

SENATE BILL REPORT

SB 5730

As of January 10, 2024

Title: An act relating to impounds of vehicles used as residences.

Brief Description: Concerning impounds of vehicles used as residences.

Sponsors: Senator Fortunato.

Brief History:

Committee Activity: Housing: 2/15/23, 2/17/23 [DPS-TRAN]; 1/10/24.

Brief Summary of Bill

- Establishes a process for towing an unauthorized vehicle left on publicly owned or controlled property.
- Adds safe parking areas for low and very low-income households using a vehicle as their residence to the list of activities eligible for assistance from the housing trust fund.
- Authorizes a court to release a vehicle after an impound hearing or postpone hearings if certain criteria are met.
- Allows courts to consider the person's ability to pay if a vehicle is used as a residence, and reduces towing and storage fees if the court finds the person to be indigent.
- Requires the Department of Licensing to pay the difference between any reduced fees and the tow operator's actual costs for towing and storage.
- States that a vehicle illegally parked on public property or in a public right-of-way is not a homestead.

SENATE COMMITTEE ON HOUSING

Majority Report: That Substitute Senate Bill No. 5730 be substituted therefor, and the

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substitute bill do pass and be referred to Committee on Transportation.

Signed by Senators Kuderer, Chair; Frame, Vice Chair; Fortunato, Ranking Member; Braun, Cleveland, Gildon, Rivers, Saldaña, Shewmake, Trudeau and Wilson, J..

Staff: Melissa Van Gorkom (786-7491)

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: That Second Substitute Senate Bill No. 5730 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Liias, Chair; Lovick, Vice Chair; Shewmake, Vice Chair; King, Ranking Member; Holy, Assistant Ranking Member; Cleveland, Kauffman, Lovelett, MacEwen, Nobles, Padden, Randall, Valdez, Wilson, C. and Wilson, J..

Staff: Brandon Popovac (786-7465)

Background: Towing and Impounds. Tow truck operators who impound vehicles are regulated by the Department of Licensing (DOL). Impoundment is defined as taking and holding a vehicle in legal custody without the consent of the owner and may only be performed by registered tow truck operators (RTTOs). RTTOs may impound, transport, and store unauthorized vehicles and dispose of abandoned vehicles. There are two types of impounds:

- public impounds are at the discretion of a law enforcement officer or public official having jurisdiction over the public property on which the vehicle was located; and
- private impounds are at the discretion of a person having control or possession of the private property on which the vehicle was located.

Redemption of Towed Vehicles. Vehicles titled with DOL lawfully impounded by RTTOs may be redeemed by the following persons or entities:

- the legal owner;
- the registered owner;
- a person authorized in writing by the registered owner;
- the vehicle's insurer or a vendor working on behalf of that insurer;
- a third-party insurer who has a duty to repair or replace the vehicle, with consent from either the registered owner or the legal owner of the vehicle, a driver in possession of the vehicle with the registered owner's permission, or an adult member of the registered owner's family; or a vendor working on the insurer's behalf with the specified consent;
- a person verified by the operator to have the permission of the registered owner;
- a person who has purchased a vehicle registered or titled with DOL from the registered owner and who produces proof of ownership or written authorization and signs a receipt; or
- a person, known to the registered or legal owner of a motorcycle or moped towed from the scene of an accident, may redeem the motorcycle or moped as a bailment

while the registered or legal owner is admitted as a patient in a hospital due to the accident.

To redeem a vehicle, a person or entity eligible to do so must pay the costs of towing, storage, or other services provided during the course of towing, removing, impounding, or storing the vehicle. Any person seeking to redeem an impounded vehicle has the right to a hearing to contest the validity of the impoundment or the amount of towing and storage charges. The RTTO must give each person seeking to redeem a vehicle written notice of their right to a hearing, accompanied by a form to be used for requesting a hearing, the name of the person or agency authorizing the impound, and a copy of the towing and storage invoice. Hearing requests must be received by the court within ten days of the date the RTTO provided written notice of the right to a hearing, and more than five days before the date of the auction.

At the conclusion of the impound hearing the court will determine whether the impoundment was proper, whether the towing or storage fees charged were in compliance with the posted rates, and who is responsible for payment of fees. If the court finds the impoundment to be proper, the court may not adjust fees or charges in compliance with the posted or contracted rates. If the court finds the impoundment to be improper, the vehicle owner does not have to pay the cost for impoundment, towing, or storage fees. Instead, the person or agency who authorized the impoundment is liable for these fees.

Fee Schedules. An RTTO must register a fee schedule with DOL. All filed fees must be adequate to cover the costs of service provided and no fees may exceed those filed with DOL. At least ten days before the effective date of any changes in the fee schedule, the RTTOs must file the revised fee schedule with DOL. The fees charged by Class A, Class D, or Class E tow trucks are subject to a cap. For private impounds, an RTTO may not file a fee schedule with an hourly rate that exceeds 135 percent of the maximum rate for a Class A tow truck as negotiated with the Washington State Patrol (WSP). The filed fee schedule may not have a storage rate exceeding 135 percent of the maximum daily storage rate as negotiated with WSP. A filed schedule's after-hours release fee may not exceed 100 percent of the maximum after-hours release fee as negotiated with WSP. These limits do not apply to other classes of tow trucks; private voluntary towing; towing a vehicle not parked or not upright, does not have all of its wheels or tires, or has a broken axle; or if the vehicle is being towed from a location at which it was involved in an accident.

