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LEGISLATIVE AUDITOR'S
LETTER REPORT

July 24, 2022

Public Service Commission Third-Party Towing Update

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July 24, 2022

The Honorable Craig Blair, President
West Virginia State Senate
Post Audit Subcommittee, Co-Chair
Room 229M, Building 1
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Charleston, WV 25305

The Honorable Roger Hanshaw, Speaker
West Virginia House of Delegates
Post Audit Subcommittee, Co-Chair
Room 228M, Building 1
State Capitol Complex
Charleston, WV 25305

Mr. President and Mr. Speaker:

During the April 2022 Interim meeting of the Post Audits Subcommittee, the Legislative Auditor released his report entitled, "*West Virginia Public Service Commission: Third-Party Towing Rule.*" Subsequently, members of the Post Audits Subcommittee posed two additional questions for follow-up on the topic of third-party tows conducted in West Virginia:

1. In instances wherein a vehicle is impounded after a third-party tow and the vehicle owner abandons the vehicle at the impoundment location, what options are available to the Legislature for providing recourse to tow/impoundment yard operators to dispose of abandoned vehicles?
2. Current law in West Virginia requires counties to dispatch tow truck operators to respond to third-party tow requests in an equitable and fair manner but provide broad latitude to counties as to how they achieve that goal. What processes are currently employed by counties to dispatch tow truck operators to respond to third-party tow requests in their respective jurisdictions?

Legislative Options for the Disposition of Abandoned Vehicles Based on an Analysis of Select States' Statutes.

During the April Interim meeting of the Post Audit Subcommittee, issues were raised regarding instances wherein, after a third-party tow is performed, a vehicle owner will, in essence abandon the towed vehicle at the place of impoundment. Compounding this issue, members noted

that the ability of the vehicle owner to retrieve personal items of value from the towed vehicle may facilitate abandoning the vehicle, particularly if the vehicle is of little market value.

Under current state law, tow operators and impoundment locations have little to no recourse to dispose of vehicles that are abandoned in this manner. Often, they must maintain physical possession of the vehicle for prolonged periods of time. In these instances, there could be both a monetary and non-monetary cost to these operators. First, if a vehicle is abandoned and goes unclaimed, the vehicle owner has likely not paid the tow operator for the cost of providing the third-party tow and the associated storage cost for the vehicle. Moreover, operators incur non-monetary and/or non-monetary costs related to prolonged possession of these vehicles, such as the loss of usable space.

The Legislative Auditor asked Legislative Services to conduct legal research into how this issue is handled in other states. In response, Legislative Services provided detailed summaries from four states (Arizona, California, Pennsylvania, Michigan) regarding the disposition of abandoned motor vehicles in those states.

Arizona

Arizona Revised Statute defines “abandoned vehicles” and outlines a process by which vehicles that are abandoned may be disposed of or scrapped. A.R.S. §28-4801 defines abandoned vehicles as

[A] vehicle, trailer or semitrailer that is of a type subject to registration under this title whether lost, stolen, abandoned or otherwise unclaimed and that has been abandoned on a public highway, public property or elsewhere in this state, including private property. Evidence that a vehicle was left unattended for a period of forty-eight hours within the right-of-way of any highway, road, street or other public thoroughfare or for a period of seventy-two hours on public or private property or elsewhere in this state is prima facie evidence of abandonment.

In addition, Arizona law indicates additional circumstances wherein the party in possession of a vehicle may file a report with the Department of Transportation for the vehicle to be considered “abandoned.” These circumstances include:

- Vehicles which are impounded due to a violation of various motor vehicle operation laws (i.e., DUI or driving on a suspended license) may be considered “abandoned” if no claim is made for the return or possession of the vehicles by the end of the immobilization or impoundment period—typically 20 days¹.
- Vehicles left in a public garage or parking lot for more than 10 days that have not been left under a written storage contract².
- Vehicles left in a repair facility for more than 10 days after notice is sent to the owner by certified mail that the vehicle is ready for pick up³.

¹ A.R.S. §28-3511

² A.R.S. §28-4839

³ A.R.S. §28-4840

Upon receipt of an abandoned vehicle report, Arizona Revised Statute §28-4841 establishes the procedures that the director of Transportation must follow in an effort to identify the owner, lienholder, or other interested parties for the abandoned vehicle. These steps include:

- Searching AZ DOT records for the owner, lienholder, or other interested party;
- Inquiring of another state's vehicle registration agency if the vehicle is from outside Arizona;
- Sending notice, via mail of the intent to transfer ownership of the abandoned vehicle to its current possessor within 30 days unless successfully claimed;
- If no information is found for an owner, lienholder, or other person of interest, the director must publish notice of intent to transfer ownership in a newspaper of general circulation in the county in which the vehicle was found or seized.

