



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** H.B. 341 of the 131st G.A.

**Date:** May 9, 2016

**Status:** As Reported by House State Government

**Sponsor:** Reps. Young and Sweeney

**Local Impact Statement Procedure Required:** Yes

**Contents:** Towing law changes

### State Fiscal Highlights

- The bill creates the Towing and Quick Clear Board, permits it to appoint staff, and requires the Public Utilities Commission of Ohio to provide support if requested to do so. The bill also creates the Towing and Quick Clear Fund consisting of civil penalties imposed on towing companies, and requires the money in the fund be used to execute the Board's duties. The amount of money that may be generated annually is uncertain, as is the cost of the Board's annual operations.
- Potential negligible annual revenue gain in the form of state court costs collected from violators of the bill's failure to display prohibition and deposited into the state treasury.<sup>1</sup>

### Local Fiscal Highlights

- The cost of any additional work for clerks of courts of common pleas to issue additional certificates of title may be more or less offset by the collection of related fees.
- The bill's civil and criminal penalty provisions are likely to generate additional cases for county and municipal judicial systems to dispose of. The costs of doing so will not be significant, and are likely to be offset to some degree by court costs, fees, and fines.

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<sup>1</sup> The court costs are apportioned between the Victims of Crime/Reparations Fund (Fund 4020) and the Indigent Defense Support Fund (Fund 5DY0).

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## **Detailed Fiscal Analysis**

The bill makes various changes to the state's motor vehicle towing requirements and procedures, many of which primarily affect private towing and salvage companies and do not have any fiscal impact on governmental entities.

### **Bureau of Motor Vehicles record search**

Under current law, a sheriff, chief of police, or an Ohio State Highway Patrol trooper may, under certain conditions, order a motor vehicle into storage. For each motor vehicle that is so ordered, current law requires that sheriffs and chiefs of police conduct a search of Bureau of Motor Vehicles (BMV) records to ascertain the identity of the owner and any lienholder of that motor vehicle. The bill changes the timeline for conducting a search of BMV records from "immediately" to "within five business days of the removal of the vehicle." Although this provision will not have a significant fiscal impact, it will give certain law enforcement agencies more flexibility generally in performing their duties and responsibilities by giving them more time in which to conduct the required search of BMV records.

### **Certificates of title**

#### **Salvage certificate of title**

The bill allows the agent of a towing service, storage facility, or repair garage, under certain conditions, to file an affidavit with a clerk of court of common pleas to obtain a salvage certificate of title to a vehicle in its possession for purposes of disposing of the vehicle through a motor vehicle salvage dealer or a scrap metal processing facility. In order to be eligible for a salvage certificate of title, the towing service or storage facility must follow a specified process that in part involves confirming that the vehicle in question: (1) has a value of less than \$1,500 after reductions for repairs, towing, and up to 30 days of storage, (2) is apparently inoperable, and (3) is impossible to restore for highway operation.

These changes may increase the workload for clerks of court, as they may have to issue salvage certificates of title for additional vehicles. The bill requires the payment of a \$4 fee to issue such a title, and requires it be deposited into the county certificate of title administration fund. The cost of any additional work for a clerk will likely be offset to some degree by the fees collected.

#### **Unclaimed vehicle certificate of title**

Under current law, the owner of a repair garage or place of storage is permitted to file an affidavit with a clerk of court of common pleas to receive a certificate of title for certain vehicles that have been left unclaimed for more than 30 days. The bill changes the term "owner" to "agent" and specifies that an agent of a repair garage or place of storage is also permitted to file an affidavit seeking title of an unclaimed vehicle if the person who left the vehicle was not the owner or lienholder of that vehicle,

provided that the appropriate notice is filed with the appropriate law enforcement agency. These changes may increase the workload for clerks of court, as they may have to issue certificates of title for additional vehicles that could be declared unclaimed.

Current law requires the owner of a repair garage or place of storage to pay the clerk of court, for deposit into the county general fund, the value of the motor vehicle for which the certificate of title is requested, less any expenses the owner may have incurred. The cost of any additional work for a clerk will likely be offset by the revenue received for the value of the motor vehicle.

### **Value of an unclaimed vehicle**

The bill increases, from \$3,500 to \$4,400, the value of a motor vehicle for purposes of allowing an entity in possession of the vehicle to take title to it as described in the immediately preceding section, and specifies that the deduction of towing and storage fees for the period of time that the vehicle was stored without payment is not permitted as part of the value determination, but those fees may be deducted from the amount paid to a clerk of court.

These changes may potentially increase the number of vehicles for which the owner of a repair garage or place of storage is permitted to file an affidavit with a clerk of court of common pleas to receive a certificate of title and for which the clerk of court collects a fee based on the value of the vehicle. They may also decrease the amount that the clerk might otherwise have collected by allowing the deduction of certain amounts used to calculate the vehicle's value and the clerk's related fee. The net annual fiscal effect on the amount that the clerks collect for deposit in the county's general fund is uncertain.

### **Certificate of Public Convenience and Necessity**

Current law requires a towing service to obtain a valid Certificate of Public Convenience and Necessity issued by the Public Utilities Commission and display both the certificate number and business telephone number on the left and right sides of the towing vehicle. The bill creates a penalty for the failure to display such information and classifies a first offense as a minor misdemeanor subject to a fine of up to \$150. A second or subsequent violation is an unclassified misdemeanor subject to a mandatory \$500 fine, and the court is required to seize and impound all vehicles used to tow motor vehicles on behalf of the towing service until the required certificate is obtained.

