

## **BILL ANALYSIS**

Senate Research Center

H.B. 2799  
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### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Several large Texas cities are beginning to address the removal of disabled vehicles on state highways and roads without accord on the state level. A statewide policy on this issue is necessary to ensure that drivers understand their rights as they travel across the state.

H.B. 2799 establishes that a municipality may create a traffic incident management program authorizing the municipality to enter into an agreement with one or more towing companies to remove traffic on its roadways, and requires that vehicles towed under this program be taken to safe drop locations, vehicle storage locations designated by the municipality, a garage designated or maintained by the municipality, or a position off the paved or main traveled part of the roadway. This legislation models the Freeway Service Patrol program established statewide in California in 1992 which has been extremely successful.

H.B. 2799 authorizes a political subdivision to establish a traffic incident management to regulate towing within that political subdivision, if that political subdivision has been permitted to establish a program in an agreement with the Texas Department of Public Safety (DPS). The political subdivision may enter into agreements with towing companies to provide towing for the program and may not impose fees or a charge that exceeds two percent of the annual gross receipts for traffic incident management towing. The political subdivision must also apply all revenue received from these fees to the program and may pay a towing company for towing and storage under this program.

All vehicles towed in connection with the program must be taken to a safe drop location, garage maintained by the political subdivision, vehicle storage facility, or a space on a paved or main traveled part of the roadway or right-of-way.

A towing company that provides traffic incident management towing shall maintain insurance, and may not use a driver that is not certified by the National Drivers Certification Program of the Towing and Recovery Association of America or a driver who has been convicted of a felony in the preceding seven years. The company must also provide training for drivers in incident practices and provide appropriate equipment for the towing and recovery of light duty and heavy duty vehicles.

Towing companies are required to verify the criminal records of their drivers through DPS, and the political subdivision may impose stricter standards on the employment of drivers with felony convictions.

Finally, the program must comply with Chapter 15, Business and Commerce Code, preventing monopolies in connection with the program.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 542.203(a), Transportation Code, to prohibit a local authority from establishing a transportation or mobility enhancement program on a state highway, including a farm-to-market or ranch-to-market road, such as a program by which the

municipality receives revenue for towing of vehicles located on the highway, unless permitted by a certain agreement between the local authority (certain local entities authorized to enact traffic laws under the laws of this state) and the Texas Department of Transportation. Makes conforming and nonsubstantive changes.

SECTION 2. Amends Section 545.001, Transportation Code, as follows:

Sec. 545.001. New heading: DEFINITIONS. Adds definitions of "safe drop location," "towing company," and "vehicle storage facility." Makes nonsubstantive changes.

SECTION 3. Amends Sections 545.305(a) and (b), as follows:

(a) Authorizes certain officials to remove or require the operator or person in charge of a vehicle to move a vehicle from a highway if the vehicle is disabled so that normal operation is impossible or impractical and the owner or person in charge of the vehicle does not designate a particular towing or vehicle storage facility, rather than storage company. Makes a nonsubstantive change.

(b) Authorizes an officer acting under Subsection (a) to require that the vehicle be taken to a safe drop location, rather than the nearest garage or other place of safety, or a vehicle storage facility. Makes nonsubstantive changes.

SECTION 4. Amends Section 545.3051(d), Transportation Code, to require the owner and any carrier of personal property removed under this section to reimburse the towing company for any reasonable cost of removal and disposition of the property. Makes nonsubstantive changes.

SECTION 5. Amends Subchapter G, Chapter 545, Transportation Code, by adding Section 545.309, as follows:

Sec. 545.309. TRAFFIC INCIDENT MANAGEMENT PROGRAM. (a) Defines "traffic incident."

(b) Authorizes a political subdivision to establish a traffic incident management program to provide for the safe and efficient removal of personal property from a roadway or right of way in the political subdivision.

(c) Authorizes a political subdivision, as part of its traffic incident management program, to enter into agreements with towing companies to provide traffic incident management towing. Prohibits the political subdivision from imposing a fee or charge that exceeds two percent of the annual gross receipts for traffic incident management towing. Requires the political subdivision to apply all revenue generated by any fees or charges to the traffic incident management program.

