



California Public Utilities Commission

**Feasibility To Impound
Passenger Carrier Vehicles
and Enroll in the
Franchise Tax Board
Interagency Intercept Program**

**Staff Implementation of State
Auditor Report 2013-130
Recommendation #8**

**Transportation Enforcement Branch
August 2016**

Summary

The Transportation Enforcement Branch (TEB) of the California Public Utilities Commission (CPUC) prepared this document in response to Recommendation 8, one of 13 individual recommendations contained in the June 2014 transportation audit report issued by the Bureau of State Audits (BSA).¹

Recommendation 8 asked the CPUC to require that staff examine and formally report on the feasibility of impounding the vehicles of passenger carriers that refuse to comply with CPUC orders or that refuse to pay citation penalties, and also on the feasibility of making use of the Tax Board's program to intercept income tax refunds, lottery winnings, and unclaimed property payments to collect unpaid citation penalties. To that end, TEB staff prepared a Draft Report in February 2016, and finalized the report in August 2016.

This report finds that California Public Utilities (PU) Code section 1046 (b) et seq authorizes peace officers to directly impound vehicles, but not the CPUC. However, PU Code §1044 allows the CPUC to petition for an injunction, including vehicle impounds, in Superior Court.

The report also indicates that the CPUC enrolled in the Franchise Tax Board Interagency Intercept Program, which allows the CPUC to notify the FTB of monies owed to the CPUC by transportation carriers constituted as sole proprietorships; the FTB attempts to collect those funds by intercepting state tax refunds, lottery winnings and unclaimed property payments.

Background

Currently, the CPUC is responsible for implementing and ensuring compliance of over 10,000 passenger and household goods carriers with dozens of sections of the California Public Utilities Code, Vehicle Code, and Commission General Orders and decisions. In 2013, BSA conducted an audit of TEB's enforcement Program, and found the program deficient in five broad categories:

1. High staff turnover and lack of training.
2. Inadequate fiscal procedures to track, charge and collect carrier fees and fine payment.
3. Inadequate complaint procedures, low citation amounts.
4. Failure to dedicate five positions to airport enforcement.
5. High turnover in key management positions, lack of program goals or performance measures.

BSA made 13 recommendations to address those program deficiencies. The CPUC, through TEB and the Fiscal/Budget Office, initiated corrective actions to address the recommendations, and successfully or partially implemented the majority. The CPUC submits annual progress reports to BSA, and will submit the next report in December 2016. TEB anticipates that it will complete all corrective actions responsive to the recommendations under its purview by the December 2016 submission.

Vehicle Impound Authority

¹ <http://www.bsa.ca.gov/reports/summary/2013-130>

The Vehicle Code and the Public Utilities Code confer various types of authority over passenger carriers upon the CPUC, the CHP and peace officers.

Most relevant to this report, PU Code Section 1044 allows the CPUC to request an injunction, restraining order or other type of order in Superior Court to enjoin a carrier's illegal acts or practices, and to allow the court to order an impound of a carrier's vehicles at the owner's expense, to be released only upon a subsequent court order.

In 2015, the Governor signed Senate Bill 541 (Hill), which, among other matters, clarified that:

- 1) Defined a peace officer as consistent with the Penal Code;² peace officers may enforce multiple sections of the Public Utilities Code.³
- 2) Peace officers may impound vehicles owned or driven by passenger carriers (except transportation network companies [TNCs]) for violations of the Public Utilities Code §1046(c) and 5387(d).⁴

Currently, the CPUC works collaboratively with the CHP, airports and local law enforcement to cite and impound illegal passenger carriers. Either the CPUC, CHP or local law enforcement may cite carriers for violations of the Public Utilities Code. The CHP and local law enforcement designated as peace officers may impound vehicles owned by carriers or drivers that lack a CPUC permit or valid driver's license.

