

**AGENCY BILL ANALYSIS  
2013 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**LFC@NMLEGIS.GOV**

*And*

**DFA@STATE.NM.US**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

**Original**        **Amendment**      
**Correction**        **Substitute**   

**Date** February 27, 2013  
**Bill No:** HB 253(CS)--305

**Sponsor:** Rep. William Rehm / HTPWC  
**Short**    Towing Service Fees, Hours  
**Title:**    and Payment

**Reviewing**    Attorney General's Office  
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**SECTION II: FISCAL IMPACT \*\*\*\*FOR LFC OFFICIAL PURPOSES\*\*\*\***  
**AGO STAFF SHOULD LEAVE SHADED AREAS BLANK**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

**BILL SUMMARY**

Summary Synopsis:

HB 253 would create a new section under 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 his/her motor vehicle, so long as the request is made between the hours of 7AM and 7PM. The amendment would allow a towing service to charge a “reasonable additional fee” if a request is made outside the 7AM to 7PM timeframe.

HB 253 would also require a towing service to make a representative available every day of the year, between the hours of 7AM and 7PM, to process requests for the pickup or inspection of a motor vehicle. If a request is made on a weekday, a representative must be available on-site within one-half hour of receiving a request, unless the vehicle was towed pursuant to a DWI arrest or a criminal investigation. If a request is made on a weekend, a representative must be available on-site within one hour of receiving the request, unless the vehicle was towed pursuant to a DWI arrest or a criminal investigation.

HB 253 would also prohibit a towing service from requiring payment of any portion of a towing or service fee as a precondition to inspecting a towed motor vehicle. HB 253 would also require that a representative be available twenty-four hours a day, every day of the year, to respond to requests to retrieve medication or medical supplies from a motor vehicle.

HB 253 would also require that the owner, or authorized representative, of private property from which a motor vehicle is being towed to be physically present on the property when the motor vehicle is being towed. It also requires that the private property owner sign an invoice for the tow. HB 253 would also prohibit a towing service from providing compensation to the real property owner from whose property the vehicle is authorized to tow. Finally, HB 253 would also make it a petty misdemeanor to violate any part of the new section.

**FISCAL IMPLICATIONS WITH ENACTING THIS BILL**

N/A

**SIGNIFICANT LEGAL 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 prohibits a state from regulating towing services. 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 only regulate the rates of towing services in cases where a vehicle has been towed without the owner’s consent (i.e. nonconsensual tows).

Also, the AGO notes that Section 65-2A-21 of the Act, as it is currently written, addresses rates charged by towing services performing nonconsensual tows. Section 65-2A-21 states that nonconsensual tows shall observe reasonable, nonpredatory and non-discriminatory rates and practices for the transportation services they provide.” Section 65-2A-21 also makes it unlawful to charge a predatory or discriminatory charge.

**PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL**

None for the AGO

**ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL**

None for the AGO

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION**

Relationship to SB 328 and HB 194 both of which amend provisions of the Motor Carrier Act

**TECHNICAL ISSUES OR DRAFTING ERROR**

Please see analysis under “significant legal issues.” Also, the term “reasonable additional fee” in Section A is subjective and may result in many different interpretations by towing services.

**OTHER SUBSTANTIVE LEGAL ISSUES**

N/A

**ALTERNATIVES TO ENACTING THIS BILL**

N/A

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

**AMENDMENTS NEEDED TO IMPROVE THIS BILL**

N/A