(d) Authorizes a political subdivision to pay a towing company for traffic incident management towing and storage. Provides that if a political subdivision does not pay the towing company, the owner of the vehicle that is towed or stored under this section is liable for all reasonable towing and storage fees incurred.

(e) Requires a political subdivision, in connection with its traffic incident management program, to comply with Section 643.204 (Towing Fee Studies) and ensure that fees collected from the owner or operator of a vehicle involved in a traffic accident for services provided by a towing company do not exceed the allowable amounts established by a political subdivision under that section.

(f) Requires a towing company that provides traffic incident management towing to maintain insurance as required by Chapter 643 (Motor Carrier Registration) and comply with each fee provision in that chapter, provide annual training for incident practices, and provide appropriate equipment for the towing and recovery of light duty or heavy duty vehicles in accordance with the vehicle manufacturer's towing guidelines. Prohibits a towing company that provides traffic incident

management towing from using a driver who is not certified by the National Drivers Certification Program of the Towing and Recovery Association of America for the size tow truck to be driven or a driver who has been convicted of a felony in the preceding seven years.

(g) Requires a towing company to verify the criminal record of each driver through the criminal history record information maintained by the Department of Public Safety. Authorizes a political subdivision to impose stricter limitations on the employment of drivers with felony convictions than the limitation established by this section.

(h) Requires a vehicle that is towed in connection with a traffic incident management program to be taken to a safe drop location, a garage designated or maintained by the political subdivision, a vehicle storage facility, or a position off the paved or main traveled part of the roadway or right-of-way.

(i) Prohibits a political subdivision, in connection with its traffic incident management program, from entering into any agreement that would monopolize any part of trade or commerce or have the effect of lessening competition substantially in any line of trade or commerce.

(j) Prohibits a political subdivision from entering into an agreement under Subsection (c) exclusively with one towing company.

SECTION 6. Amends Section 683.011(b), Transportation Code, to authorize a law enforcement agency to use agency personnel, equipment, and facilities, or contract for other personnel, equipment, and facilities to send notice regarding and dispose of an abandoned motor vehicle, watercraft, or outboard motor taken into custody by the agency under this subchapter. Makes a nonsubstantive change.

SECTION 7. Amends Section 683.031(c), Transportation Code, to require the garagekeeper to report the abandonment of the motor vehicle to a law enforcement agency with jurisdiction where the vehicle is located or to the Department of Public Safety and to pay a \$10 fee, rather than a \$5 fee, to be used by the law enforcement agency for certain costs.

SECTION 8. Amends Sections 683.034(a), (b), and (e), Transportation Code, as follows:

(a) Provides that the law enforcement agency has custody of the vehicle if the agency has physical custody of the vehicle, has given notice to the storage facility that the law enforcement agency intends to dispose of the vehicle under this section, or has received a report under Section 683.031(c) (reporting the abandonment of a motor vehicle) and the garagekeeper has met all of the requirements of that subsection.

(b) Requires the proceeds of the sale of the abandoned vehicle to be first applied to the garagekeeper's charges for providing notice regarding the vehicle and for service, towing, impoundment, storage, and repair of the vehicle.

(e) Prohibits the law enforcement agency from taking the vehicle into custody and authorizes the storage facility to dispose of the vehicle if the law enforcement agency does not take the vehicle into custody before the 31st day after the date the vehicle was reported abandoned under Section 683.031, rather than the 31st day after the date notice is sent under Section 683.012. Deletes the provision authorizing the storage facility to dispose of the vehicle under Chapter 2303 (Vehicle Storage Facilities), Occupations Code, if the vehicle is an abandoned nuisance vehicle. Makes nonsubstantive changes.

SECTION 9. Amends Section 685.004, Transportation Code, to require a hearing under this chapter to be in the justice court having jurisdiction in the precinct in which the vehicle is located, rather than before the justice of the peace or a magistrate in whose jurisdiction is the location from which the vehicle was removed. Deletes the exception for municipalities with a population of 1.9 million or more. Makes a nonsubstantive change.