If, after the efforts outlined above are exhausted, the vehicle remains unclaimed, the director of AZ DOT must determine that the vehicle is not stolen property. Upon making this determination, ownership of the abandoned vehicle is transferred free and clear of all liens or encumbrances to the person in possession of the vehicle, generally a tow or impoundment facility. Arizona law imposes various fees on the owner of abandoned vehicles. If collected, A.R.S. §28-4805 indicates that the towing company responsible for providing the towing services is entitled to partial compensation from the amount of fees collected.

While the processes established in Arizona law differ from the specific concerns expressed by members of the Post Audits Subcommittee in that vehicles in Arizona are declared "abandoned" prior to the third-party tow, the process for searching for the vehicles' owners and disposition could be instructive for the Legislature.

California

California law authorizes public agencies to scrap "low-value" vehicles (those with estimated values of \$500 or less) that have been abandoned, and establishes a process for notifying the vehicles owner, lienholder, or other interested parties. The process is as follows:

- In most cases, a peace officer must securely affix a notice of intent to tow/remove a vehicle to the abandoned vehicle at least 72 hours prior to removal from a public highway or other space.
- Upon towing/removal of the vehicle, the public agency must work with the California Department of Justice and the Division of Motor Vehicles to ascertain whether the vehicle is stolen property and identify and notify any interested parties of the intent to dispose. Notification to interested parties must be done by first class or certified mail.
- If the vehicle remains unclaimed 15 days after the notifications were transmitted, towing and storage fees have not been paid, and no request from an interested party has been made for a hearing, the public agency files the appropriate reports and disposes of the abandoned motor vehicle to a license dismantler or scrap iron processor⁴.

In addition, California law allows for "lien-sales" of vehicles abandoned at towing and storage facilities. While the procedures for lien-sales vary based on the estimated vehicle valuation (Less than \$4000; \$4000 or more), tow operators must follow procedures generally in line with the notification requirements outlined above in an attempt to find an owner or other interested

⁴ California Code, Vehicle Code – VEH §22851.3

party for the abandoned vehicle, and the vehicle owner has an additional opportunity to claim the vehicle within 10 days of the sale of the vehicle (prior to delivery to the buyer)⁵.

Proceeds from the sale of vehicles are used to cover the costs associated with towing and storing the abandoned vehicle, with the remaining balance deposited in the Motor Vehicle Account in the State Transportation Fund. An owner or interested party can still file a claim with the DMV for any portion of the proceeds of the lien sale deposited in the State Transportation Fund for a period of 3 years from the date of the deposit⁶.

Like Arizona, California's process appears to require that vehicles are declared "abandoned" prior to the third-party tow, which subsequently triggers the disposition process. Nevertheless, the detailed process for disposing of abandoned vehicles used by California could be instructive to the Legislature should it choose to address this concern via legislation.

Pennsylvania

The process for disposing of abandoned vehicles in Pennsylvania also begins with the receipt of an abandoned vehicle report by the Department of Transportation. Upon receipt of the report, the Department sends a notice of intent to dispose of the vehicle to the last known owner of record, or in the event that an owner's name and address cannot be found, the Department must publish the notice in a newspaper of general circulation in the areas wherein the vehicle was abandoned.

If, after 30 days, no claim has been made on the vehicle, a nonrepairable or salvage vehicle is processed for scrap and vehicles with value are sold at public auctions. The proceeds from the sale of any abandoned vehicle at public auction are used to reimburse the tow operator and/or salvor for costs incurred, with the remaining balance to be deposited in the Pennsylvania Motor License Fund.

Michigan

Finally, Michigan law allows owners or interested parties who believe their motor vehicle was improperly declared "abandoned" to file a petition with a court having jurisdiction within 20 days of receiving notice from the Michigan Secretary of State of the intent to dispose of the vehicle. If the motor vehicle is not redeemed or a hearing is not requested within the required 20-day time frame, the authorized agent(s) may sell the vehicle at a public auction. Owners of abandoned vehicles are subject to additional fines and penalties, and the proceeds from the sale of abandoned vehicles are used to reimburse tow operators for costs incurred.

Most West Virginia Counties Report Using A Rotation List, Designated Towing Districts, or Both in Order to Fairly Assign Tow Operators to Third-Party Tow Requests in Their Jurisdictions.

The provisions of W.Va. Code §24-6-12 set forth the requirements for counties to establish fair and equitable processes for dispatching towing service providers for third-party tows. It requires:

Every three years, the county commission of each county or the municipality operating an emergency telephone system or an enhanced emergency

⁵ California Code, Civil Code – CIV §3068-3072

⁶ California Code, Civil Code – CIV §3073

telephone system shall, in consultation with all public safety units, public agencies and all available towing services registered as common carriers pursuant to the provisions of chapter twenty-four-a of this code, establish a policy that provides for the most prompt, fair, equitable and effective response to requests or dispatches for emergency towing services.