Ownership in Doubt. If a person is unable to obtain satisfactory evidence of ownership or release of interest in a vehicle, they may apply for ownership in doubt and receive a three-year registration without title or a bonded title. Ownership in doubt does not apply to unauthorized vehicles, abandoned vehicles, snowmobiles, or Washington vehicle dealer sales.

Homestead Exemption. The homestead exemption protects real or personal property the owner or a dependent of the owner uses as a residence from sale of the property to repay

debt.

Work Group Report. In the 2022 Supplemental Transportation Budget, the Legislature directed Washington State University (WSU) to convene a work group to examine the implications of the Washington Supreme Court's findings in *City of Seattle v. Long*, which emphasized the need for courts to assess the individuals ability to pay when determining whether the fines and fees are excessive, and make recommendations for amending provisions concerning the towing and impounding of vehicles. WSU completed the report in December 2022, providing a number of recommendations, including allowing courts to authorize release of vehicle residences and to determine an individuals' ability to pay impound fines or fees during impound hearings.

Abandoned Recreational Vehicle Disposal Account. The applicant for a registration for a camper, motor home or travel trailer must pay a \$6 fee deposited into the Abandoned Recreational Vehicle Disposal Account that may be used by DOL to reimburse tow truck operators and licensed dismantlers for the cost for transport, dismantling, and disposal of abandoned recreational vehicles when the last registered owner is unknown.

Housing Trust Fund. Administered by the Department of Commerce, the Housing Trust Fund provides grants or loans to eligible organizations for projects that will provide affordable housing to meet the needs of low-income and special needs populations.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Towing and Impounds. A new process for towing an unauthorized vehicle left on publicly owned or controlled property is established. Law enforcement discovering an unauthorized vehicle left on publicly owned or controlled property must attach a readily visible notification sticker indicating the date and time, identity of the officer, a statement that if the vehicle is not redeemed the registered owner will have committed the traffic infraction of littering—abandoned vehicle, the address and telephone number where additional information can be obtained, and a statement that the law enforcement officer may provide for the vehicle's removal to a place of safety and stored at the owner's expense:

- for the first offense, the owner has 72 hours to declare the vehicle is being used as a residence and move the vehicle to a safe parking area; and
- for the second offense, if the vehicle is not removed within 24 hours.

If the vehicle has Washington license plates, the officer must check records to learn the identity of the last owner and make a reasonable effort to contact the owner by telephone in order to give the information on the notification sticker.

Redemption of Towed Vehicles. A person authorized by a court after an impound hearing or other procedure may redeem a vehicle impounded by an RTTO. A court or administrative hearings officer may review additional information and evidence at a hearing

if ownership of the vehicle or authorization from the legal or registered owner to use, reside in, or retrieve the vehicle is disputed. If a person is unable to present sufficient evidence to show they are an authorized person or entity, the court may, with good cause, set aside the hearing for up to 15 business days to allow the person the opportunity to file appropriate ownership paperwork with DOL or obtain written authorization from the legal or registered owner to redeem the vehicle. A court may grant additional time for extenuating circumstances or until the legal proceeding has ended when the person files for ownership in doubt.

The court may consider a late request for an impound hearing for good cause when the vehicle is used as a residence and the request is made more than five days before the date of the auction.

At the conclusion of the impound hearing, if the court finds a vehicle is used as a residence, the court may consider the person's ability to pay the towing and storage fees and reduce the fees if the court finds the person to be indigent. The RTTO may apply to DOL for costs reimbursement to pay the difference between any reduced towing and storage fees and the RTTO's actual costs for towing and storage. DOL must pay the difference between the reduced fees and RTTO's actual costs for the towing and storage if the RTTO applies for reimbursement. DOL may only use funds authorized from the Abandoned Vehicle Disposal Account (Account) for costs reimbursement of a vehicle used as residence. If funds in the Account become insufficient to reimburse claims, DOL must create a waitlist and distribute funds in the order claims are received. DOL is not liable and not subject to any penalty or cause of action for the provision or lack of provision of funds for claim reimbursement.

Homestead Exemption. A vehicle illegally parked on public property or in a public right-of-way is not a homestead.

Housing Trust Fund. Activities eligible for assistance from the Housing Trust Fund and other legislative appropriations are expanded to include safe parking areas for low and very low-income households using a vehicle as their residence.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill (Housing) (Regular Session 2023): *The committee recommended a different version of the bill than what was heard.*

PRO: This is a complex solution to solve a simple problem. My concern is that if the RV account is used for the reimbursement the account may be depleted quickly. May consider

an amendment to say that the impounding authority contribute to the RV account to keep it whole.