SECTION 10. Amends Section 685.006, Transportation Code, to require notice under Section 685.005 (Notice to Vehicle Owner or Operator) to include the name, address, and telephone number of the person, property owner, or law enforcement agency that authorized the removal of the vehicle, and the name, address, and telephone number of the justice court having jurisdiction in the precinct in which the vehicle storage facility is located. Deletes existing text requiring the notice to contain the name, address, and telephone number of one or more of the appropriate magistrates. Deletes existing text defining which magistrates' name, address, and phone numbers must be listed on the notice. Makes nonsubstantive changes.

SECTION 11. Amends Section 685.008, Transportation Code, to authorize the court to charge a filing fee of \$20, rather than \$10, for a hearing under this chapter.

SECTION 12. Amends Section 685.009, Transportation Code, by amending Subsections (a) and (b) and adding Subsection (b-1), as follows:

(a) Requires a hearing under this chapter to be held before the 10th, rather than seventh, working day after the date the court receives the request for the hearing.

(b) Requires the court to notify the person who requested the hearing of certain information regarding the hearing by registered or certified mail. Requires the notice of the hearing to the person or law enforcement agency that authorized the removal of the vehicle to include a copy of the request for a hearing.

(b-1) Provides that at a hearing under this section, the burden of proof is on the person who requested the hearing and hearsay evidence is admissible if it is considered otherwise reliable by the justice of the peace.

SECTION 13. Amends Chapter 685, Transportation Code, by adding Section 685.010, as follows:

Sec. 685.010. APPEAL. Provides that an appeal from a hearing under this chapter is governed by the rules of procedure applicable to civil cases in justice court, except that no appeal bond may be required by the court.

SECTION 14. Amends Section 2303.152(a), Occupations Code, to authorize notice to the registered owner and the primary lienholder of a vehicle towed to a vehicle storage facility to be provided by publication in a newspaper of general circulation in the county in which the vehicle is stored if any, rather than all, of certain conditions apply.

SECTION 15. Amends Section 2303.154, Occupations Code, by adding Subsection (a-1), to require the operator of the vehicle storage facility, if a vehicle is not claimed by a person permitted to claim the vehicle before the 10th day after the date notice is mailed or published, to consider the vehicle to be abandoned and send notice of abandonment to a law enforcement agency.

SECTION 16. Amends Section 2303.155(f), Occupations Code, to prohibit the operator of a vehicle storage facility or governmental vehicle storage facility from charging any additional fee related to storage of the vehicle other than those fees set forth in this section or towing fees allowed under Chapter 642, Transportation Code, rather than charging an additional fee that is similar to a notification, impoundment, or administrative fee.

SECTION 17. Amends Section 101.141(a), Government Code, to require the clerk of a justice court to collect a \$20, rather than \$10, fee for hearing on probable cause for removal of a vehicle and placement in a storage facility if assessed by the court.

SECTION 18. Amends Section 101.161, Government Code, to authorize the clerk of a municipal court to collect a \$20, rather than \$10, fee for hearing on probable cause for removal of a vehicle and placement in a storage facility if assessed by the court.

SECTION 19. Amends Section 101.181, Government Code, to delete existing text requiring the clerk of a municipal court of record to collect a \$10 fee for hearing on probable cause for

removal of a vehicle and placement in a storage facility if assessed by the court. Makes a nonsubstantive change.

SECTION 20. Provides that Chapters 683 and 685, Transportation Code, Chapter 2303, Occupations Code, and Chapter 101, Government Code, as amended by this Act, take effect September 1, 2005. Makes application of Chapters 683 and 685, Transportation Code, Chapter 2303, Occupations Code, and Chapter 101, Government Code, as amended by this Act, prospective to the removal or seizure of a vehicle that occurs on or after September 1, 2005.

SECTION 21. Effective date: upon passage or September 1, 2005.