consumer Services (BL&CS) Division and the Investigations/Internal Affairs (IIA) Division, including 31 full-time and 3 contractual positions. This personnel estimate is based on the staffing of other sections in the BL&CS and IIA divisions and the assumptions that licenses will be issued to 700 towing operators, 7,000 drivers, and 1,400 vehicle storage facilities. The estimate includes 16 customer agents (including three contractual agents), 11 investigators, 1 customer agent supervisor, 1 BL&CS manager, 1 IIA manager, 1 administrative assistant, 1 information technology analyst, 1 internal auditor, and 1 auditor supervisor.

The estimate also includes \$1.1 million in external computer programming charges of three different MVA information technology systems. The computer programming charges are incurred in fiscal 2014 in preparation for initial license issuance in fiscal 2015. Because this is prior to license issuance, no licensing fee revenues in the Towing Services Fund are available in fiscal 2014, and TTF monies are required to cover this cost. MVA advises that, in order to ensure that towing services and their employees can be licensed by October 1, 2015, it is necessary to begin program implementation and

license issuance prior to this date, and this analysis assumes that the new staff and resources are added July 1, 2014. Estimated program implementation costs also include leasing space within a new building for the additional personnel, vehicle purchase and operation costs, as well as document issuance, postage, supply, and equipment costs.

	<u>FY 2014</u>	<u>FY 2015</u>
Positions		31
Contractual Positions		3
Salary and Fringe Benefits		\$2,137,216
Automobile Operations		214,239
Leased Space		77,568
Equipment		177,680
Operating Expenses		37,077
Computer Programming	<u>\$1,110,000</u>	<u>\$0</u>
Total State Expenditures	\$1,110,000	\$2,643,780

Future year expenditures reflect annual increases and employee turnover as well as annual increases in ongoing operating expenses.

DSP workloads increase minimally to take unregistered tow trucks into custody. However, this can be handled with existing budgeted resources, and any increase in expenditures is covered by reimbursement payments made by the tower to reclaim the truck.

State Revenues: Special fund revenues increase by \$8.9 million in fiscal 2015, and by an additional \$3.6 million between fiscal 2016 and 2018 from the collection of new license and renewal fees that must be set to cover the costs of MVA to implement and enforce the bill. This is an amount sufficient to cover the expenditures discussed above over a five-year period.

This revenue estimate is based on the collection of the following fees: (1) a \$900 fee for the issuance and renewal of a towing operator license with a two-year validity period; (2) a \$1,200 fee for the issuance and renewal of a tow truck driver fee with a five-year validity period; and (3) a \$2,000 fee for the issuance and renewal of a vehicle storage facility license with a five-year validity period. As noted above, MVA assumes that it will issue licenses to 700 towing operators, 7,000 tow truck drivers, and 1,400 vehicle storage facilities and that, to meet the requirement for all such persons to be licensed by October 1, 2015, approximately three-fourths are licensed in fiscal 2015 and the rest are licensed in the first quarter of fiscal 2016. To the extent that the number of licensees is fewer than anticipated, MVA may need to increase the fees in future years to cover the costs of license issuance. MVA may also change the levels of each license fee, but overall fee revenues must remain at a level sufficient to cover costs.

This estimate does not account for any increase in TTF revenues from the collection of application and license reinstatement fees established by the bill. A person that requests information about the license status and qualifications of a licensee must pay an application fee to do so, and a licensee that fails to renew a license in the required period of time must pay, in addition to past-due renewal fees (paid into the Towing Services Fund), a reinstatement fee. The bill does not designate either of these fees for deposit in the Towing Services Fund.

TTF revenues may also increase from the collection of administrative penalties (\$5,000 maximum) established by the bill. General fund revenues may increase from the application of the bill's misdemeanor penalty of up to \$2,000.

Finally, cost-recovery fees increase for DSP to the extent that additional towing vehicles are taken into custody by DSP under the bill's authority and result in the payment of fees to reclaim the vehicle to reimburse DSP for towing, impoundment, and storage.

Local Fiscal Effect: The bill specifies that it does not preempt a county or municipality from enacting and enforcing standards to govern towing practices. However, the bill does not specify whether a jurisdiction is preempted from charging a license fee to a jurisdiction. In the absence of an express authorization, it is assumed that a jurisdiction is preempted from licensing vehicles locally or charging licensing fees. Thus, local government expenditures and revenues associated with the licensure of towers decrease significantly. For example, Montgomery County advises that it currently licenses 157 towing services and charges a licensing fee of \$138 to these entities annually. Thus, Montgomery County revenues decrease by about \$21,700 annually. To the extent that any local licensure fees were set to cover the costs of enforcing local towing ordinances, other revenue sources may need to be raised to cover these costs.

Caseloads increase for circuit courts as a result of the injunctive authority established by the bill. The extent of the increase in caseloads cannot be reliably estimated, but expenditures may increase for any circuit court that cannot handle the additional caseload with existing resources. The additional caseloads may be most significant in jurisdictions where a greater number of towing services in the State are located.

Local law enforcement expenditures may increase minimally for local law enforcement officers to take improperly registered tow trucks into custody. The bill authorizes, but does not require, police to take a tow truck into custody if it is improperly registered; on or before October 1, 2015, this refers to an unregistered tow truck, but after October 1, 2015, this refers to a tow truck that is not registered and licensed by MVA.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Kent, Montgomery, and Worcester counties; Judiciary (Administrative Office of the Courts); Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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