OTHER: We support these efforts to protect vehicle residence. It goes a long way to codify the *City of Seattle v. Long* decision but don't think the bill goes far enough because the decision made was not limited to people who live in their cars and calls for an excessive fines analysis for impound costs more generally. Other low-income people should also be included and allowed to get extensions hearings for good cause. The bill should also incorporate homestead protections for vehicle residences and exempt the vehicle from sale if someone lives in it.

Cannot support any role in the tower determining whether the vehicle is or is not a residence and think there should be an exemption from litigation under the homestead act if the tower complies with towing requirement. Jurisdictions have different rules regarding impounding of vehicles and we need assurance that the way business is done in different areas is the same and ask that you consider preemption language for this issue.

Urge you to include coverage for the difference of fees and fines by the courts that relate to private impounds as well as public impounds. Worked with DOL for four years on the RV program and we were conservative with what we asked for to pay for RVs. There is currently a surplus but this funding needs to remain available for the abandoned RVs. DOL or the local impounding authority should pay the difference and it needs to be tied to the jurisdiction that authorizes the tow.

Persons Testifying (Housing): PRO: Senator Phil Fortunato, Prime Sponsor.

OTHER: Sarah Nagy, Columbia Legal Services; Peter Lukevich, Towing Recovery Association of Washington (TRAW); Paul Bressi, Towing & Recovery Assn of WA.

Persons Signed In To Testify But Not Testifying (Housing): No one.

Staff Summary of Public Testimony on First Substitute (Transportation) (Regular Session 2023): *The committee recommended a different version of the bill than what was heard.* PRO: The bill is a byproduct of dueling bills in the previous committee, and addresses who pays the difference when tow operator costs are reduced by the courts. The bill also keeps the abandoned RV disposal account whole through the new reimbursement, pass through process.

CON: The abandoned RV disposal account program is not only about removing vehicles from road but also involves dismantling and disposing of such vehicles. Account funds are being put at risk and are needed for all of the eligible uses and not for such new uses. Tow truck operators should collect reduced towing costs from the impoundment authority instead of DOL.

OTHER: There are administrative challenges for collecting reimbursement amounts from impounding authorities that are municipalities or law enforcement. The allowed new use could deplete the abandoned RV disposal account. The bill should introduce language to ensure the availability of funds, and delay the effective date until January 1, 2024. The bill addresses concerns of the tow truck industry. Abandoned RV disposal account funds should not be reduced as the bill addresses only lawful impounds not improper ones. The *Seattle v. Long* decision placed the tow truck industry in a state of uncertainty, and this bill is a step in the right direction, providing more certainty with how tow operators should do business. The account receiving reimbursements from impoundment authorities will help preserve funding and not thwart access for other account purposes.

Persons Testifying (Transportation): PRO: Senator Phil Fortunato, Prime Sponsor.

CON: James King, Independent Business Association.

OTHER: Peter Lukevich, Towing Recovery Association of Washington (TRAW); Kris Zachary, Burns Towing; Paul Bressi, Nisqually Towing; Beau Perschbacher, WA Dept. of Licensing.

Persons Signed In To Testify But Not Testifying (Transportation): No one.

Staff Summary of Public Testimony On Proposed Substitute (Housing) (Regular Session 2024): PRO: Had a separate bill to create an indigent impound account to fund this rather than the abandoned vehicle account. The bill also allows for HTF funds to be used by locals to establish safe parking areas.

OTHER: Concerned with one word in section three which requires LE to attach a sticker. LE is not generally required to respond, an officer generally responds at their discretion and so we ask that you make that discretionary and that would address the concern. State Supreme Court held in the *Long* case that courts must consider the ability to pay and reduce fines under the constitution and this bill allows court to decide when to make that analysis. The bill should clarify that the ability to pay analysis and reduction in fines should be required by the courts in all cases. The bill also needs to address remaining inconsistencies between the current law and the towing statutes which are confusing for the courts and the people impacted by impounds. For example, some statutes and the bill still contain language stating that the courts can't reduce fees from the posted rates but, as of 2021, courts not only have the power, but do reduce fees where they stand in the way of the person and their livelihood. Concerned about using the abandoned RV fund as the source for the funding of this. This fund exists so that towers and scrap processors can handle taking care of abandoned RVs in their lots and so, while there is money there now, that amount will be drained as we are able to process requests for the current use. Would like an appropriation from the Legislature to fund this rather than using this existing RV account. Need a definition for what is a residence when it comes to an automobile so that LE can make that decision, tow companies should not be involved in that decision. Concerned about the 90 day requirement to dispose of a vehicle that has been declared abandoned

because the ability for the courts to extend the hearing under this bill there may need to be additional time in those cases. If affidavit of indigency is required then there should be another penalty or requirement on the individual to dissuade them from trying to claim vehicles as residences that are not.

Persons Testifying (Housing): PRO: Senator Phil Fortunato, Prime Sponsor.

OTHER: James McMahan, WA Assoc Sheriffs & Police Chiefs; Sarah Nagy, Columbia Legal Services; Peter Lukevich, Towing and Recovery Association of Washington; Chester Baldwin, TRAW - Towing & Recovery Assn of WA.

Persons Signed In To Testify But Not Testifying (Housing): No one.