The penalty for failure to display may increase the number of misdemeanor cases for municipal and county courts to adjudicate. Presumably, towing services, for the most part, are generally complying with current law's requirement to display a valid certificate number and will continue to do so. As such, any increase in costs associated with disposing of additional cases under the bill is likely to be relatively small for any given court. For those courts that do experience an increase in caseload as a result of the bill, the bill requires the owner of a towing service who permitted the violation to appear in the appropriate court to answer the charge. Under current Supreme Court

Rule, a person who receives a citation for certain traffic violations is permitted to pay the amount of fines, fees, and court costs to the office of the clerk of the court in person or by mail thereby avoiding having to appear in court. As such, it may take more time to dispose of these cases than if the offender was permitted to settle the matter outside of court.

Any increase in criminal cases and subsequent convictions as a result of the bill may lead to a gain in related state and local revenues. The state revenues would be in the form of locally collected state court costs, in the amount of \$29 for a misdemeanor, that are forwarded for deposit in the state treasury and divided as follows: \$20 to the Indigent Defense Support Fund (Fund 5DY0) and \$9 to the Victims of Crime/Reparations Fund (Fund 4020). Counties and municipalities may gain revenues in the form of local court costs, fees, and fines. The amount of money that either the state or local governments may gain annually is likely to be negligible, as the number of affected cases is likely to be relatively small.

### **Civil penalties for towing violations**

Current law permits the owner of a vehicle that was towed in violation of the towing law to file a civil action against the towing service or storage facility and requires the court, if it is determined that a violation occurred, to impose specified penalties on the towing service or storage facility. The bill modifies those penalties by creating and distinguishing between "major violations" and "minor violations," and adding failure to display the Certificate of Public Convenience and Necessity number as a violation for which a civil action can be initiated. The bill specifies that if a vehicle owner brings an action for multiple violations, the court must consider each violation as a separate violation for purposes of awarding a civil penalty and determining the number of violations a towing service or storage facility has committed within the year.

This civil penalty modification may result in a relatively small increase in the number of civil actions filed against towing services and storage facilities but will not likely have a discernible impact on courts, as they are not expected to significantly increase workload. The costs associated with any new civil actions filed as a result of the bill may be at least partially offset by the fee that is required to accompany each filing. Additionally, civil actions alleging towing violations generally involve private parties, so it is unlikely that the state or a political subdivision would be a defendant in such an action and subsequently required to pay the imposed penalty. Civil actions alleging towing violations fall under the subject matter jurisdiction of common pleas, municipal, and county courts.

### **Judgment against a towing company or storage facility**

If a vehicle owner brings a civil action in a court of competent jurisdiction against a towing service or storage facility that commits a major or minor violation and the court issues a judgment against a towing service or storage facility, the bill requires the court to send a copy of that judgment to the Public Utilities Commission of Ohio (PUCO). The PUCO must provide a copy of that judgment upon request. As a result,

affected local courts may incur negligible expenditures to provide the notice to the PUCO and the PUCO may incur negligible expenditures to comply with the bill's record-keeping policies.

## **Public Utilities Commission**

### **Towing and storage fee establishment and review**

The bill requires the PUCO to establish, within one year of the bill's effective date, the maximum fees that may be charged by a for-hire motor carrier engaged in the towing of motor vehicles or a storage facility that accepts such vehicles. The bill also requires PUCO to establish a process for reviewing towing and storage fees every five years to determine whether the fees are just, reasonable, and compensatory and authorizes PUCO to adjust those fees to an appropriate amount. Any additional costs that PUCO may incur to comply with the bill's provisions are likely to be absorbed utilizing existing resources.

### **Towing and Quick Clear Board**

The bill establishes the Towing and Quick Clear Board to resolve disputes filed by insurance companies over a bill for any portion of the towing of a motor vehicle for which the insurance company is responsible for payment. The Board consists of seven members appointed by the Governor with the advice and consent of the Senate. The bill specifies that a representative of the PUCO is to serve as the chairperson of the Board and that PUCO must provide the Board with a meeting place, supplies, and staff assistance. Board members are to serve without compensation, but must be reimbursed for reasonable and necessary expenses incurred in the discharge of their duties. The bill also requires the Board to issue a report to the General Assembly no later than 25 months after the bill's effective date containing specific information regarding complaints filed with the Board over the previous two years.

The bill permits the Board to impose financial penalties on towing companies or, in certain circumstances, recommend to PUCO that a towing company's Certificate of Public Convenience and Necessity be revoked if the Board finds the amount billed for the towing of a motor vehicle to be excessive. These financial penalties are deposited into the state treasury to the credit of the Towing and Quick Clear Fund, which the bill creates, for the purpose of executing the duties of the Board. The Board may also require an insurance company to pay a towing company if the Board finds that the disputed amount was appropriate. A decision of the Board may be appealed to the Franklin County Court of Common Pleas.

As a result of the bill's Towing and Quick Clear Board requirements, the PUCO will experience an increase in expenditures, the magnitude of which is uncertain, but may be tens of thousands of dollars or more. While the bill specifies that the Towing and Quick Clear Fund is to be used for the purpose of executing the duties of the Board, there is no appropriation permitting PUCO (or any other state agency) to spend the proceeds collected by the fund. Additionally, it is possible that the Franklin County

Court of Common Pleas may experience a slight increase in caseload if decisions made by the Board are appealed. Any increase would likely be minimal with any additional costs at least partially offset by a filing fee.

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