To ascertain each counties process and method for assigning third-party tows to available providers, the Legislative Auditor transmitted a letter to all 55 county commissions requesting copies of the policies established pursuant to W.Va. Code §24-6-12. In total, 53 of 55 counties (96 percent) responded to the Legislative Auditor’s inquiry (Hancock and Jackson counties have not provided responses to the Legislative Auditor’s inquiries). The figure below provides a breakdown of the responses received and Appendix A provides detailed data, by county.

Figure 1	
Dispatch Methods for Third-Party Tows	
Method of Dispatch	Number of Counties
Rotation List	34
Designated Districts/Zones	13
Decided by Law Enforcement	4
No Response	2
Closest Available Provider	2
Source: Information provided by each of the 53 responding counties.	

As the figure above indicates, the vast majority of West Virginia counties (47) report that they employ either a rotation list or establish designated zones/districts/areas for each qualified towing service provider within their jurisdictions. In addition, four counties (McDowell, Monroe, Tucker, and Wood) report that the primary method of dispatching towing service providers to respond to third-party tow requests is at the discretion of the responding law enforcement officer. Two counties (Wayne and Webster) simply dispatch the closest available service provider to the scene of an incident.

The Legislative Auditor notes that these numbers reflect the reported primary methods of dispatching towing service providers. Many counties indicated, either in their policies or in writing, that other methods can and are employed on an as needed basis (i.e., law enforcement discretion may supersede a rotation in certain emergency situations). Moreover, the Legislative Auditor is unable to make any determinations on the extent to which the counties comply with their stated policies nor opine on the extent to which they are effective. The information provided herein solely reflects the information reported by each individual county.

In addition, the Legislative Auditor notes that 51 of the 53 responding counties submitted formal, written policy documents laying out the county’s method for dispatching third-party towing service providers. Wirt County, which currently reports having just a single provider, did not submit a formal written policy. Randolph County did not submit a policy document, but instead submitted a standardized letter it distributes to qualified towing service providers wherein the county lays out its process for dispatching providers. Finally, the Legislative Auditor noted that 39 counties provided policies that meet the statutory requirement to be current (within the last 3 years), while 13 counties submitted policies that were more than 3 years old.

Appendix A

County	Written Policy (Y/N)	Last 3 Years (Y/N)	Rotation or Districts
Barbour	Yes	Yes	Rotation
Berkeley	Yes	Yes	Rotation
Boone	Yes	Yes	District
Braxton	Yes	Yes	Rotation
Brooke	Yes	Yes	Rotation
Cabell	Yes	Yes	Rotation
Calhoun	Yes	Yes	Rotation
Clay	Yes	Yes	Rotation
Doddridge	Yes	Yes	Rotation
Fayette	Yes	Yes	South and North Rotations
Gilmer	Yes	Yes	Rotation
Grant	Yes	Yes	Rotation
Greenbrier	Yes	Yes	District
Hampshire	Yes	No	District
Hancock	No Response	No Response	No Response
Hardy	Yes	Yes	Districts/Location based
Harrison	Yes	Yes	Districts
Jackson	No Response	No Response	No Response
Jefferson	Yes	Yes	Rotation
Kanawha	Yes	No	District/Rotation
Lewis	Yes	No	Rotation
Lincoln	Yes	Yes	Rotation
Logan	Yes	Yes	Rotation
Marion	Yes	No	Rotation
Marshall	Yes	Yes	Rotation
Mason	Yes	Yes	Rotation
McDowell	Yes	No	No
Mercer	Yes	No	Rotation (3 geographic areas)
Mineral	Yes	No	Rotation in sectors
Mingo	Yes	Yes	Designated Coverage Areas
Monongalia	Yes	Yes	Rotation
Monroe	Yes	Yes	No (officer discretion after owner choice)
Morgan	Yes	Yes	Rotation
Nicholas	Yes	Yes	Rotation
Ohio	Yes	Yes	Districts
Pendleton	Yes	No	Rotation
Pleasants	Yes	Yes	Rotation
Pocahontas	Yes	No	Territories and seperate territories for weight.
Preston	Yes	Yes	Districts then rotation
Putnam	Yes	Yes	Rotation
Raleigh	Yes	No	Districts with Rotation unless officer needs to chose
Randolph	No	N/A	Rotation
Ritchie	Yes	No	Rotation
Roane	Yes	Yes	Districts and rotation
Summers	Yes	No	Rotation light and heavy
Taylor	Yes	Yes	Rotation
Tucker	Yes	Yes	Officer discretion then rotation
Tyler	Yes	Yes	Rotation (missing pages of policy)
Upshur	Yes	Yes	Rotation
Wayne	Yes	No	Closest available

Webster	Yes	Yes	Closest available then rotation if equal.
Wetzel	Yes	Yes	Rotation
Wirt	No	No	Rotation
Wood	Yes	Yes	Officer discretion then rotation
Wyoming	Yes	Yes	Districts