One example of a successful impound program partnership is the one between TEB and the Los Angeles International Airport (LAX). TEB provides monthly training to airport police officers regarding the Public Utilities Code, specifically which sections may be cited for particular violations and to impound vehicles. LAX routinely issues citations and impounds vehicles with assistance from CPUC staff located full-time to LAX. TEB provides similar assistance to other airports on a prescheduled basis.

Similarly, the CHP pledges its full cooperation to cite and impound vehicles in partnership with the CPUC at joint inspections or pursuant to CPUC investigations. Despite the authorization clarified by SB 541, local cities and counties still don't feel comfortable issuing citations or impounding vehicles under the Public Utilities Code.

Historically, the CPUC has not pursued court-ordered vehicle impounds against illegal passenger carriers for two primary reasons. First, CPUC attorneys focus on administrative regulatory law, and for the most part, lack experience in criminal or civil litigation within the Superior Court system. Second, the CPUC successfully partners with airports such as LAX, as well as the CHP, to impound vehicles owned by illegal carriers.

Having said that, TEB investigates carriers known to chronically flaunt passenger carrier statutes and regulations. In such cases, the impound periods authorized to peace officers may not sufficiently motivate a carrier to register with the CPUC or deter future illegal activity. In such cases, TEB

² Penal Code Part 2, Title 3, Chapter 4.5, Section 830.

³ PU Code Sections 1046 et seq.; §5411 and §5412, resulting from a violation of §§ 5371, 5379, 5385, 5385.7, or 5387 et seq, or more than one of those sections. A peace officer may additionally enforce and assist in the enforcement of Sections 5411.3 and 5414.

⁴ Carrier or driver that operates without a CPUC permit, certificate and/or valid driver's license.

recommends that the CPUC pursue court-ordered enforcement actions, conditional upon obtaining a CPUC permit and paying all associated fees and fines prior to release of carrier vehicles.

Interagency Intercept Program

BSA Recommendation 8 questioned the feasibility of collecting unpaid fines via the Franchise Tax Board (FTB). The FTB administers the Interagency Intercept Collection Program (IICP) to intercept refunds when individuals have delinquent debts owed to government agencies and California colleges. The FTB administers the IICP on behalf of the State Controller's Office.

Upon agency enrollment in the IICP program and at the agency's specific request, the IICP intercepts personal income tax refunds, lottery winnings and unclaimed property disbursements, based on an individual's Social Security number. The IICP collects only the amount owed to the requesting agency. Enrolled agencies must annually submit an *Intent to Participate* form with the IICP. The IICP does not intercept refunds from corporate entities.

Although it is not clear when the CPUC initially enrolled in the IICP, the CPUC filed an *Intent to Participate* form during calendar year 2016 on February 8, 2016.

Historically, the CPUC did not collect Social Security numbers from individual carrier/applicants. By the end of 2016, TEB will revise passenger carrier applications to require a sole proprietor to provide TEB with his or her Social Security Number (SSN). Concurrently, the CPUC's Information Technology unit will add a field to record the SSNs of individual owners in TEB's legacy carrier database: the Transportation Management Information System (TMIS). Beginning in 2017, the CPUC will submit intercept requests to the IICP monthly or as required, triggered by fines and penalties unpaid or underpaid 120 days from the date of issuance.

Longer term, TEB could also consider whether to utilize the IICP to intercept unpaid and underpaid annual and quarterly fees. Passenger carrier that annually gross \$100,000 or less pay annual fees based on the annual gross by January 15 of the subsequent year. Passenger carriers that gross more than \$100,000 annually pay quarterly fees due the 15th of July, October, January and April. Under existing TEB protocols, TEB first suspends, and subsequently revokes carriers that fail to pay quarterly or annual fees as required. The risk of suspension and revocation act as powerful motivators for licensed carriers to pay the fees on time. In addition, the majority of carriers that pay quarterly are corporations, and thus the IICP does not apply to such carriers. Nevertheless, existing law allows the CPUC to collect unpaid carrier fees, and TEB welcomes new tools in its enforcement toolbox.