



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number: LLS 22-0063 **Date:** August 15, 2022
Prime Sponsors: Rep. Ricks; Hooton **Bill Status:** Signed into Law
 Sen. Gonzales; Sonnenberg **Fiscal Analyst:** Will Clark | 303-866-4720
 Will.Clark@state.co.us

Bill Topic: TOWING CARRIER NONCONSENSUAL TOWS

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill expands consumer towing protections. Starting in FY 2022-23, it will increase state revenue and expenditures on an ongoing basis, and may increase local expenditures on an ongoing basis.

Appropriation Summary: For FY 2022-23, the bill requires and includes an appropriation of \$109,475 to the Department of Regulatory Agencies.

Fiscal Note Status: The fiscal note reflects the enacted bill.

Table 1
State Fiscal Impacts Under HB 22-1314

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue	Cash Funds	\$109,475	\$116,518
	Total Revenue	\$109,475	\$116,518
Expenditures	Cash Funds	\$109,475	\$116,518
	Centrally Appropriated	\$32,134	\$37,350
	Total Expenditures	\$141,609	\$153,868
	Total FTE	1.4 FTE	1.7 FTE
Transfers		-	-
Other Budget Impacts	TABOR Refund	\$109,475	\$116,518

Summary of Legislation

The bill updates state towing requirements, notification procedures, and lien processes. It grants the Public Utilities Commission (PUC) in the Department of Regulatory Agencies (DORA) additional authority to promulgate rules related to non-consensual towing, to deny permit applications or permit renewals of towing carriers who commit towing-related offenses or act against the public interest, and to adjust towing company permit fees to cover direct and indirect costs of the bill.

Towing companies. This bill modifies towing company notification requirements to law enforcement, the Department of Revenue (DOR), and the owners or lienholders of a vehicle. It also establishes new responsibilities for vehicle towing companies and storage facilities, including that companies:

- prominently display maximum allowable rates that may be charged for towing services, as permitted by the PUC, at the company's place of business and on their website;
- provide adequate lighting and signage in storage facilities, maintain safety and security of towed vehicles, and provide evidence of insurance upon request;
- only charge for storage when it is provided, do not charge for storage beyond the first 24 hours before providing notification to interested parties, and give owners or lienholders an itemized bill upon request;
- photographically document vehicle condition and reason for a tow before towing, record and retain information of non-consensual tows for three years, and provide these records upon request;
- upon demand of the vehicle's owner, retrieve the contents of a towed vehicle without payment, or allow the owner to retrieve the vehicle after the owner pays 15 percent of the fees owed, not to exceed \$60, and signs a form affirming they owe the towing company payment;
- except under certain circumstances, obtain authorization from the property owner, leaseholder, or common interest community and give notice to a vehicle owner 24 hours before removing a vehicle from private property;
- release a vehicle that has been hooked up but not towed from the property if approached and requested by an authorized or interested person;
- unless ordered by a peace officer, not tow vehicles due to expired vehicle registration; and
- pay lienholders, car owners, and other interested persons the sum of any proceeds from sale of a vehicle that is greater than the charges owed to the towing company.

Private property owners. Private property owners must provide written notice of parking policies to tenants and ensure that adequate signage of parking regulations is maintained on their property. Towing carriers are prohibited from acting as an agent for a property owner.

Vehicle owners. Individuals who have had their vehicles towed non-consensually may seek and recover damages from a towing company if their vehicle is towed in violation of these regulations. The bill also exempts attached accessories and equipment and the contents of a vehicle from towing carrier liens, and exempts vehicles from liens for 30 days after notice is provided to a vehicle owner, if the vehicle was towed non-consensually. If a carrier damages a vehicle or violates these provisions in a manner that causes damages, and refuses to reimburse the owner or lienholder, the owner may recover attorney fees. The bill also establishes a deceptive trade practice for violations of this act, and provides the Attorney General with authority to address violations.

Towing task force recommendations. The bill requires the towing task force to analyze and make recommendations to the PUC about non-consensual towing rates charged to the public. It also expands the task force's annual reporting requirements to the General Assembly, requiring them to include:

- the recommendations made to the PUC about non-consensual towing rates charged to the public;
- the task force's definition of a consensual and non-consensual tow;
- information about the dollar amounts considered when setting the rates that towing companies can charge for non-consensual tow;
- the time taken to settle complaints made to the PUC;
- categories of complaints and the number of complaints in each category; and
- a list of the towing companies that have been issued a permit, the number of valid complaints against each company, and the action taken by the PUC in response to each valid complaint.

Background and Assumptions

Towing regulation and investigations. The PUC currently regulates Colorado's 732 towing companies regarding towing rates, scope of operations, insurance, safety, compliance and complaints. The PUC employs 6 investigators who investigate around 400 towing complaints each year on average. The fiscal note assumes these investigations will increase by roughly 15 percent starting in FY 2022-23, an increase of around 60 per year, as a result of new towing regulations and requirements.

Taking possession of abandoned vehicles. Upon towing an abandoned vehicle, towing carriers are required to perform both a Colorado motor vehicle records search and a national records search. Towing carriers may take possession of an abandoned vehicle and sell the vehicle if it is not recovered, after meeting certain reporting, notification and appraisal requirements, and using forms provided by the Department of Motor Vehicles (DMV) in the DOR.

Comparable Crime Analysis

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or creates a new factual basis for an existing crime. This section outlines data on crimes comparable to the offense in this bill and discusses assumptions on future rates of criminal conviction for those offense.

Prior conviction data and assumptions. This bill creates a new factual basis for the existing offense of violating motor vehicle carrier rules and regulations, a class 2 misdemeanor, by expanding the rules and requirements for towing carriers concerning non-consensual tows. From FY 2018-19 to FY 2020-21, one offender has been sentenced and convicted for this offense. Demographically, the offender was a white male. Though convictions could increase because of the lower burden required to prove a violation and the expanded type of behaviors that must be reported, the fiscal note assumes there will continue to be minimal or no additional criminal case filings or convictions for this offense under the bill. Because the bill is not expected to have a tangible impact on criminal justice-related revenue or expenditures at the state or local levels, these potential impacts are not discussed further in this fiscal note. Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Revenue

The bill allows the PUC, with approval of the executive director of DORA, to adjust towing company permit fees to pay for the direct and indirect costs of implementing the bill. The fiscal note assumes that these fees will be adjusted to pay costs of \$109,475 in FY 2022-23 and \$116,518 in FY 2023-24 and future years.

Towing company permit fee impact on HB 22-1314. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fees will be set administratively by the PUC in DORA based on cash fund balance, estimated program costs, and the estimated number of towing company permits subject to the fee. The table below identifies the fee impact of this bill. The fee for towing company permits is currently set at \$125 a year, and deposited in the Public Utilities Commission Motor Carrier Cash Fund. This fee will be adjusted after the bill’s effective date by the PUC to reflect the number of towing companies seeking permits in any given year, and is subject to TABOR.

**Table 2
Fee Impact on HB 22-1314**

Fiscal Year	Type of Fee	Proposed Fee	Number Affected	Total Fee Impact
FY 2022-23	Towing Company Permit	\$149.56	732	\$109,475
FY 2022-23 Total				\$109,475
FY 2023-24	Towing Company Permit	\$159.18	732	\$116,518
FY 2023-24 Total				\$116,518

Civil filing fees. To the extent the bill increases civil case filings, state revenue will increase beginning in FY 2022-23. The bill creates additional violations of motor carrier rules and regulations, which may increase cases heard in trial courts. Given existing administrative remedies under DORA to regulate towing companies and resolve complaints and the historic availability of alternative causes of action against towing companies, the fiscal note assumes that the increase in civil filing fees will be minimal. This fee revenue is subject to TABOR.

State Expenditures

The bill increases state expenditures in DORA by \$141,609 in FY 2022-23 and by \$153,868 in FY 2023-24 and future years from the Public Utilities Commission Motor Carrier Cash Fund. It will also increase workload for several other state agencies. Expenditures are shown in Table 3 and detailed below.

**Table 3
Expenditures Under HB 22-1314**

	FY 2022-23	FY 2023-24
Department of Regulatory Agencies		
Personal Services	\$85,981	\$103,178
Operating Expenses	\$1,890	\$2,295
Capital Outlay Costs	\$12,400	-
Vehicle Lease	\$5,733	\$6,879
Vehicle Operating	\$3,472	\$4,166
Centrally Appropriated Costs ¹	\$32,134	\$37,350
Total Cost	\$141,609	\$153,868
Total FTE	1.4 FTE	1.7 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Regulatory Agencies. DORA requires a complaint investigator to investigate additional towing complaints from expanded towing requirements as well as a compliance specialist to comply with new reporting requirements. It will also have increased workload from rulemaking and providing additional support to the towing task force. The fiscal note assumes a September 1 start date, and first year costs reflect the General Fund pay date shift.

- **Complaint investigator.** DORA requires 1.0 FTE to investigate complaints against towing companies, respond to questions, and provide enforcement. The new investigator will require a vehicle, with lease costs reappropriated to the Department of Personnel and Administration. Standard operating and capital outlay costs are included, along with leasing and operating costs for one vehicle.
- **Compliance specialist.** DORA requires 0.7 FTE to analyze towing data for the towing task force, including information considered for the setting of towing rates for non-consensual tows, the time taken to settle towing complaints to the PUC, the number and categories of complaints, and information about towing companies and complaints made against them. Standard operating and capital outlay costs are included.
- **Rulemaking.** Workload will increase for PUC staff to adopt new rules, create a towing company release form, and make other administrative changes as required by the bill. This increase in workload can be accomplished within existing legal services appropriations.

Judicial Department. Workload may increase in the trial courts for any civil actions brought under the bill. The fiscal note assumes that any increase to trial court workload will be minimal and absorbable using existing resources. However, if there is a significant increase in case filings as a result of the bill, the Judicial Department will seek additional resources through the annual budget process.

Department of Law. Violations of new requirements under the bill are considered deceptive trade practices, which allows the Attorney General to investigate and prosecute as appropriate. Violations will be addressed within the department's consumer protection resources, and no change in appropriations is required.

Department of Revenue. The bill requires DMV administrative changes and updates to rules, forms, manuals, and websites upon the effective date of this bill. Training will also be provided to authorized agents, Vehicle Services Section staff, law enforcement, and other entities affected by this bill. No appropriation is required.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 3.

Other Budget Impacts

TABOR refunds. The bill is expected to increase the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the March 2022 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24. Because TABOR refunds are paid from the General Fund, increased cash fund revenue will reduce the amount of General Fund available to spend or save.

Local Government

Local governments may have costs to update requirements related to towing carrier notifications, particularly for local law enforcement agencies. Similar to the Department of Law, district attorneys may have increased workload to prosecute the deceptive trade practice.

Effective Date

The bill was signed into law by the Governor on June 7, 2022, and it took effect on August 9, 2022.

State Appropriations

For FY 2022-23, the bill requires and includes an appropriation of \$109,475 to the Department of Regulatory Agencies from the Public Utilities Commission Motor Carrier Cash Fund, and 1.4 FTE. Of this amount, \$5,733 is reappropriated to the Department of Personnel and Administration.

State and Local Government Contacts

Counties	Information Technology	Judicial
Law	Local Affairs	Municipalities
Personnel	Public Safety	Regulatory Agencies
Revenue	Sheriffs	Transportation